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NATIONAL PARK SERVICE

P.O. BOX 37127

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Memorandum

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To: Solicitor
Assistant Secretaries
All Bureau Heads

From: Departmental Consulting Archeologist *SPM*

Subject: The Native American Graves Protection and Repatriation Act

On November 16, 1990, President Bush signed into law the Native American Graves Protection and Repatriation Act (P.L. 101-601; 104 Stat. 3048; 25 USC 3001-13). The law has generated widespread interest among Native Americans, museum professionals, archeologists, and Federal agency employees charged with meeting its requirements.

This memorandum describes our preliminary understanding of the statute. The Departmental Consulting Archeologist has been delegated many of the responsibilities the statute assigns to the Secretary of the Interior. These interpretations are necessarily preliminary. They may be modified during the official rule making process that we will begin soon. The exact means of implementing the statute must await formal regulations developed using the public review process. Specific directions found in regulations have not yet been and cannot be achieved at this time. This memorandum is intended to explain the statute; material provided in the House and Senate Committee reports is used to clarify statutory intent on some issues.

This law sets forth the rights of Indian Tribes and Native Hawaiian organizations with respect to human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they can demonstrate lineal descent or cultural affiliation. As part of this recognition, this statute also conveys to such groups the right to decide disposition or take possession of such items. Throughout the remainder of this document, P.L. 101-601 is referred to as the Graves Protection and Repatriation Act.

The purpose of this Act is to require that Federal agencies and museums receiving Federal funds inventory holdings of such remains and objects, and work with Indian Tribes and Native Hawaiian organizations to reach agreements on the repatriation or other disposition of these remains and objects (House Report 101-877:8-9). Once cultural affiliation and in some cases the right of possession have been demonstrated, Indian Tribes or Native Hawaiian organizations normally make the final determination on the disposition of human remains or cultural items defined by the statute. It also protects Native American burial sites and controls the removal of human remains, funerary objects, sacred objects, and items of cultural patrimony on Federal, Indian, and Native Hawaiian lands. Many historic or prehistoric artifacts besides those defined in Section 2 of the Act and Section IV of this memorandum are found in archeological sites or collections. These kinds of artifacts, for

example, pottery, stone tools, and metal artifacts not from burials, are not covered by the statute and may remain in Federal or museum ownership.

Both the statutory language and the Committee reports describe the context for effective implementation. Such an approach requires consultations and encourages agreements between and among Indian Tribes, Federal agencies, and museums receiving Federal funds. The Committee reports express the hope that these discussions will lead to a better understanding of the historic and contemporary cultural values of remains and objects. The Senate Report (101-473:5-6) notes both that human remains must at all times be treated with dignity and respect and the important role that museums play in educating the public and increasing social awareness about the nation's prehistory and history. The statute requires two major activities for its implementation. These are: (1) the collection, inventories, written summaries, and potential repatriation activities, and (2) the care and disposition of cultural items recovered during planned or unanticipated excavations, either data recovery or testing. This memorandum first provides an overview of the content of the Act (Section I), next it identifies the responsible organizations and other potential participants (Section II); then it explores issues raised by the definitions of cultural items (Section III); and finally it discusses the activities required of or recommended for Federal agencies, museums receiving Federal funds, and Indian Tribes and Native Hawaiian organizations involved in collections, inventories, written summaries, repatriation, or excavation activities (Section IV). An outline of the sections and subsections of the memorandum follows:

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APPENDIX B. National Park Service Staff Directive 84-5

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I. OVERVIEW OF THE GRAVES PROTECTION AND REPATRIATION ACT

The Graves Protection and Repatriation Act establishes two main requirements. First, Federal agencies and museums receiving Federal funds are required to inventory individually human remains and associated funerary objects and develop written summaries for unassociated funerary objects, sacred objects, and objects of cultural patrimony that are in the collections they own or control. As part of the inventory process, agencies and museums are to determine, as best they can from the items, records, and other data, the likely lineal descendent(s) or cultural affiliation of these items or conclude that cultural affiliation cannot be established. Agencies and museums must notify Indian Tribes or Native Hawaiian organizations that appear to be culturally affiliated with the items of their holdings and offer them the opportunity to claim the remains and items. Tribes and Native Hawaiian organizations may then request the repatriation of these cultural items and are entitled to those with which they are culturally affiliated or for which they are lineal descendants.

Indian Tribes or Native Hawaiian organizations may request the repatriation of human remains or associated funerary objects for which no cultural affiliation is established by the inventory. Remains and objects for which the Tribe or organization can show cultural affiliation by a preponderance of the evidence using geographic, kinship, biological, archeological, anthropological, linguistic, folklore, historic, oral traditional, or other relevant information or expert opinion are to be repatriated to the requesting Tribe or organization.

The steps and requirements related to the repatriation of unassociated funerary objects, sacred objects, and objects of cultural patrimony are similar to those for human remains and associated funerary objects, but different in important ways that are described in section IV of this memo.

The second principal intention of the law is the protection of Native American graves and other cultural items. This approach encourages avoidance of archeological sites that contain burials or those portions of sites that contain graves through in situ preservation, but may encompass other actions to preserve these remains and items. Therefore, it is advantageous for Federal agencies and Tribes undertaking land-modifying activities on their lands to precede them with good-faith consultations and intensive archeological surveys whenever possible. This will help agencies and Tribes to locate and then avoid unmarked Native American graves and cemeteries. On Federal and Tribal lands, archeological investigations for planning or research purposes, or other land modifying activities that inadvertently discover such items require the Federal agency or Tribe involved to consult with affiliated or potentially affiliated Native Americans.

Other provisions of the Act may be summarized as follows: (1) it stipulates that illegal trafficking in human remains and cultural items may result in criminal penalties; (2) it authorizes the Secretary of the Interior to administer a grants program to assist museums and Indian Tribes in complying with this law; (3) it requires the Secretary of the Interior to establish a Review Committee to provide advice in carrying out key provisions of the statute; and (4) it directs the Secretary to develop regulations in consultation with this Review Committee.

II. RESPONSIBLE ORGANIZATIONS

Executing the provisions of the Graves Protection and Repatriation Act involves three primary participants: Federal agencies, all museums receiving Federal funds (including State institutions), and Indian Tribes and Native Hawaiian organizations. This section summarizes the roles of each; additional and more specific information on responsibilities of each organization is given in Section IV. Oversight of and directions for the activities required of these three types of organizations are to be provided by the Secretary of the Interior and the Review Committee established by the statute.

Other potential parties are the Advisory Council on Historic Preservation (ACHP) and the State Historic Preservation Officers (SHPO). For projects or activities that require review under Section 106 of the National Historic Preservation Act (NHPA) in addition to the Graves Protection and Repatriation Act close coordination between the two review processes will save time in project planning and execution. Whenever it is possible to use existing Section 106 consultation networks, the ACHP and SHPO may be able to facilitate consultation necessary to comply with the Graves Protection and Repatriation Act.

II. A. Indian Tribes and Native Hawaiian Organizations

The definitions of Indian Tribe and Native Hawaiian organization are clear in the statute. The statutory definition of Indian Tribe is:

any Tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims

Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (Sec. 2(7)).

The Bureau of Indian Affairs maintains a list of Federally recognized Tribes; other Federal agencies also offer benefits specifically to Indians.

For the purposes of the Graves Protection and Repatriation Act, however, the key issue is the establishment of lineal descent or cultural affiliation between modern Indian or Native Hawaiian individuals or Indian Tribes and Native Hawaiian organizations and human remains and other specific cultural items in museums or from Federal collections or as yet undiscovered on Federal or Tribal land.

II. A. 1. Cultural Affiliation as Established by the Statute

"Cultural affiliation" is a key concept for implementing this statute. It is one cornerstone for repatriation requests. For example, either cultural affiliation or a legal judgment that establishes aboriginal Tribal land ownership is a condition for establishing Native American consultation rights concerning excavations. Section 2 of the Act defines cultural affiliation as :

a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian Tribe or Native Hawaiian organization and an identifiable earlier group (Sec. 2(2)).

This implies that groups of Native Americans of diverse backgrounds who voluntarily associate together for some purpose or purposes are not viewed as proper claimants under the provisions of the statute. However, the individual members of such organizations may exercise their rights as members of their Tribe or as lineal descendants if such a connection can be established.

Section 3 of the Act defines how cultural affiliation is to be used to establish ownership of cultural items recovered during excavations following the date of enactment. It applies only to planned excavations or unanticipated discoveries, not to items and remains already in collections. For human remains and associated funerary objects, affiliation established by lineal descendants takes precedence over affiliation established by all other potential claimants. Although lineal descent is not defined in Section 2 of the statute or explained in the accompanying Committee reports, we interpret this term to mean a direct genetic or familial tie reasonably established between generations of an extended family, clan, or lineage. For human remains and associated funerary objects not claimed by lineal descendants, as well as unassociated funerary objects, sacred objects, and items of cultural patrimony, the statute provides a context for judging among potentially competing affiliated Tribes or other entities:

- (1) Indian Tribes or Native Hawaiian organizations on whose Tribal lands the cultural items are discovered;
- (2) Indian Tribes or Native Hawaiian organizations that can show the closest cultural affiliation to the items; and
- (3) if cultural affiliation cannot reasonably be ascertained and if the items were recovered from Federal land formally recognized by a final judgment of the Indian Claims Commission

or the U.S. Court of Claims as the aboriginal land of some Indian Tribe, proper recipients may be the Indian Tribes recognized as aboriginally occupying the area from which the items were excavated.

Regarding (3), if a preponderance of the evidence shows that a different Tribe than the one identified as aboriginally occupying the area has a stronger demonstrated affiliation with the cultural items, they would be viewed as proper affiliates.

No Tribe needs to establish beyond all doubt that it is a proper claimant for purposes of repatriation. This also is true for claims of cultural affiliation in situations dealing with newly discovered materials. As stated in the Senate Committee report:

The types of evidence which may be offered to show cultural affiliation may include, but are not limited to, geographical, kinship, biological, archaeological, anthropological, linguistic, oral tradition, or historical evidence or other relevant information or expert opinion. The requirement of continuity between present day Indian Tribes and materials from historic or prehistoric Indian Tribes is intended to ensure that the claimant has a reasonable connection with the materials. Where human remains and funerary objects are concerned, the Committee is aware that it may be extremely difficult, unfair, or even impossible in many instances for claimants to show an absolute continuity from present day Indian Tribes to older, prehistoric remains without some reasonable gaps in the historic or prehistoric record. In such instances, a finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of gaps in the record (Senate Report 101-473:9).

Many concerns have been voiced about the issue of time depth and its applications to the cultural affiliation issue. Some of these questions are:

- ** Are there any properly affiliated claimants for human remains or cultural objects assigned to Paleoindian or Archaic cultures?
- ** Is there a limit on the number of generations, centuries, or years that may have elapsed since the materials were deposited and the current repatriation request or involvement in any consultations?
- ** How are issues related to occupation of the same geographical area at different times by different aboriginal cultures to be worked out?

The statute does not address the issue of very ancient cultures, chronology, time depth, and regional variations. Consequently, at this time it is premature to offer any opinion; perhaps these issues can be resolved during the development of regulations.

II. B. Museums Receiving Federal Funds

The Graves Protection and Repatriation Act defines "museum" as:

any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency (Sec. 2(8)).

Issues such as when a museum received Federal funds or how directly it received them (e.g., a municipality received a grant that indirectly is used to support a city museum) are uncertain and probably will be considered during regulations development. Many Federal agencies supply financial support to museums and most museums receive at least some support. The committee reports are silent on issues of when and how directly any museum has received funding in order for it to be required to comply with the statute.

Some museums serve as the repositories for cultural items that were obtained from Federal or Tribal lands. The museums may conduct the required inventories or written summaries on behalf of Federal agencies or Tribes if these entities request it. However, for human remains and other cultural items that came from Federal lands or for which Federal agencies have administrative responsibility, each agency must ensure that inventories or summaries are done either within each agency structure or by a repository. Federal agencies may transfer the workload to a museum, not the ultimate responsibility for complying with the Act.

Museums are required to conduct inventories or written summaries of all cultural items (as defined in Section IV of this memorandum and Section 2 of the statute) within their collections regardless of the means of accession or geographical point of origin of the items. These activities must also be followed by notification of culturally affiliated Tribes or Native Hawaiian organizations.

Some people have raised the issue of whether Tribal repositories must function as museums under the Act. The statute provides no guidance, but we suspect that Tribal museums will be required to conduct inventories, write summaries, and are likely to receive requests for repatriation from other Native American Tribes.

II. C. Federal Agencies

Except for the Smithsonian Institution, which is covered under a separate statute (Public Law 101-185), all Federal agencies that manage land and/or are responsible for archeological collections from their lands or generated by their activities must comply with the Graves Protection and Repatriation Act. Federal agencies are responsible for: (1) producing inventories and written summaries of cultural items in their collections or controlled by them, informing Tribes and Native Hawaiian organizations that may be affiliated with these items in their holdings, and working with Native American groups identified during the inventory process; and (2) consulting with Tribes or Native Hawaiian organizations when planned archeological excavations may encounter cultural items or when cultural items are discovered inadvertently on Federal or Tribal lands. In keeping with the view given above regarding museums, Federal agencies are responsible for the inventory, summary, and potential disposition of cultural items recovered from lands under their jurisdiction, even though the items are held in non-Federal repositories. Following up on this concept, we believe that when materials are recovered from lands under the supervision of one agency, but stored in a repository owned and operated by another agency, the agency from whose lands the items were taken is responsible for such activities.

II. D. Secretary of the Interior

The statute assigns Federal governmental responsibility for statute administration, implementation, and operation to the Secretary of the Interior. Specifically, the Secretary must:

- (1) establish a Review Committee of seven persons to monitor and review inventory, identification, and repatriation activities;
- (2) provide reasonable levels of administrative and staff support for the Review Committee along with any rules and regulations for its operations; and
- (3) promulgate regulations for implementing the statute.

In addition, the Secretary is authorized to do the following:

- (1) develop and administer a grants program to assist Tribes and museums in repatriation activities;
- (2) review requests from museums for extensions of time to complete inventories of human remains and funerary objects, and to grant temporal extensions upon finding a "good faith" effort;
- (3) assess civil penalties of any museum that fails to comply with the statute or its implementing regulations; and
- (4) assume the review and consultation responsibilities that would normally be required of Federal agencies when Native American cultural items are discovered inadvertently on agency lands.

Selected Secretarial responsibilities will be delegated to the Departmental Consulting Archeologist (DCA), Archeological Assistance Division (AAD), National Park Service. The AAD office will maintain Review Committee files and documents, organize Committee meetings, and provide staff for Committee activities. The DCA will be the Review Committee's contact person.

Many questions have been raised about the grants program referred to in Section 10 of the Act. Statutory language authorizes the Secretary of the Interior to make grants to museums and Tribes. The statute does not create a grants program, leaving program establishment and the options for funding with the Executive branch or Congress. As of this writing, the grants program has not been officially established, nor has funding been appropriated.

II. E. The Native American Graves Protection and Repatriation Act Review Committee

This Review Committee is established by Section 8 of the statute. It is an advisory committee that makes recommendations to the Secretary of the Interior. The Committee's views do not bind the Federal government, but will be a very important consideration for any action that the Secretary must take.

To ensure a fair expression of all views, Committee membership is explicitly stated in the law. Appointment of members is by the Secretary of the Interior from nominations submitted by Indian Tribes, Native Hawaiian organizations, and traditional Native American religious leaders, and from national museum and scientific organizations. Consisting of seven members, the duties of the Committee are to monitor and review inventory, identification, and repatriation activities. It may make findings relating to cultural affiliation and repatriation issues if requested, facilitate the resolution of disputes, consult with parties, and offer suggestions about the care of repatriated materials. The regulations that implement the statute are to be developed in consultation with the Committee. The Committee must compile an inventory of culturally unidentifiable human remains that are in the possession or control of each museum and Federal agency, and recommend specific actions for developing a process for disposition of such remains. Each year, the Committee is to submit a report to Congress on the progress made and any barriers encountered in carrying out its function. The charter establishing the Review Committee was signed by Secretary of the Interior Manuel Lujan on August 2, 1991; a copy is included as Appendix C of this memorandum.

The statute assigns an important role of national scope to the Committee. Specific matters concerning repatriation, inventory, and potential agreements concerning excavation are best approached through agreements negotiated by local agency offices, museums, and Native Americans. It is anticipated that the Committee's role in consulting and facilitating dispute resolution will only be invoked when such agreements at the local level are not possible.

II. F. Potential Consulting Organizations

Two other potential contributors to negotiations include the Advisory Council on Historic Preservation and the State Historic Preservation Officers. It is anticipated that these two entities will have a minimal role in dealing with inventory, written summary, and repatriation activities. The degree of involvement for excavation activities depends on how appropriate and feasible it is to merge the Section 106 compliance process from the NHPA with Section 3 of the Graves Protection Act for specific projects. Applications on a case-by-case basis are occurring at this time. Ultimately, any integration of the two processes must follow the regulations development process and a policy decision reached following public review, as well as any practical experience derived from informal attempts to explore a merger.

II. F. 1. The Advisory Council on Historic Preservation

The Advisory Council has no statutory role in carrying out the provisions of the Act. The Council's regulations (36 CFR Part 800, "Protection of Historic Properties") implementing Section 106 of the NHPA, however, set forth a consultation process whereby conflicts between the public values of historic preservation and the public need for Federal or Federally assisted projects or programs are resolved.

The manner in which Federal agencies meet the requirements of Section 106, including any mitigation measures agreed upon during this consultation process, may be directly affected by agency responsibilities under the Graves Protection and Repatriation Act. Consequently, early coordination and consultation under Section 106 may be of assistance in meeting some of the requirements of the Graves Protection and Repatriation Act, which requires consultation to reach agreements on how to treat Native American human remains and other cultural items.

The consultation process embodied in the Council's regulations generally involves three principal parties: the Federal agency with jurisdiction over the project or program, the State Historic Preservation Officer (SHPO) representing the State where the project is located, and the Council. Consultation with Native Americans, including Tribes, organizations, and individuals, is specifically required at several points, when: (1) identifying historic properties (36 CFR 800.4(a)), (2) resolving adverse effects (36 CFR 800.5(e)), or (3) reviewing undertakings affect Indian lands (36 CFR 800.1(c)(2)(iii)). In addition, other provisions exist in the Council's regulations providing for participation by Native Americans as interested persons.

The Council's Executive Director recently issued a memorandum to the State Historic Preservation Officers and Federal Preservation Officers on Council's view of the relationship between Section 106 and the Graves Protection Act. Developed in consultation with the DCA, it is included as Appendix A to this memorandum.

II. F. 2. The State Historic Preservation Officers

While the Act does not assign a statutory function to these officials, as the representatives of the States in the national historic preservation program they can play key roles in assisting others to help meet the provisions of the Graves Protection and Repatriation Act. For example, they may assist Federal agencies or recipients of Federal assistance in identifying Native American groups that should be consulted under the statute, they are a central source of information on prior and ongoing projects in their States that may be subject to the Act, and they may be responsible for the curation of cultural items subject to the statute. Potential roles played by the State Historic Preservation Officers also are discussed in Appendix A.

III. WHAT IS COVERED: DEFINITIONS OF CULTURAL ITEMS

The kinds of remains and the artifacts covered by provisions of the statute are: (1) human remains and associated funerary objects; (2) unassociated funerary objects; (3) sacred objects; and (4) objects of cultural patrimony. With the exception of human remains, each of the foregoing kinds of cultural items is defined within Section 2 of the statute.

III. A. Clarification of Cultural Item Definitions

Human remains are not defined in the statute, and consequently all Native American human remains are covered. One of the definitions in the statute is the term "burial site." There is some operational confusion among archeologists because some refer to human remains as a "burial." The statute defines burial site as:

any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as part of the death rite or ceremony of a culture, individual human remains are deposited (Sec.2).

This definition emphasizes the place from which remains were taken, and is not synonymous with human remains. This means that whether or not Native American human remains came from a burial site, such remains are covered by the statute. In other words, isolated human bones that may have been disturbed from a burial site are still subject to the provisions of this statute.

Associated funerary objects are objects reasonably believed to have been placed with human remains as part of a death rite or ceremony (Sec. 2(3)(A)). The use of the term "associated" refers to the fact that these materials still retain their association with human remains that can be located. It applies to all objects that are stored together as well as objects for which adequate records exist permitting a reasonable reassociation between the objects and the human remains with which they were buried. This situation may include materials located in a different repository from the human remains. It also is possible that some items seemingly from burials may not have been placed with the human remains as part of a death rite; rather they have been introduced into the burial later by natural processes.

Unassociated funerary objects are items that reasonably are believed to have been removed from burial sites, but can no longer be associated with the human remains of a specific burial (Sec.2(3)(B)) and for which there/ is no existing documentation to reestablish the burial association.

Sacred objects are defined in the statute as:

specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents (Sec.2).

Further language in this area is supplied by the Senate Committee report:

There has been some concern expressed that any object could be imbued with sacredness in the eyes of a Native American, from an ancient pottery shard to an arrowhead. The Committee does not intend this result. The primary purpose of the object is that the object must be used in a Native American religious ceremony in order to fall within the protection afforded by the bill (Senate Report 101-473:7).

Additional information is supplied by the House Report:

The definition of "sacred objects" is intended to include both objects needed for ceremonies currently practiced by traditional Native American religious practitioners and objects needed to renew ceremonies that are part of traditional religions. The operational part of the definition is that there must be "present day adherents" in either instance (House Report 101-877:14).

The key provision in this definition is whether the items are needed to practice or renew traditional religions. It should be possible to describe specific religious uses for the objects identified as sacred. Review of this definition through the regulation development process may require definitions of such terms as "religious leaders," "traditional," and "religious use." All of these terms probably will vary among groups and between regions. For example, some have asked questions such as, "How much time depth is appropriate for a practice or ceremony to be considered 'traditional?'"

Objects of Cultural Patrimony are defined in the statute as having:

ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual (Sec.2).

The key provision in this definition is whether the property was of such central importance to the Tribe or group that it was owned communally. The vagueness of this term again produced comment by the Senate Committee:

The Committee intends this term to refer to only those items that have such great importance to an Indian Tribe or to the Native Hawaiian culture that they cannot be conveyed, appropriated or transferred by an individual member. Objects of Native American cultural patrimony would include items such as Zuni War Gods, the Wampum belts of the Iroquois, and other objects of a similar character and significance to the Indian Tribe as a whole (Senate Report 101-473:7-8).

In contrast to a more general usage, the Senate Committee comments concerning "objects of cultural patrimony" indicate that most often this category will relate to specific, often ethnographic objects, rather than a generic class of archeological objects; we believe that this category probably includes few archeological objects. On the other hand, some items found in museums or collections of Federal agencies may have been inadvertently acquired from individuals with no rights of alienation or possession.

Having reviewed the definitions of human remains and cultural items, we note that many objects in archeological or ethnographic collections are not covered by the statute, because they never had a burial, funerary, religious, or cultural patrimonial context. These objects would be retained in existing repositories with appropriate treatments and care.

IV. RESPONSIBILITIES AND ACTIVITIES

There are two basic sets of activities required by the new statute. These are (1) inventory, written summary, and potential repatriation activities ; and (2) treatment, care, and disposition of cultural items recovered on Federal or Tribal lands, either by intentional excavations or by inadvertent discovery following the date of enactment. The remainder of this section discusses the nature of and processes attending to each of these activities.

IV. A. Inventory, Written Summary, and Repatriation Required of Federal Agencies and Museums Receiving Federal Funds

As in much of this statute, consultation between Federal agencies, museums receiving Federal funds, and appropriate Native American groups is a critical component of all activities associated with the inventories, written summaries, and repatriation. Much of this consultation will involve individual agency or museum accessions on a case-by-case basis. These accessions (a set of catalogued items) may range in size from a single item to thousands of items, and the existing quality of documentation is similarly variable. The statute states that whatever decisions are made in addressing repatriation requests and inventory, they should be based on readily available documentation. Museums and

Federal agencies will need time to assemble documentation in some cases, and apply it to reach determinations concerning the likely lineal descendants or cultural affiliation of the human remains and cultural items in their holdings. In other cases, museums and Federal agencies may have adequate documentation that establishes cultural affiliation, and cultural items can be expeditiously returned upon request from the affiliated group or from a group that is able to demonstrate cultural affiliation. These various factors create the need for a flexible system that permits expeditious repatriation of individual items once cultural affiliation, and right of possession, if necessary, is shown or identified.

Consultations and other communications related to inventories, written summaries, and repatriation requests should occur at the local level, for example, with officials such as Federal park, district, forest, and refuge managers. Individual museums and agency offices responsible for collections containing cultural items should consult with Native Americans concerning the particular items with which they may be affiliated.

IV. A. 1. Statutory Requirements Pertaining to Inventory, Written Summary, Notification, and Repatriation

Within five years of enactment, Federal agencies and museums receiving Federal funds must each complete an inventory of human remains and associated funerary objects that they hold or control. These inventories are to be done in consultation with Tribal government and Native Hawaiian organization officials, and traditional religious leaders. Both during and after these inventories, they shall be available to the Review Committee. The inventories must be followed by notifications of affiliated Tribes within six months of completion. Copies of these notifications must be sent to the Secretary of the Interior for publication in the *Federal Register*.

Within three years of enactment, Federal agencies and museums receiving Federal funds must complete written summaries of unassociated funerary objects, sacred objects, and objects of cultural patrimony that they hold or control. These are to be followed by consultation with Tribal government or Native Hawaiian organizations and traditional religious leaders. Upon request, access to this information shall be provided to Indian Tribes and Native Hawaiian organizations.

Museums receiving Federal funds and Federal agencies must repatriate materials upon request by a culturally affiliated group under certain circumstances. These are described in Section IV.A.4 of this memorandum.

IV. A. 2. Statutory and Operational Differences Between Federal Agencies and Museums Receiving Federal Funds

In many ways the Graves Protection and Repatriation Act views these two kinds of entities as interchangeable, but there are some differences, keeping in mind that the Act views any Federally owned museum or repository (other than the Smithsonian Institution) as an agency.

(a) Agencies

Agencies should initiate contacts with museums that retain Federal collections, and should examine in-house records for agency-operated repositories. Since Federally owned and operated repositories

are considered parts of Federal agencies under the statute, they are not eligible for grants, nor can they obtain extensions of time for completing their inventories. This is an important distinction, since agencies probably will need to shift or increase their allocation of resources to carry out this obligation. If feasible, one place to start developing information on collection location would be to consult old Antiquities Act, ARPA, or agency-based permits for archeological investigations and accompanying files.

Defining the Federal interest in collections held by non-Federal repositories is of considerable importance to agencies. In some collections resulting from multi-agency projects, this process would entail identification of the agency that traditionally has managed or should have managed the material, generally through consultations between collaborating agencies and the repository. Early resolution of such potential ambiguities will help identify Federal interests. Federal agencies uncertain of their responsibilities for archeological collections should consult 36 CFR 79, especially Section 79.3.

Another issue at the interface of Federal agency and museum relationships involves who is responsible for initiating consultations, inventories, written summaries, notifications, and dispositions. We have noted some disagreement on this issue. Some Federal agencies view themselves as the party of primary responsibility, since potential disposition of what they view as Federal property is involved. Others believe the non-Federal repository where the materials are located should be charged with the responsibility. Museums sometimes do not wish to wait for Federal agencies to start addressing their legal responsibilities under the statute, either because they want to begin to repatriate appropriate cultural items or because they fear that delays will result in a museum being unable to meet statutory deadlines or other requirements and being subject to civil penalties. This is a complex issue, but we believe that whatever the record of past agency stewardship, the materials from Federal lands or projects are primarily the agencies' responsibilities. Agencies may transfer the work load through a contract or other agreement, but not the responsibility to ensure compliance with the statute. This implies that Federal agencies should initiate consultation with Native American groups concerning the inventories of Federal collections for which they are responsible in non-Federal repositories. These consultations should be undertaken in close coordination with any museum(s) that hold the items being discussed. Following the beginning of consultation, Federal agencies should immediately begin to address the need to inventory and develop written summaries of cultural items for which they are responsible. Obviously, agencies must work closely with museums that hold their collections to initiate and carry out these activities.

(b) Museums that Receive Federal Funds

Museums will have access to a grants program that may be established under the statute in order to assist them in completing their inventories. Requirements for the grants program will be identified during the regulation writing process. Museums holding collections that are Federal agency responsibilities may be able to apply for grants to inventory such materials.

A museum may request an extension from the Secretary of the Interior if its inventories are incomplete after five years. Extensions of time for inventories may only be granted if the museums can show what the statute defines as a "good-faith effort," at minimum, a plan for complying with the statute; however, the presence of a plan will not guarantee an extension. If museums do not comply with the law, they face civil penalties that may be assessed by the Secretary of the Interior.

Finally, Section 7(f) provides that any museum that repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of State law that are inconsistent with the provisions of this Act. Such an effort should include attempting to identify and consult Federal agencies responsible for cultural items prior to repatriation, especially since no such protection is offered to Federal agencies.

IV. A. 3. A Flexible Process

The variable sizes of accessions for cultural items and the diverse quality of documentation suggest that flexibility will be needed throughout the implementation of this Act. Although what is presented below is a step-by-step approach, some cultural items might move through the steps more rapidly than others. Examples might be cultural items of particular interest to lineal descendants or to a documented culturally affiliated group. The recommended steps are: (a) consultation, (b) written summary and inventory, (c) notification, and (d) repatriation, and (e) disposition.

(a) Consultation

Agencies and museums should first identify, to the extent possible given existing information, appropriate American Indian Tribes, Native Hawaiian organizations, known lineal descendants, and traditional religious leaders who have an interest in various components of their collections. The inventory of human remains and associated funerary objects should be executed in consultation with these groups. Although often it may seem difficult to identify potential culturally affiliated groups given the level of documentation for an accession, agencies and museums are encouraged to make a reasonable effort in addressing this task, recognizing that the current proximity between Tribes and the locations where materials were recovered is not the sole measure of potential affiliation and that traditional religious leaders and known lineal descendants are as important an inclusion in consultations as are secular Tribal governments. If feasible, museums and agencies may wish to form a consultation group of interested parties for each of their various accessions or different parts of collections. Ultimately, agencies could develop data bases linking affiliated groups with cultural items from certain areas.

(b) Written Summary and Inventory Procedures

Once consultation has been initiated, inventory tasks might include:

(1) Develop a written summary. Each Federal agency or museum may summarize in writing rather than provide an object-by-object inventory of unassociated funerary objects, sacred objects, and items of cultural patrimony. This summary must be submitted within 3 years of enactment, and include the following information: scope of collection, kinds of objects included, reference to geographic location, means and period of acquisition, and cultural affiliation. There is no provision for a time extension for the completion of summaries. Consultation with Tribal officials, Native Hawaiian organization officials, and religious leaders must follow the completion of the summary.

(2) Develop an inventory plan. This plan will assist agencies or museums in meeting their responsibilities under the statute. Such a document would help plan for funding needed to accomplish the inventory and justify grant proposals. The development of such a plan is cited in the statute as one means of justifying an extension of time for inventory completion. The

scope of the inventory plan may be quite variable, based either on portions of the collection or the entire holdings of a museum or agency.

(3) Conduct the inventory. The statute defines an inventory as an itemized list. Inventory listings should contain enough information to describe individually each cultural item being listed. The listing also should describe the documentation available about each item. "Documentation" means an examination of agency or museum records, any accession records or catalogues, studies, or other materials that might have a bearing on the geographic origin, cultural affiliation, and the basic facts concerning the acquisition of each item. Although it is expected that conducting the inventory will probably be primarily either an agency or museum function, the law states that the Review Committee may have access to the documentation during this process; however, information on site location that could lead to looting or vandalism should not be released to the public. The initiation of studies to acquire new scientific information is not required as part of the inventory. Optional studies might include ethnographic research to help identify sacred objects, burial practices, or physical anthropological studies to document or confirm ethnicity.

Each inventory will result in lists of human remains and associated funerary objects, with their documentation, that are believed to be affiliated with a certain Tribe or Native Hawaiian organization. Each inventory will also result in a list of human remains and associated funerary objects for which no cultural affiliation can be determined. The treatment of these unaffiliated remains and objects awaits the development of regulations. Lists of these remains and objects along with the documentation about them must be sent to the Review Committee, which is to keep an inventory of these items.

(c) Notification

Agencies or museums must notify affiliated groups formally of the inventory results within 6 months of inventory completion. This notification must describe each set of human remains and each associated funerary object and the circumstances surrounding its acquisition by the agency or museum. The notice must list those remains and objects that are identified clearly as affiliated with the Tribe or Native Hawaiian organization to which the notice is being sent. The notice also is to include a listing of those remains and objects that are estimated reasonably to be affiliated with the Tribe or Native Hawaiian organization. A copy of each notification must be sent to the Secretary of the Interior, who will publish it in the *Federal Register*. This one-time notification process is separate from and more formal than interactions that may occur between agencies and museums and Tribes throughout the inventory process, since it involves a wider audience than any developed during consultation. Finally, if requested, information discovered during the inventory shall be made available by the agencies or museums to Indian Tribes or Native Hawaiian organizations.

The statute requires consultation with Tribal and Native Hawaiian organization officials and traditional religious leaders following the completion of the written summary. Presumably, these consultations will take place between agencies and museums and the Tribes, Native Hawaiian organizations, and traditional religious leaders identified as having likely cultural affiliation with some of the items covered by the written summaries.

At least for the near future, agencies or museums will continue to care for unaffiliated cultural items and affiliated cultural items that are unclaimed in accordance with curatorial and museum standards. The Review Committee is directed in Section 8 of the Act to compile:

an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains (Sec.8 (c)(5)).

Unclaimed materials recovered from excavations are to be handled in a similar fashion:

Native American cultural items not claimed under subsection (a) [of Section 3] shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8, Native American groups, representatives of museums and the scientific community (Sec. 3(b)).

The regulations developed to implement the Act will identify ways to treat any unaffiliated items or affiliated items that are not claimed under the provisions of this statute.

(d) Repatriation

We believe the following perspective on repatriation actions to be consistent with the Standard of Repatriation stated in Section 7(c) of the Act. With respect to human remains and associated funerary objects, the Act provides that where (1) the cultural affiliation of the material with the requesting Tribe or individual has been established by the museum or Federal agency as part of its inventory process or (2) cultural affiliation has been proven by a preponderance of the evidence to be with the requesting party, the material must be expeditiously returned to the lineal descendent or Tribe if requested. In the event that research essential to the national interest is being conducted on such materials, return can be delayed until the research has been completed.

Museums and agencies are not required to repatriate unassociated funerary objects, sacred objects, and objects of cultural patrimony unless the claimant can demonstrate all of the following: (a) the objects conform to the definition for an unassociated funerary object, sacred object, or object of cultural patrimony; (b) cultural affiliation exists for these kinds of items; (c) sacred objects and objects of cultural patrimony were in the claimant's ownership or control; and (d) evidence presented by the claimant exists which, if standing alone before the introduction of evidence to the contrary, would support a finding that the agency or museum did not have the right of possession to such object.

Once these four issues are satisfied, the Federal agency or museum must return the object if it agrees both that the object is properly classified and that it has no right of possession. If museums or agencies disagree with the claimant regarding the classification with respect to the application of the statutory definition, or has evidence that convey to them the right of possession, no return is required. Disputes can be resolved with the help of the Review Committee or in Federal court.

As is implied by the foregoing, a key factor in determining ownership is the right of possession. This is defined in Section 2 of the statute as:

possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian Tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession to that object. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian Tribe or native Hawaiian organization is deemed to give right of possession to those remains.

Cultural items under scientific study also must be returned expeditiously upon request by affiliated Native American groups unless these items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States (Sec. 7(b)). These items must be returned within 90 days of the completion of any such specific scientific study.

(e) Disposition

The statute encourages consultation concerning potential disposition, as well as pursuing collaborative agreements for access, use, care, and treatment of cultural items. It is clear that lineal descendants or culturally affiliated Indian Tribes and Native Hawaiian organizations have the right to make the final decisions about the treatment of human remains and other cultural items covered by the statute. Section 11 (1)(b) provides for the possibility that dialogue between agencies, museums, and culturally affiliated Native Americans may result in treatments that recognize Native American ownership, yet provide for curation, display, and/or research on these cultural items. An example of such an agreement might be the transfer of ownership to a Tribe, followed by the selection of specific items by the Tribe for ceremonial use or reinterment, followed in turn by the loan of the remaining objects to the an agency or museum for curation. The Native American Graves Protection and Repatriation Act Review Committee may assist in agreement negotiation, or provide recommendations for care, treatment, or access to materials if asked.

Another issue relating to disposition is the administrative aspect of deaccessioning materials and the legal requirements surrounding disposition of Federal property. Generally, museums and Federal agencies have their own processes for deaccession or disposition of museum property. These processes may not now incorporate repatriation, however. Although the National Park Service is conducting a survey to identify which agencies in the Department of the Interior have some sort of deaccession/disposition authority, and the results could be used to develop a departmentwide process, any final unifying process remains in the future.

Aside from the prohibitions against illegal trafficking in Native American human remains and cultural items that pertain to all persons and are identified in Section 4 of this statute, there are no requirements for Native American groups regarding the use, access, treatment, or care of repatriated cultural items.

IV. B. The Role of Indian Tribes, Native Hawaiian Organizations and Traditional Religious Leaders In Repatriation Activities

Indian Tribes, Native Hawaiian organizations, and traditional religious leaders may take an active role throughout the repatriation process or they may choose to await notification from museums and/or

agencies of their findings. One active role would be to identify museums or Federal agencies that might have ownership, stewardship, or management of Tribal cultural items, and express an interest in consulting about items in these collections that are of interest.

A second activity would be to begin to assemble documentation to help establish valid claims to cultural items. Examples of these kinds of evidence are oral or traditional evidence, linguistic, biological, archeological, or anthropological material, or legal documents pertaining to the Indian Claims Commission or the Federal Court of Claims.

Another activity would be to identify any other potential claimant Tribes or organizations. If any are found, the Tribes should attempt to resolve the claims issue. The statute states that a preponderance of the evidence will establish the strongest relationship between a Tribe and any affiliated cultural items if cases are brought into court. In dealing with this issue, potential competing claimants should attempt to resolve it in conjunction with the definitions of cultural affiliation supplied by the statute.

Tribes and Native Hawaiian organizations have a role in consulting with Federal agencies and museums that will be seeking guidance initially on what materials are of interest to individual Tribes. We recommend early interaction and regular consultation if warranted. Indian Tribes and Native Hawaiian organizations may request access to materials once they have been notified that the inventory, or the portion of an inventory for items they are particularly concerned about, is complete.

Native American groups that are dissatisfied with any of the negotiations with museums, Federal agencies, or other Native American groups may contact the Native American Graves Protection and Repatriation Act Review Committee. One of the Committee's functions is to facilitate resolution to such disputes.

Once Indian Tribes or Native Hawaiian organizations have been notified, the statute stipulates no specific time requirement for Tribal responses to agencies or museums about claims for repatriation or disposition of cultural items. The statute only requires repatriation for those items that meet the definitions and are requested by affiliated Tribes. Tribes and Native Hawaiian organizations may elect not to have items returned. The statute provides for relinquishment of claims if the affiliated group wishes.

IV. C. Intentional Excavation and Inadvertent Discovery of Native American Remains and Objects

This section discusses human remains and cultural items removed from Federal or Tribal lands after November 16, 1990. These materials are dealt with in Section 3 of the statute and are discussed either as the result of intentional excavation or inadvertent discovery.

IV. C. 1. Intentional Excavation

The use of the term "intentional excavation" in the statute is synonymous with planned archeological activities, including research. This term also applies to undertakings and developments that cannot avoid archeological sites and thus require excavations that may encounter human remains and associated funerary objects at potential but unspecified locations within those sites. For example, this might include the excavation of a trash midden into which burials were later placed.

Federal agencies are encouraged strongly to undertake comprehensive archeological survey work designed to discover the locations of archeological sites and the likely locations of burials and other cultural items within these sites during the early stages of project planning for agency developments and operations, or for land use applicant projects whenever possible. Discovery of unanticipated cultural items during project execution may be followed by a 30-day delay under the inadvertent discovery section of the statute (Section 3(d)). We believe the delay requirement of this subsection indicates strong legislative intent to identify burials and cultural items in archeological sites during project planning and preserve them in situ during project construction. This archeological survey work should be coupled with an increased effort to identify Indian Tribes and Native Hawaiian organizations, including traditional religious leaders, who might have an affiliation with materials likely to be disturbed.

Section 3 calls for removal of human remains and cultural items only under the following conditions: (1) pursuant to an Archaeological Resources Protection Act (ARPA; P.L. 96-95; 93 Stat. 712; 16 USC 470) permit; (2) after consultation with Tribes, or documented evidence of attempts to consult, in cases involving Federal lands, and the documented consent of appropriate Tribes in the case of Tribal lands; (3) under ownership, control, and disposition provisions stipulated in this statute.

The Act requires consultation in order to determine appropriate treatments of human remains and other cultural items. The requirement that Federal agencies, or through the agencies non-Federal users of Federal lands, formally consult with the appropriate Native American groups regarding the treatment and disposition of human remains and other cultural items recovered during archeological investigations conducted on Federal and Tribal lands complements, but does not substitute for the Section 106 consultation process. Likewise, archeological data recovery or other actions to mitigate project impacts developed through Section 106 consultation must meet Graves Protection and Repatriation Act requirements when they occur on Federal or Tribal lands.

Consultations to implement Section 3(c), the intentional excavation subsection of the Act should lead to agreements on:

- (1) the specific Native American organization(s) with cultural affiliation or having an aboriginal land claim legally established by the Indian Claims Commission or the U.S. Court of Claims with any human remains and other cultural items that may be recovered;
- (2) the kinds of artifacts that will be considered to be cultural items as defined in the Graves Protection Act, including associated and unassociated funerary objects, sacred objects, or objects of cultural patrimony;
- (3) the kinds of analysis and curation to which cultural items will be subjected, along with a schedule for any disposition of the items;
- (4) the curation facility to be used, if any; and/or
- (5) a specific course of action to be taken should human remains and other cultural items be encountered unexpectedly during a project.

Such discussions and any formal agreement must include the Federal agency and the appropriate Tribe or Native Hawaiian organization. In order to coordinate any conditions to this agreement with Section 106 requirements, these parties must include in the discussions the SHPO, the Advisory Council, if participating, and the licensee or permittee (if applicable). These discussions could lead to an agreement that forms the basis for any required ARPA permit and could be incorporated by reference into the Section 106 documentation.

IV. C. 2. Inadvertent Discovery

The intention of this section of the statute is to deal with cultural items not anticipated but discovered, uncovered, or disturbed during undertakings on Federal or Tribal lands. This includes situations such as finding human remains or other cultural items in areas where no sites were anticipated or discovered during archeological surveys done as part of project planning, (i.e., buried sites not visible from examination of the surface). If cultural items are discovered during such activities as construction, logging, mining, or agriculture, this law requires agencies or non-Federal users to:

cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice (to the appropriate Federal agency or Tribal official). Upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian Tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification (Section 3(d)).

This section requires that activity in the area of the inadvertent discovery cease, although activities may continue elsewhere in the project area. Once notification has been received by the agency or Tribe, the consultation described above in V. C. 1. and Section 3(C) of the statute must occur and be documented. Regarding notification, if the project is on Federal lands the notice must be provided to the appropriate agency, as well as the appropriate Native American groups. If it is on Tribal lands, the appropriate Indian Tribe must be notified. Upon certification that notification has been received, the activity may proceed following a 30-day delay, but the provisions of ARPA and NHPA must still be followed.

The Advisory Council's regulations (36 CFR 800.11) encourage agencies to develop a plan for dealing with unexpected discoveries of archeological materials during a project. Appendix A provides some of the details. Inadvertent discoveries require that agencies follow either the Advisory Council's procedures or those established for the Archeological and Historical Preservation Act of 1974 (P.L. 93-291; 88 Stat. 174) to prevent the loss of important scientific information. This latter approach is described in National Park Service Staff Directive 84-5, included as Appendix B.

IV. D. Discussion: The 30-Day Delay Provision and Proactive Memoranda

As noted, the statute requires a 30-day delay period following official certification that the notification of an accidental discovery has been received. Several Federal agencies have questioned whether this period could be reduced through consulting and reaching a proactive agreement with affiliated Indian Tribes or Native Hawaiian organizations, normally on a case-by-case basis. Such hypothetical memoranda would identify the nature of the undertaking and methods of treatment, handling, and

disposition of cultural items that might be encountered. Moreover, they would delineate procedures to streamline the notification, consultation, and agency or Tribal response process.

Because of the unequivocal nature of the statutory language, any such proactive approach will have to be considered in the development of regulations. If feasible, this approach would be based on language found in the accompanying Committee reports, such as:

An Indian Tribe or Native Hawaiian organization may, after notification, determine the appropriate disposition of any remains or objects found on these lands. Under this notification process, an Indian Tribe may determine the appropriate disposition of any remains or objects without significant interruption of the activity. The Committee intends this section to provide for a process whereby Indian Tribes and Native Hawaiian organizations have an opportunity to intervene in development activity on Federal or Tribal lands in order to safeguard Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony. Under this section, Indian Tribes and Native Hawaiian organizations would be afforded 30 days in which to make a determination as to the appropriate disposition for these human remains or objects. The Committee does not intend this section to operate as a bar to the development of Federal or Tribal lands on which human remains or objects are found. Nor does the Committee intend this section to significantly interrupt or impair development on Federal or Tribal lands (Senate Report 101-473).

Section 11 (1)(B) might offer the potential for entering into proactive Memoranda with respect to inadvertent discovery situations, but its application will require the force of regulations.

Section 11(1)(B)

preserves the right of all parties to enter into other mutually agreeable arrangements than those provided for in this Act. The Committee encourages all sides to negotiate in good faith and attempt to come to agreements, where possible, which would keep certain items available to all those with legitimate interests (House Report 101-877:16)

A second possible approach for dealing with the 30-day delay provision might be to utilize the ARPA permitting process. Under such circumstances, consultations would lead to an agreement document, and the conditions of the agreement stipulated in an ARPA permit, which becomes an instrument that helps to demonstrate consultation, streamline notification and response time, and identify care, treatment, and disposition.

IV.E. The Relationship Between the Graves Protection and Repatriation Act Section 3 Provisions and the National Historic Preservation Act's Section 106 Compliance Provisions

The Section 106 consultation process offers an operational template for addressing similar issues under the Graves Protection and Repatriation Act, as well as an opportunity to initiate a consultation process. Readers should be sensitive to the fact that while the two statutes can stand alone in terms of their requirements, there may be opportunities for consolidation when both laws are applicable to an activity. Since the decisions and agreements reached under one statute may not necessarily satisfy the requirements for the other, it is especially important to consider early coordination of the two laws where both apply.

Section 106 applies to work done using Federal funds or requiring Federal permits and licenses. Section 3 of the Graves Protection and Repatriation Act applies to Federal or Tribal lands. Thus, there probably will be frequent instances where both laws will apply. With respect to other sections of the Graves Protection and Repatriation Act, repatriation is not an undertaking as defined by the Advisory Council's procedures, except in rare circumstances wherein objects to be repatriated are listed on the National Register of Historic Places. Appendix A provides additional guidance on coordinating the two processes.

V. CONCLUDING STATEMENT

This memorandum has attempted to summarize the Graves Protection and Repatriation Act and examine legislative intent based upon the Committee reports. We have tried to integrate the many comments and answer questions we have received from museums, Federal agencies, and Native Americans concerning the statute. Many of these suggestions and the issues that they raise cannot be answered outside of the formal rule making process. We have attempted to explore some of the issues that this process may consider.

All Federal agencies, museums that receive Federal funds, Indian Tribes, and Native Hawaiian organizations are encouraged to collaborate in developing creative and mutually respectful solutions to the challenges posed by this important statute.