

National Park Service | U.S. Department of the Interior

Cultural Resources, Partnerships and Science

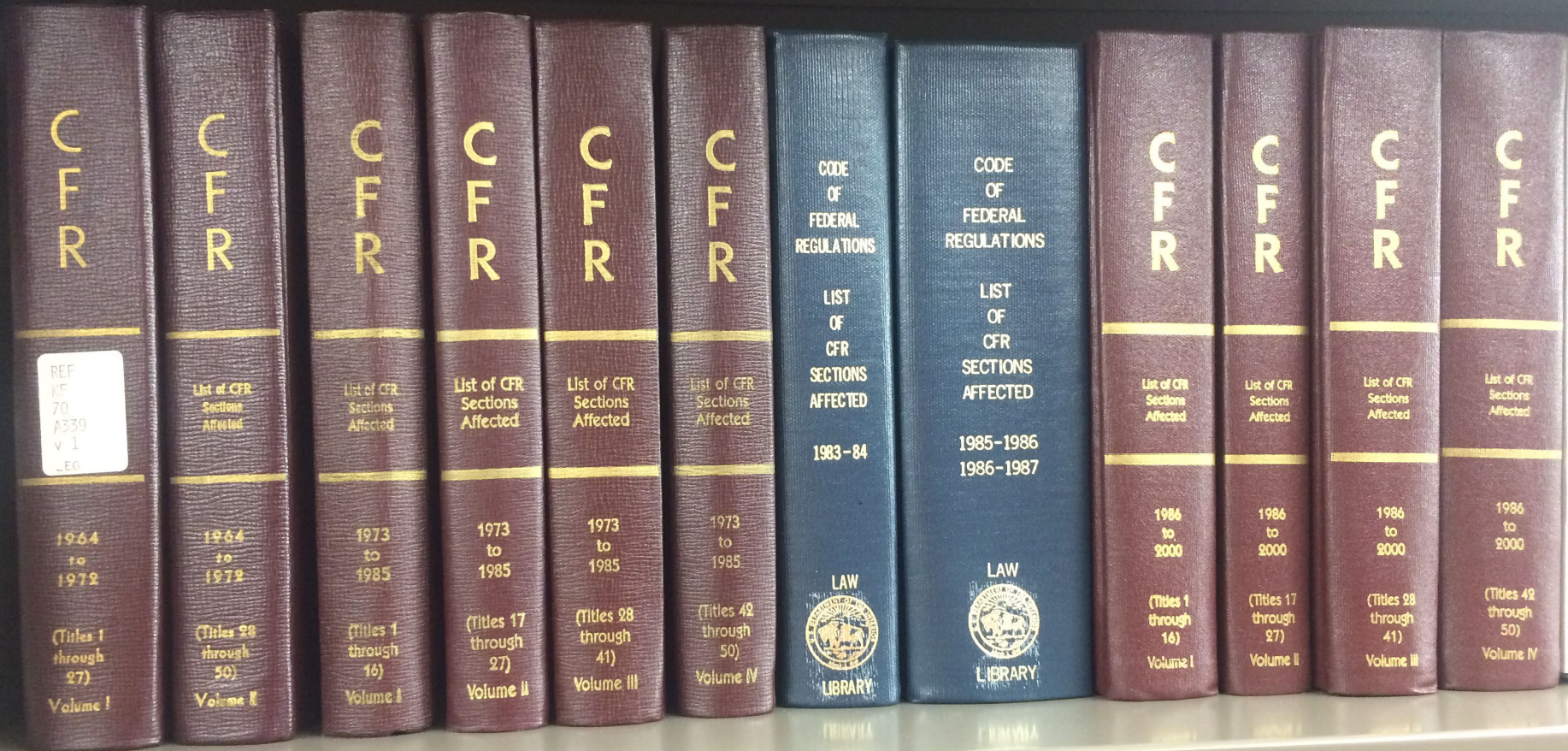
National NAGPRA Program



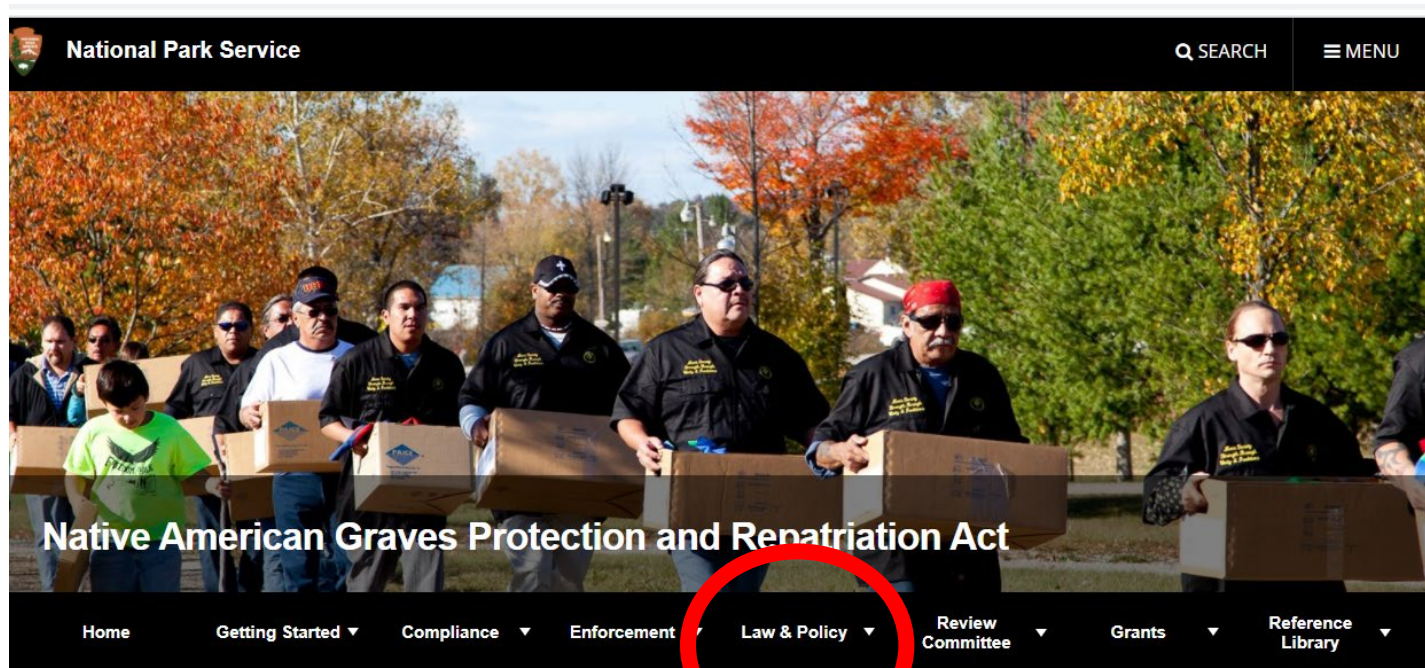
Facilitating Respectful Return



Sources/Resources



nps.gov/nagpra Law & Policy



NPS.gov / Home

Facilitating Respectful Return

Since 1990, Federal law has provided for the repatriation and disposition of certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. By enacting NAGPRA, Congress recognized that human remains of any ancestry "must at all times be treated with dignity and respect." Congress also acknowledged that human remains and other cultural items removed from Federal or tribal lands belong, in the first instance, to lineal descendants, Indian Tribes, and Native Hawaiian organizations. With this law, Congress sought to encourage a continuing dialogue between museums and Indian Tribes and Native Hawaiian organizations and to promote a greater understanding between the groups while at the same time recognizing the important

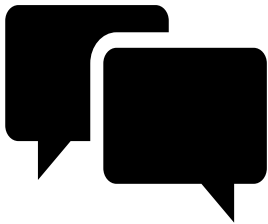
The Law and Congressional Intent

- [Native American Graves Protection and Repatriation Act of 1990](#)
(25 U.S.C. 3001-3013; 104 Stat. 3048-3058)
- [US House Report 101-877](#) [Oct. 15, 1990]
- [US Senate Report 101-473](#) [Sep. 26, 1990]

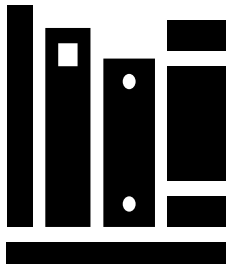
The Regulations and Interpretation



[Proposed Rules](#) to seek comments and revisions



[Final Rules](#) with preamble responding to all comments



Current [NAGPRA Regulations](#)
(43 CFR Part 10)

* All sources are publicly available and text searchable

Getting Back to Basics



Legislative Purpose

Recognize the rights of lineal descendants, Indian Tribes, and NHOs in Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

"... to reach **agreement on repatriation or other disposition** of these remains and objects."

US House Report 101-877

"...to provide for the **protection** of Native American graves and the **repatriation** of Native American remains and cultural patrimony."

US Senate Report 101-473

Regulatory Purpose

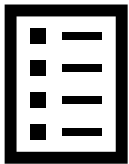
Two systematic processes for Native American human remains and cultural items:

Subpart B – protect on Federal or Tribal lands

Subpart C – restore ancestors and items in collections



Consultation with lineal descendants, Indian Tribes, and Native Hawaiian organizations (NHOs)



Identifying and reporting all Native American human remains and cultural items



Giving notice prior to repatriating or transferring human remains and other cultural items

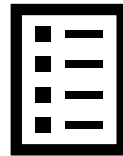
Determining Cultural Affiliation

- Responsibility of museums and Federal agencies



- In consultation with Indian Tribes and NHOs

- Based on available information **without** any additional study or research



- Not be precluded because of gaps in the record

- Give notice of determination



- By applicable deadline

Back to the Future

MONTH	DAY	YEAR	AM PM	HOUR	MIN
NOV	16	1990	PM	04	29
DESTINATION TIME					
MONTH	DAY	YEAR	AM PM	HOUR	MIN
MAR	16	2021	PM	11	49
PRESENT TIME					
MONTH	DAY	YEAR	AM PM	HOUR	MIN
NOV	16	1995	PM	01	20
LAST TIME DEPARTED					

Cultural Affiliation means

A reasonable connection between human remains or cultural items and an Indian Tribe or NHO based on a relationship of shared group identity.

Cultural affiliation may be identified:

- CLEARLY by the information available OR
- REASONABLY by the geographical location or acquisition history of the human remains or cultural items.

Cultural Affiliation means

We agree with the suggestion to add “cultural” before affiliation in this definition. We have clarified this definition by incorporating the Congressional intent of this definition “to ensure that the claimant has a reasonable connection with the materials” (H. Rpt. 101-877, at 14, and S. Rpt. 101-473, at 6). The additional language found in the definition in the Act (traced through time and identifiable earlier group) has been incorporated into the procedure for determining cultural affiliation and the related changes explained in our responses under § 10.3. We included in the definition of cultural affiliation the two ways cultural affiliation may be identified (clearly or reasonably), taken from the language in the Act (25 U.S.C. 3003(d)(2)).

<https://www.federalregister.gov/d/2023-27040/p-180>

Determining Cultural Affiliation

Throughout this part, cultural affiliation ensures that disposition or repatriation of human remains or cultural items is based on **a reasonable connection** with an Indian Tribe or Native Hawaiian organization.

43 CFR 10.3

Determining Cultural Affiliation

We have replaced “a preponderance of the evidence” with “reasonable.” ...we agree with the comments that these terms have different connotations, and that “preponderance of the evidence” has been misused and misapplied in determining cultural affiliation.

We agree with the comments that the Act envisioned a simple and collaborative procedure to determine cultural affiliation through consultation with Indian Tribes and NHOs. Only when a museum or Federal agency was unable to determine cultural affiliation would an Indian Tribe or NHO need to demonstrate cultural affiliation through a preponderance of the evidence.

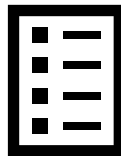
<https://www.federalregister.gov/d/2023-27040/p-320>

Determining Cultural Affiliation

- Based on information available



- Does not require exhaustive studies, additional research, or continuity through time.



- Including information from Indian Tribes and NHOs

- Not precluded solely because of reasonable gaps in the information available.

43 CFR 10.3

Determining Cultural Affiliation

As this section of the regulations describes the initial procedure for determining cultural affiliation, we have revised it to only reflect the requirement to reasonably determine cultural affiliation.

In response to one comment, “reasonable” means both the procedure to make a determination and the determination itself are “in accordance with reason,” “not extreme or excessive,” and “moderate, fair” (<https://www.merriam-webster.com/dictionary/reasonable>, accessed 12/1/2023).

<https://www.federalregister.gov/d/2023-27040/p-320>

Step 1: Collect information available

- Records, catalogues, relevant studies, and other pertinent data.
- Additional information may be provided by an Indian Tribe or NHO.
- One or more of equally relevant types of information may be available.
- A lack of any type of information does not preclude a determination of cultural affiliation.
- One type of information may be used to determine cultural affiliation when no other relevant information is available.

43 CFR 10.3(a)

Step 1: Collect information

We cannot make the requested changes to prioritize the types of information or assign them relative values (1995 Final Rule, 60 FR 62156). We have repeated the exact types of information used for cultural affiliation as provided by Congress in alphabetical order and added Native American traditional knowledge to call out this newly defined type of expert opinion.

<https://www.federalregister.gov/d/2023-27040/p-318>

Step 1: Collect information

The inclusion of Native American traditional knowledge as a type of information that can identify cultural affiliation is consistent with Congressional intent and ensures the stated purpose of these regulations for deference to lineal descendants, Indian Tribes, and NHOs in determinations of cultural affiliation.

<https://www.federalregister.gov/d/2023-27040/p-315>

Step 2: Identify the required criteria

1. One or more earlier groups connected to the human remains or cultural items;
2. One or more Indian Tribes or Native Hawaiian organizations; and
3. A relationship of shared group identity between the earlier group and the Indian Tribe or Native Hawaiian organization that can be reasonably traced through time.

43 CFR 10.3(b)(1)

Step 2: Identify the required criteria

One type of information may identify criteria when no other relevant information is available.

For example, geographical information may identify:

1. The earlier groups of people connected to a geographical location
2. The Indian Tribe or NHO connected to a geographical location
3. A relationship of shared group identify between the two traced through time

43 CFR 10.3(b)(2)

Step 2: Identify the required criteria

...realign the geographic analysis, applied previously to culturally unidentifiable human remains, as part of the cultural affiliation process. The same methods, analyses, sources, and evidence may inform cultural affiliation determinations based on geographical information as have been used in the past and as discussed in the proposed rule. We agree with the voluminous comments that described museum and Federal agency practices as overly expansive in designating human remains and associated funerary objects as culturally unidentifiable. We believe in most cases, sufficient information on geographic origin and acquisition history exists and can be used to either clearly or reasonably identify Indian Tribes or NHOs with cultural affiliation.

Step 3: Make a determination

- Responsibility of museums, Federal agencies, and DHHL
- Make a written record to briefly describe information available and criteria identified
- Identify one of the following:
 1. Cultural affiliation is identified **clearly** by the information available,
 2. Cultural affiliation is identified **reasonably** by the geographical location or acquisition history, or
 3. Cultural affiliation **cannot be** clearly or reasonably **identified**.

Step 3: Make a determination

The two options for identifying cultural affiliation come directly from the Act... In the Act, cultural affiliation of human remains may be (1) clearly identified or (2) not clearly identified but determined by a reasonable belief given the “circumstances surrounding acquisition” (25 U.S.C. 3003(d)(2)(B) and (C)). Throughout this section of the Act, there is reference to an inventory identifying “geographical and cultural affiliation,” “geographical origin,” “basic facts surrounding acquisition and accession,” “[T]ribal origin,” and “totality of circumstances surrounding acquisition of the remains or objects” (25 U.S.C. 3003).

<https://www.federalregister.gov/d/2023-27040/p-510>

Step 3: Make a determination

“Acquisition” is not defined in the Act or these regulations and should be understood to have a standard, dictionary definition of “to get as one's own; to come into possession or control of.”

To elaborate and clarify what information the Act requires, we have separated the concept of acquisition into two separate parts: “provenience” and “provenance” which both mean “origin, source.”

Provenance also means “the history of ownership of a valued object or work of art or literature”

(<https://www.merriam-webster.com/dictionary/acquire>, <https://www.merriam-webster.com/dictionary/provenience>, and <https://www.merriam-webster.com/dictionary/provenance>, accessed 12/1/2023).

<https://www.federalregister.gov/d/2023-27040/p-511>

Step 3: Make a determination

...a museum or Federal agency must identify both the geographical location (provenience) from which the human remains and associated funerary objects were removed, but also the acquisition history (provenance) of the human remains and associated funerary objects. Even in the small number of cases where geographical location (provenience) of human remains and associated funerary objects is unknown, all human remains and associated funerary objects (as well as other cultural items) will have some kind of acquisition history or provenance. Even when the only information about human remains and associated funerary objects is that they were “found in collections” of a museum, that information is sufficient to identify the Indian Tribes or NHOs with potential cultural affiliation for consultation based solely on the location of or general collection practices of the museum.

<https://www.federalregister.gov/d/2023-27040/p-512>

Step 3: Make a determination

- May be more than one Indian Tribe or NHO, for example:
- An identifiable earlier group may have a relationship to more than one Indian Tribe or NHO.
- Two or more earlier groups may be connected to human remains or cultural items
- A relationship may be reasonably traced to two or more Indian Tribes or NHOs that do not themselves have a shared group identity.
- In Hawai'i, two or more Native Hawaiian organizations may be part of the same Native Hawaiian Community, but may have distinct beliefs, protocols, and other cultural practices passed down through different familial, cultural, and geographical lineages.

Step 3: Make a determination

Throughout these final regulations, the term “Indian Tribe” is used in the singular form, but it is expected that multiple Indian Tribes may meet the criteria under this part for disposition or repatriation of the same human remains or cultural items. Any Indian Tribe with cultural affiliation may submit a claim for disposition or a request for repatriation. Two or more Indian Tribes may agree to joint disposition or joint repatriation of human remains or cultural items. Claims or requests for joint disposition or joint repatriation should be considered a single claim or request and not competing claims or requests.

<https://www.federalregister.gov/d/2023-27040/p-248>

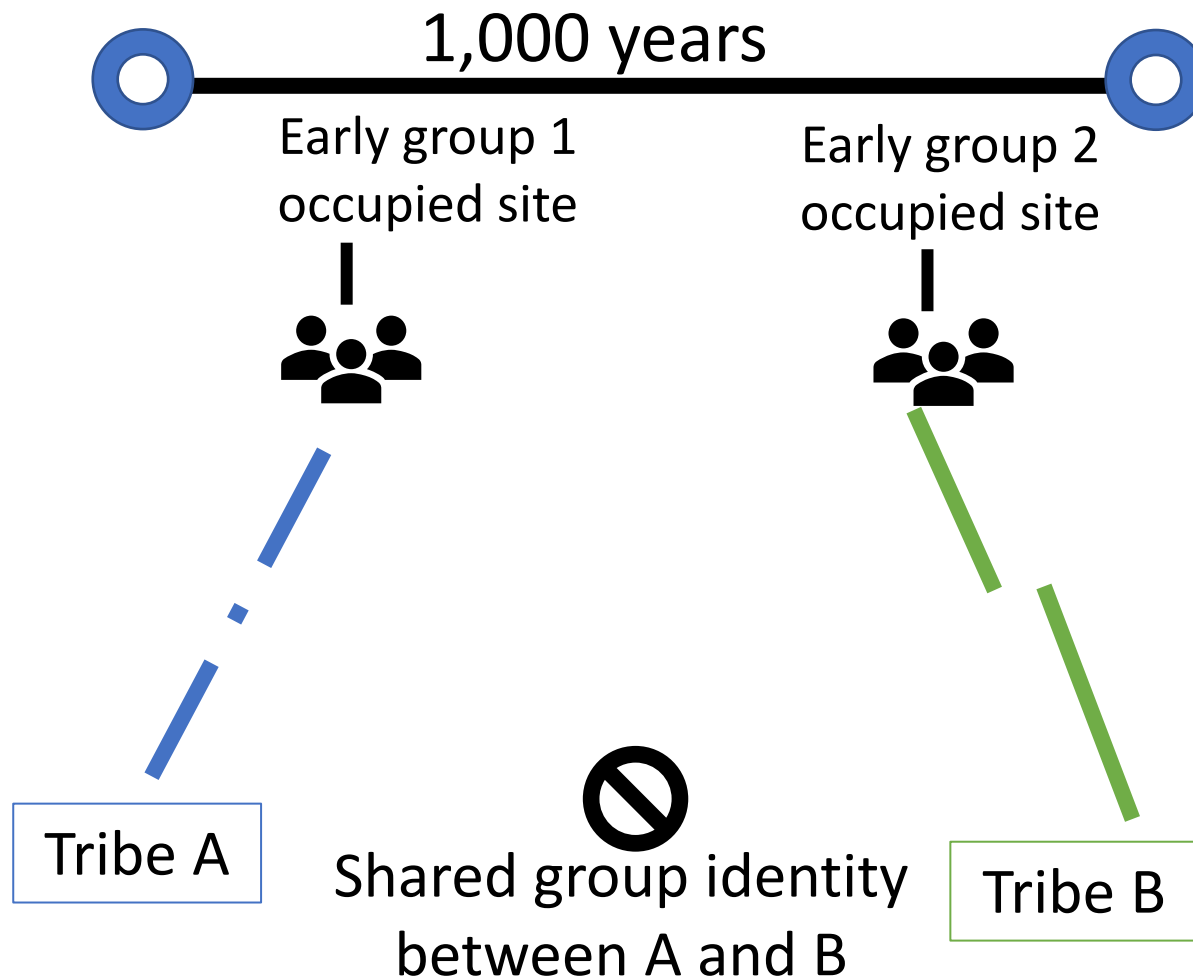
Scenario 1 – No earlier group

- The only information regarding Native American human remains is the geographical location from which they were removed.
- No earlier group or groups have been identified in that geographic location.

Scenario 2 – Multiple earlier groups

- The only information regarding Native American human remains is the geographical location from which they were removed.
- The human remains are not dated to a particular time period but are not more than 12,000 years old and no information shows the human remains are historic (1542 or later)
- Earlier groups in that geographical location are
 - Group X, 10,000 BCE - 500 BCE
 - Group Y, 500 BCE - 500 CE
 - Group Z, 700-1000
- Present-day Indian Tribes related to that geographical location
 - Tribe A, 1542-1865

Scenario 3 – Multiple groups/Tribes



Scenario 4 – More information

- Geographic location where the human remains were removed
- Archeological evidence showing a date range for the burial from 1000 to 1400
- An anthropologist's report stating the location was abandoned and unoccupied from 1000 to 1400
- A recent master thesis suggesting an occupation of the site from 900 to 1200
- Three other burials in the same general area date to 400-1000, identified as the early groups named Group Y and Group Z
- No other burials after 1000 and before 1400 have been found in the area, except for these human remains
- A treaty between the Britain and multiple Tribes in 1634
- Oral traditions of the treaty Tribes say they came to the general area in a time that equates to the year 900
- An oral tradition from a non-treaty Tribe suggests the treaty Tribes arrived in the area much later (after 1400)

Scenario 4 – Cultural Affiliation

FOR

- geographical A-treaty Tribes in 1634 and after
- geographical B-location of removal
- oral tradition A-arrival in the location in 900
- anthropological B-occupation of the site from 900-1200

AGAINST

- oral tradition B-arrival of the Tribes in the area after 1400
- archeological A-no other burials found that date to 1000-1400
- archeological B-burials found date to 400-1000
- anthropological A-no groups known in area during 1000-1400

Evaluate the information

FOR

- oral tradition A-arrival in the location in 900
- ++ [multiple Tribes agree on date of oral tradition]
- anthropological B-occupation of the site from 900-1200
- ++ [new study based on chemical analysis of sediment in nearby lake]

AGAINST

- oral tradition B-arrival in the area after 1400
- [one Tribe's oral tradition about neighboring enemy tribes]
- archeological B-burials found date to 400-1000
- [dating of burials by avocational archaeologists in the 1930s]

Evaluate the information

FOR

- oral tradition A-arrival in the location in 900
- [only one Tribe and very recently determined a date for the oral tradition]
- anthropological B-occupation of the site from 900-1200
- [a master's level thesis with very little evidence to counter previous studies]

AGAINST

- oral tradition B-arrival in the area after 1400
- ++ [multiple Tribes agree on the date of arrival of the treaty Tribes]
- archeological B-burials found date to 400-1000
- ++ [dating of burials made during 1970s field schools at a large nearby site]

Evaluate the information

Treat each determination as an independent analysis.

Do:

- Give all information adequate consideration
- Take into account the source and content of information

Don't:

- Exclude any available information, regardless of its source
- Treat a lack of information in a particular category as information for or against