

MEMORANDUM OF AGREEMENT
Between
WESTERN CAROLINA UNIVERSITY
And the
EASTERN BAND OF CHEROKEE INDIANS
Regarding the
REPATRIATION & REBURIAL of HUMAN REMAINS & ASSOCIATED
FUNERARY OBJECTS

WHEREAS, the Eastern Band of Cherokee Indians (EBCI), in consultation with the Tribal Historic Preservation Officer (THPO), Native American Grave & Repatriation Act Officer (NAGPRA) and in conjunction with Western Carolina University, determined that the Human Remains and funerary objects (associated and unassociated) excavated from Western Carolina University's campus beginning with: (1) The Old Townhouse Indian Mound in 1898; (2) The Men's Dormitory Site in 1964; (3) The Cullowhee Mound in 1966, are suitable for re-interment upon campus grounds and

WHEREAS, WCU will make a good faith effort to protect the burials within the selected site from future disturbance, subject to the needs of Western Carolina University arising from repair and renovation; campus expansion; alteration; and similar matters,

NOW THEREFORE, the EBCI and WCU agree that the following stipulations shall be implemented for the repatriation, reburial, and protection of all human remains and associated funerary objects discovered during the aforementioned excavations. EBCI, THPO, & WCU shall ensure that the terms and conditions of this MOA are implemented in a timely manner and with adequate resources in compliance with NAGPRA (P.L. 101-601).

STIPULATIONS

A. TEMPORARY CURATION

- 1.) WCU agrees to provide a secure, temporary curation area/facility for the remains, once site preparation is complete. The on-campus curation site will be room 192 McKee. If the curation site is unavailable due to building renovation, or other security concerns, an equally secure alternate site will be determined. University Police routinely patrol campus and access to room 192 is monitored; otherwise, entry is under lock and key. Remains will be encapsulated for interment in acid-free corrugated boxes. Within one to two days of WCU receiving the remains, the EBCI will expeditiously execute the reburial; thereby, ensuring the briefest curation period possible.
- 2.) The EBCI agrees with WCU that the Human Remains and Associated Funerary Objects, etc., are unique to the Cullowhee campus and that the WCU campus shall

not be considered a general repository for other NAGPRA repatriation and reburial objects.

B. SITE PREPARATION

- 1.) The EBCI will perform a site survey, in order, to record the location of the burials. Any GPS or other survey or mapping identifiers will be buried beneath ground, and all mapping flags will be removed at completion of the survey to accommodate the routine grounds maintenance of this campus location.
- 2.) The Western Carolina University Department of Anthropology and Sociology will begin burial site preparation, in coordination with IHPO, EBCI, and their respective mapping personnel.

C. REBURIAL CEREMONY

- 1.) To the extent allowed by law, the EBCI burial ceremony will be closed to the general public and mass media. University representation will be by invitation only. To the extent reasonable in a University setting and with available and/or grant funded resources, the University will assist the EBCI in creating solitude for conducting the burial ceremony. To assist the University in helping to create solitude for the ceremony and to minimize and possibly avoid potential interference from campus residents and visitors, the ceremony will be performed on a pre-dawn weekend morning.
- 2.) EBCI will schedule ceremony time and details through coordination with University Police and the Assistant to the Vice Chancellor for Administration and Finance.

D. PUBLIC EDUCATION/CULTURAL INTERPRETATION/SITE PROTECTION

- 1.) Upon completion of the burial(s) associated specifically with this agreement, no other such human remains will be added to the aforementioned burial location(s) without mutual agreement between the parties to amend this MOA. The number of individuals for interment will be 12.
- 2.) A mutually acceptable marker at the new campus burial location and a mutually acceptable interpretative sign nearer to the original site of burial discovery will be placed to educate WCU and its visitors about Native Americans and their long history of occupation on the WCU campus and surrounding Cullowhee Valley area. Specific burial plot(s) will not be visibly marked.

E. BURIAL RELOCATION

- 1.) If WCU needs deem future re-location necessary, the EBCI and WCU agree to maintain an amenable working relationship, in good faith, cooperation, and friendship, above all else.
- 2.) The EBCI, with WCU(s) full cooperation, will be allowed to exhume and perform the reburial(s) and associated ceremony within reasonable time limits, subject to any campus project schedule that would necessitate such relocation
- 3.) Any campus relocation site must be mutually agreeable to both parties, and both parties will not unreasonably withhold their consent. In the event mutual agreement cannot be reached within the aforementioned project time constraints, WCU retains the right to unilaterally choose a campus relocation site, with consideration given to fairness. Likewise, the EBCI retain the right to remove the burial remains and associated funerary objects from campus. If any future relocation is performed, such campus relocation(s) will remain subject to this Agreement in its entirety.

F. PROPERTY

- 1.) No interest in WCU real or personal property is conveyed to the EBCI as a result of this Agreement. However, the burial remains and associated funerary objects are and will remain the property of the EBCI pursuant to NAGPRA regulations, codified in 43 CFR 10.9.

G. LIABILITY

- 1.) The EBCI shall indemnify, defend, and hold harmless Western Carolina University, its governing board, officers, agents, and employees from and against any and all liability, claims, losses, lawsuits, judgments, and/or expenses including attorney fees arising, either directly or indirectly, out of the performance of this Agreement.
- 2.) In the event of a lawsuit, the parties will file in the state court located in Wake County, North Carolina. WCU and the EBCI will accept service of a lawsuit filed in Wake County, if properly asserted under the North Carolina Rules of Civil Procedure.
- 3.) This Agreement shall be governed by and construed under the laws of the State of North Carolina, which shall be the forum for any lawsuits arising from or incident to this Agreement.
- 4.) Nothing in this agreement constitutes a waiver of the EBCI's sovereign immunity.
- 5.) As a state agency, the University does not endorse any religious or ceremonial rituals that may be performed.

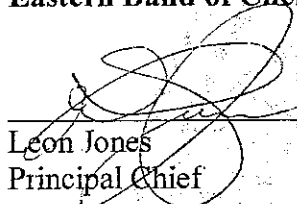
H. TERMINATION

- 1.) Either party may not assign this Agreement without the advance written consent of the other. This Agreement shall be binding upon each party's administrators, heirs, and/or permitted assigns.

SIGNATURES

Upon both parties setting hand to this document, this agreement shall enter into force on the latest date of signature.

**On behalf of the
Eastern Band of Cherokee Indians**




Leon Jones
Principal Chief

4-24-02

Date

And

**On behalf of
Western Carolina University**



John Bardo
Chancellor

5/10/02

Date

