

This rule was filed as MNM: Rule No. 11.

**TITLE 4            CULTURAL RESOURCES**  
**CHAPTER 51       MUSEUM OF NEW MEXICO**  
**PART 11           POLICY ON COLLECTION, DISPLAY AND REPATRIATION OF CULTURALLY SENSITIVE MATERIALS**

**4.51.11.1           ISSUING AGENCY:** Office of Cultural Affairs, Museum Division (Museum of New Mexico).  
[Recompiled 10/31/01]

**4.51.11.2           SCOPE:** [RESERVED]  
[Recompiled 10/31/01]

**4.51.11.3           STATUTORY AUTHORITY:** [RESERVED]  
[Recompiled 10/31/01]

**4.51.11.4           DURATION:** [RESERVED]  
[Recompiled 10/31/01]

**4.51.11.5           EFFECTIVE DATE:** [Filed February 5, 1991]  
[Recompiled 10/31/01]

**4.51.11.6           OBJECTIVE:** The policy of the museum of New Mexico is to collect, care for, and interpret materials in a manner that respects the diversity of human cultures and religions. Culturally sensitive materials include material culture as well as the broader ethical issues which surround their use, care, and interpretation by the museum. The museum's responsibility and obligation are to recognize and respond to ethical concerns.  
[Recompiled 10/31/01]

**4.51.11.7           DEFINITIONS:**

A. "Culturally sensitive materials" are objects or materials whose treatment or use is a matter of profound concern to living peoples; they may include, but are not limited to:

(1) "human remains and their associated funerary objects" shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later;

(2) "sacred objects" shall mean specific items which are needed by traditional religious leaders for the practice of an ongoing religion by present-day adherents;

(3) photographs, art works, and other depictions of human remains or religious objects, and sacred or religious events; and

(4) museum records, including notes, books, drawings, and photographic and other images relating to such culturally sensitive materials, objects, and remains.

B. "Concerned party" is a museum-recognized representative of a tribe, community, or an organization linked to culturally sensitive materials by ties of culture, descent, and/or geography. In the case of a federally recognized Indian tribe, the representative shall be tribally-authorized.

C. "Repatriation" is the return of culturally sensitive materials to concerned parties. Repatriation is a collaborative process that empowers people and removes the stigma of cultural paternalism which hinders museums in their attempts to interpret people and cultures with respect, dignity, and accuracy. Repatriation is a partnership created through dialogue based upon cooperation and mutual trust between the museum and the concerned party.

D. The museum of New Mexico's committee on sensitive materials is the committee, appointed by the director of the museum of New Mexico, that shall serve as the museum of New Mexico's advisory body on issues relating to the care and treatment of sensitive materials.

[Recompiled 10/31/01]

**4.51.11.8           IDENTIFICATION OF CONCERNED PARTIES:**

A. The museum shall initiate action to identify potentially concerned parties who may have an interest in culturally sensitive material in the museum's collections.

B. The museum encourages concerned parties to identify themselves and shall seek out those individuals or groups whom the museum believes to be concerned parties.

C. The museum's sensitive materials committee shall review all disputed individual claims of concerned-party status in consultation with the tribe, community, or organization which the individual(s) claims to represent. The museum's sensitive materials committee shall assist, when necessary, in designating concerned parties who have an interest in culturally sensitive materials contained in the collections of the museum of New Mexico.

D. The museum shall provide an inventory of pertinent culturally sensitive materials to recognized concerned parties.

E. The museum shall work with concerned parties to determine the appropriate use, care and procedures for culturally sensitive materials which best balance the needs of all parties involved.

[Recompiled 10/31/01]

#### **4.51.11.9 IDENTIFICATION AND TREATMENT OF CULTURALLY SENSITIVE MATERIALS:**

A. Within five years of the date of adoption of this policy, each museum unit shall survey to the extent possible (in consultation with concerned parties, if appropriate) its collections to determine items or material which may be culturally sensitive materials. The museum unit shall submit to the director of the museum of New Mexico an inventory of all potentially culturally sensitive materials. The inventory shall include to the extent possible the object's name, date and type of accession, catalogue number, and cultural identification. Within six months of submission of its inventory to the director of the museum of New Mexico, each museum unit shall then develop and submit, a plan to establish a dialogue with concerned parties to determine appropriate treatment of culturally sensitive items or materials held by the unit.

B. As part of its treatment plans for culturally sensitive materials, the museum reserves the right to restrict access to, or use of, those materials to the general public. The museum staff shall allow identified concerned parties access to culturally sensitive materials.

C. Conservation treatment shall not be performed on identified culturally sensitive materials without consulting concerned parties.

D. The museum shall not place human remains on exhibition. The museum may continue to retain culturally sensitive materials. If culturally sensitive materials, other than human remains, are exhibited, then a good-faith effort to obtain the advice and counsel of the proper concerned party shall be made.

E. All human skeletal remains held by the museum shall be treated as human remains and are de facto sensitive materials. The museum shall discourage the further collection of human remains; however, it will accept human remains as part of its mandated responsibilities as the state archaeological repository. At its own initiation or at the request of a concerned party, the museum may accept human remains to retrieve them from the private sector and furthermore, may accept human remains with the explicit purpose of returning them to a concerned party.

[Recompiled 10/31/01]

#### **4.51.11.10 REPATRIATION OF CULTURALLY SENSITIVE MATERIALS:**

A. On a case-by-case basis, the museum shall seek guidance from recognized, concerned parties regarding the identification, proper care, and possible disposition of culturally sensitive materials.

B. Negotiations concerning culturally sensitive materials shall be conducted with professional discretion. Collaboration and openness with concerned parties are the goals of these dialogues, not publicity. If concerned parties desire publicity, then it will be carried out in collaboration with them.

C. The museum shall have the final responsibility of making a determination of culturally sensitive materials subject to the appeal process as outlined under Section VII A. [now Subsection A of 4.51.11.12 NMAC]

D. The museum of New Mexico accepts repatriation as one of several appropriate actions for culturally sensitive materials only if such a course of action results from consultation with designated concerned parties as described in Section III of this policy [now 4.51.11.8 NMAC].

E. The museum may accept or hold culturally sensitive materials for inclusion in its permanent collections.

F. The museum may temporarily accept culturally sensitive materials to assist efforts to repatriate them to the proper concerned party.

G. To initiate repatriation of culturally sensitive materials, the museum of New Mexico's current deaccession policy shall be followed. The curator working with the concerned party shall complete all preparations for deaccession through the museum collections committee and director before negotiations begin.

H. Repatriation negotiations may also result in, but are not limited to, the retention of objects with no restrictions on use, care, and/or exhibition; the retention of objects with restrictions on use, care and/or exhibition; the lending of objects either permanently or temporarily for use to a community; and the holding in trust of culturally sensitive materials for the concerned party.

I. When repatriation of culturally sensitive materials occurs, the museum reserves the right to retain associated museum records but shall consider each request for such records on an individual basis.

[Recompiled 10/31/01]

#### **4.51.11.11 ONGOING RECOVERY OR ACCEPTANCE OF ARCHAEOLOGICAL MATERIALS:**

A. In providing sponsored archaeological research or repository functions, the museum shall work with agencies that regulate the inventory, scientific study, collection, curation, and/or disposition of archaeological materials to ensure, to the extent possible under the law, that these mandated functions are provided in a manner that respects the religious and cultural beliefs of concerned parties.

B. When entering into agreements for the acceptance of, or continued care for, archaeological repository collections, the museum may issue such stipulations as are necessary to ensure that the collection, treatment, and disposition of the collections include adequate consultation with concerned parties and are otherwise consistent with this policy.

C. In addition to the mandated treatment of research sites and remains and in those actions where treatment is not mandated, defined, or regulated by laws, regulations, or permit stipulations, the museum shall use the following independent guidelines in recovering or accepting archaeological materials.

(1) Prior to undertaking any archaeological studies at sites with an apparent relationship to concerned parties, the museum shall ensure that proper consultation with the concerned parties has taken place.

(2) When so requested by concerned parties, the museum shall include an observer, chosen by the concerned party, in the crew of an archaeological study.

(3) The museum shall not remove human remains and their associated funerary objects or materials from their original context nor conduct any destructive studies on such remains, objects, and materials, except as part of procedures determined to be appropriate through consultation with concerned parties, if any.

(4) The museum reserves the right to restrict general public viewing of in situ human remains and associated funerary objects or items of a sacred nature and further shall not allow the public to take or prepare images or records of such objects, materials, or items, except as part of procedures determined to be appropriate through consultation with concerned parties. Photographic and other images of human remains shall be created and used for scientific records only.

(5) The museum reserves the absolute right to limit or deny access to archaeological remains being excavated, analyzed, or curated if access to these remains would violate religious practices.

D. Twice each calendar year, the state archaeologist shall compile and distribute a listing of all proposed, ongoing, and complete state-permitted archaeological work in New Mexico and all museum of New Mexico archaeological projects state-permitted or not. The list shall be public information and, in consonance with this policy, shall be distributed to all tribal governments in New Mexico, as well as to other recognized organizations that may be concerned with ongoing archaeological excavations and their findings.

[Recompiled 10/31/01]

#### **4.51.11.12 APPEAL PROCESS:**

A. A museum-recognized concerned party, or a party that claims to be a concerned party but which is not recognized to have such status by the museum's committee on sensitive materials, may appeal in writing to the director of the museum of New Mexico. The director shall issue a written response to the appeal within thirty (30) calendar days of its receipt. The decision of the director may be contested by written appeal to the board of regents of the museum, which shall take such final action as it deems appropriate.

B. Museum staff may appeal a decision of the sensitive materials committee in writing to the director of the museum of New Mexico. The director shall issue a written response to the appeal within thirty (30) calendar days of its receipt. The decision of the director shall be final.

[Recompiled 10/31/01]

#### **HISTORY OF 4.51.11 NMAC:**

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives under:

MNM: Rule No. 11, Policy on Collection and Display of Sensitive Materials, 10/18/82.

MNM: Rule No. 11, Collection and Display of Sensitive Materials, 4/18/86.  
MNM: Rule No. 11, Collection and Display of Culturally Sensitive Materials, 12/4/89.  
MNM: Rule No. 11, Collection and Display of Culturally Sensitive Materials, 12/15/89.  
MNM: Rule No. 11, Collection, Display and Repatriation of Culturally Sensitive Materials, 2/5/91.

History of Repealed Material: [RESERVED]