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Advisory Council on Historic Preservation
Native American Program
1100 Pennsylvania Avenue NW
Suite 809
Washington DC 20004

Re: Archeology Task Force's Draft Policy Statement On
"The Treatment of Human Remains, Burial Sites and Funerary Objects"

The comment from the Tribal Historic Preservation Office of the Wampanoag Tribe of Gay Head (Aquinnah) (WTHPO) is simply that we needed more time to adequately deliberate and resolve critical concerns and issues surrounding this extremely important responsibility and honor; the treatment of the remains of our Ancestors, their Burial Sites, Funerary Objects and Objects of Cultural Patrimony including all documentation and reports associated with these areas.

The aspect of the treatment of our Ancestors' remains, burial sites, funerary objects and objects of cultural patrimony along with associated documents; and its implications are so important to Tribal Nations, to attempt to expedite the timeframe for Tribes to comment, begs the question of the demonstrated level of respect for Indian Culture, Traditions and Religious Practices. However, I/we will attempt to comment on the content of the "Draft" as it was submitted.

I/We would first like to acknowledge and thank the Archeology Task Force for its commitment to the issue and recognition of its importance. I/We further applaud their efforts and hard work of creating the draft policy statement as a basis for continued dialogue and consultation. The draft document is an excellent starting point and a wonderful building block on which the Tribal Nations can begin the process of how to responsibly consider; and adequately address this extremely sensitive and solemn responsibility and honor.

My first general comment is that there needs to be a separate or additional section, specifically addressing the unique status and impact on the Ancestral Remains of American Indians. Since there has only been approximately 400 years of Euro/Anglo settlement on this continent, the overwhelming majority of human remains that may be impacted by federal undertakings will be of American Indian, Alaskan Native and or Hawaiian descent as defined in US Code Title 25 The Indian Education and Self Determination Assistance Act.

SEC. 4. ø25 U.S.C. 450b¿ For purposes of this Act, the term—
(e) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

A FEDERALLY ACKNOWLEDGED TRIBE

With this in mind, the attempt to "lump" all human remains together in my opinion does not fully consider the tremendous impact this policy will have on the Indigenous American Indian People of this land, which appears to be inconsistent with the intent of the Indian Self Determination and Education Assistance Act P.L. 93-638 and Section 106 of the National Historic Preservation Act 36 CFR Part 800 etc.

US Code: Title 25 PART III—INDIAN EDUCATION
Indian Self-Determination and Education Assistance Act
(Public Law 93-638)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ø25 U.S.C. 450 noteç That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".

CONGRESSIONAL FINDINGS

SEC. 2. ø25 U.S.C. 450ç (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

DECLARATION OF POLICY

SEC. 3. ø25 U.S.C. 450aç (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

The Indigenous Peoples of this continent, the American Indian Tribes have inhabited this continent since time in memorial. The vast majority of potentially disinterred burials will most likely be American Indians. Therefore we feel it is imperative that an additional section should be incorporated into the policy specifically devoted to American Indians / Indian Tribes, which articulates the uniqueness of our situation and the "special relationship" that Federally Recognized Tribal Nations have with the United States Government and unique status we maintain.

Additionally, the section should contain an acknowledgement and understanding, that Indian Tribes continue to practice their individual and collective traditions and culture, and have maintain individual funeral rights and practices specific to their individual and collective Tribal Nations; it should also affirm that each must be respected.

There should be a section with definitions of terms as it pertains to this policy and or document, to offer clarity and consistency in terminology. The wording in the draft also needs to be strengthened as to avoid misinterpretation and provide consistency with all federal laws, rules, regulations, and Executive Orders relative to its intent and application to Indian Tribes.

I feel that in the beginning of the statement there should be a declaration, establishing the intent of the policy and the Federal Agency's duties and responsibilities, under the government-to-government relationship, including its fiduciary responsibility to Indian Tribes (again consistent with the federal laws, regulations rules and Executive Orders).

In Principal 1, I would recommend changing the phrase "unless absolutely necessary" to: if no other alternative exists. And the term "in place" should be changed to the term "in situ", and defined in the definitions section.

Principal 2 should really consider and clarify what "meaningful consultation" means including protocols on how to consult with Indian Tribes. It should also include the language "consult directly with all affected Indian Tribes".

Principal 1 should become Principal 3 and Principal 2 should be come Principal 1 and Principal 3 should become Principal 2.

Principal 4 needs to be re-written. It reads as if it was inferring that an Indian Tribe would not attach significance to their Ancestors' burial sites and all related cultural or burial rights. Additionally, the portion of "Federally recognized tribes are sovereign..." should be at the beginning of the principal reinforcing the obligation of the federal agency, acting as an agent on behalf of the federal government.

Principal 5 should include language that clearly states that the "consultation" should be with the affected Indian Tribes / Tribal Nations. And a clarification of "respectfully" should read: in accordance with the traditions and customs of the affected Indian Tribes.

Principal 6 should clarify that while the federal agency is responsible for making the final decision, it should also include that it is after meaningful consultation and negotiations with the affected Indian Tribe(s). I would also prefer that the "t" in Tribe be capitalized.

Principal 7 should include; and negotiation after the term "meaningful consultation" and again, "meaningful consultation" must be defined to provide consistency and clear understanding of what it means and what shall be expected. This principal is also unclear if it is speaking to unanticipated finds or anticipated excavations.

Principal 8 is unclear as to in what context "the disposition of human remains and funerary objects is not legally prescribed...". Are they referring to when it is not covered under Native American Graves Protection and Repatriation Act (NAGPRA) and or State laws? There needs to be clarification when that would be a consideration, if these are regulations for Federal Agencies during an "undertaking", then it is my understanding that NAGPRA is enforceable whenever the agency or its agents take possession or has control over the remains. If this is not in fact correct, then more clarity needs to be provided. NAGPRA doesn't apply to any non-Indian remains, burials and or funerary objects, but is would when that are of American Indian origin.

There also needs to be language incorporated into the policy that requires agencies and or museums to also surrender all documentation, reports, data and notes pertaining to the disinterred human remains of Indian People as part of the repatriation process.

In closing, to fully consider the long-term ramifications, residual effects and possible adverse affects of this important piece of policy regulation; it is imperative that we fully comprehend them. Failure to recognize the gravity and importance of the implications of these policies would prove to undermine the honor and respect that Indian Tribes attach to their Ancestors, Burial Rights, Burial Sites, Funerary Objects and the contributions and sacrifices the Ancestors have made.

We still need more time to properly confer with our Traditional Cultural Leaders, Religious Leaders and Spiritual Leaders, in order to ascertain the broader perspectives and scope of this most important issue. Plus we must solicit the comments of our extended Nations' Peoples and respond both individually and collectively, as is the traditional practice of Indian People.

For the Indigenous Tribal Nations, it is our honor and responsibility to protect and preserve the final resting places of our Ancestors. It is not a responsibility that is taken lightly, nor should we be expected to accept a policy of a process that has the potential to impact our people for several generations to come.

I/We thank you for the opportunity to have our voice heard and our concerns expressed. I am hopeful that we will be able to continue under formal and meaningful consultation, as we define it. And we are hopeful that the final outcome will be a policy that will satisfy the need and provide clear direction in this extremely sensitive area. Should you have any questions, please feel free to contact me at the above referenced phone number extension 112.

In Balance, Harmony and Peace,



Cheryl Andrews-Maltais
Tribal Historic Preservation Officer

C: Wampanoag Tribe of Gay Head (Aquinnah) Cultural and Historic Commission
Untied South and Eastern Tribes Culture and Heritage Committee
National Association of Tribal Historic Preservation Officers
John Nau, Chairman Advisory Council on Historic Preservation