

1  
2 **UNITED STATES DISTRICT COURT**  
3 **COMMONWEALTH OF MASSACHUSETTS**

4  
5 Leyah Jensen, )

6 Plaintiff *pro se*, )

7  
8 v. )

**Civil No.**

9 1:14-cv-14095-RGS )

10 National Park Service, )

11 Defendant. )

12  
13  
14 **MOTION FOR DENIAL of MOTION TO DISMISS**

15  
16 **“The Act only protects—.”** The Act only protects *specific* people. It does not protect others, for  
17 whom no aid is offered. And as a natural matter of course, the privilege in due turn becomes  
18 construed so as would deny the fair and equal consideration of those left behind. The facts of the  
19 case at hand have made the consequences clear. Still the Defendant would affirm discriminatory  
20 practices again and again, as the just cause to bring matters to a close. In this, the Plaintiff could not  
21 agree more; any further evidence in fact extends the issue at core. The *Motion to Dismiss* has  
22 crystallized the object of this case, and by their own words the defense has proven those grounds to  
23 grant full relief. Yet as nonetheless they would, ***let Facts be submitted to a candid World.***

24  
25 **DEFENDANT fails the lawful grounds for dismissal** because the factors that would lawfully  
26 validate one, are presented through errors in fact; and the points of debatable controversy, are *not*  
27 valid grounds to dismiss. The defense answers the question of constitutional jurisprudence in itself:  
28 by responding to allegations of civil rights denied, with an answer only *affirming* unconstitutional  
29 practice and assuring to deliver more of the same. The Defendant would rewrite the *Complaint* (see:  
30 NHD vs. NHL) rather than address specifics, and responds with a *Motion to Dismiss* that portrays  
31 infactual information (see: lack of NPS jurisdiction) meanwhile belaboring the reader with truths,  
32 where no dispute was ever at hand (see: National Historic District). They deny application of

1 Federal Torts, for having not first filed “claim with the agency” (*p.10, l.22*); forgetting their failures  
2 to answer as covered by plain terms in Torts: 28 USC ss.2675. The Defendant NPS denies specifics  
3 of the statute they are supposed to be administering, such as responsibility to NHLs or the  
4 requirement they answer reports. They refuse the foremost consideration they are mandated to  
5 uphold being “cultural affiliation,” then imply excuse for want of scientific certainty. And finally, the  
6 Defense mis-cites 25 USC 3001(9): first, by removing a critical ellipse “*remains of a ‘Native*  
7 *American tribe, ’*” (*pg.2, ln.5*), to follow with “*as required by the statute*” [*pg.8, ln.17*]. Affected is  
8 an inexcusable breach of faith toward those most defenseless, where cases had laid expectations clear.

9 *Society of American Archeology in amicus for Department of the Interior (Bonnischsen v. U.S.)*  
10 *as a determination science could agree with and still “reasonably carried out Congress’s intent:*  
11 *“As defined in NAGPRA, “Native American” refers to human remains & cultural items relating*  
12 *to tribes, peoples, or cultures that resided in the area now encompassed by the United States*  
13 *prior to the historically documented arrival of European explorers, irrespective of when a*  
14 *particular group may have begun to reside in the area, & irrespective of whether some or all of*  
15 *these groups were or were not culturally aff. or biologically related to present-day Indian tribes.”*  
16

17 **PLAINTIFF** hereby respectfully requests the Court deny dismissal, for it’s errors-in-fact hereafter  
18 detailed. May the reading material offered by Defendant’s *Motion* not succeed to tire, where  
19 substantial similarity could not drawn. The Plaintiff reminds that the case at hand is not seeking to  
20 *obtain* material, but rather relief for material *in her possession* and where still at large. May the Court  
21 recognize any attempts to incite alienation from support of Native American Indians, where Defense  
22 would force Plaintiff to label where statutes make no such demand; and whereby overturn of the  
23 word “indigenous” the Defense would neither offer precision, nor do they cast out standing  
24 expectation as quoted above. The Plaintiff asserts the sovereign and monetary privileges that  
25 American Indians uniquely deserve. This case calls instead upon those rights inalienable—endowed  
26 not by governments, but by Creator—which entitle each citizen to fair and equal consideration under  
27 the law for their basic civil liberties. May this Court, like those before, find the grievance at hand *res*  
28 *ipsa loquitur*, and grant relief for the toll where denied the course of law. And may it redeem statutes  
29 fallen to abuse, having purposed—as *all* legislations—to further fairness, justice, and *truth*.

30 Congress declares: it is a national policy to preserve...for the inspiration and benefit of the  
31 people of the United States, and (b) To implement the policy, the Act authorizes the Secretary of  
32 the Interior [*administered NPS*] (2) To make necessary investigations and researches in the  
33 United States relating to particular sites, buildings or objects **to obtain true and accurate**  
34 **historical and archeological facts and information** concerning the same. 2c) The National  
35 Park Service (NPS) administers the National Historic Landmarks Program on behalf of the  
36 Secretary. ***Historic Sites Act of 1935 [16 U.S.C. 461 et seq.]***

**I. BACKGROUND.**

**On May 23, 2013 at 1:39 a.m. the Plaintiff wrote to the Defendant, National Park Service** to report what appeared a casket in a stream of city run-off. She stated having video-taped what might be an active cover-up, and therefore asked if there might be someone she could speak with over the phone to give all additional information. Given the suspicious activity she had taped, the Plaintiff felt a “non-local” should check things out as soon as possible.

**The Plaintiff did not receive reply.**

**On May 23, 2013 at 11:45 a.m. Plaintiff reported to Defendant, National Park Service** with the statement she was going to give police in advance. She described 6-foot by 3-foot shape that looked “an awful lot like a risen grave.” Fearing criminal activity which she had documentation and a “broader-spread knowledge and a cover-up in a way that is harming the graves,” the Plaintiff told Defendant she was going to ask an officer out of uniform to inspect. She informed that she would write again with result, hoping it would be discounted as a grave.

**The Plaintiff did not receive reply.**

**On May 23, 2013 at early p.m. Plaintiff put in police report, providing the specific location** where she had video-taped the suspicious activity, what she had seen, and a description of two individuals she believed intending destructive cover-up where by recent erosion had newly emerged a flat, rectangular shape covered by finely-designed wool blanket possibly a casket.

**On May 24, 2013 at 4:36 p.m. Plaintiff sent “update” to Defendant, National Park Service** that an officer had been willing to investigate, and although she doubted if his manner was thorough he had proclaimed it “rock.” Having not heard back from the NPS for either of her two reports previous, the Plaintiff asked the Defendant if finding of “Native” remains entailed some other reporting method she may have missed where no Federal authorities directly on hand.

**The Plaintiff did not receive reply.**

**On June 13, 2013 at 10:14 a.m. Plaintiff sent report to Defendant, National Park Service** that a human vertebrae among other bones had now appeared at the location. She informed of consulting with the locally-recognized tribe as well as the coroner’s office, whereby gained the verification. She asked if there were please a specific person she could call in case more police damage be attempted in lieu of coroner and archeologist arriving due under Massachusetts Law.

**The Plaintiff did not receive a reply.**

**On February 5, 2014 12:35 a.m. the Plaintiff wrote Defendant, National Park Service** regarding the fearful and intimidating circumstances that had befallen since the incidents, asking if as blown-witness/federal informant there might be some federal body she could please meet with.

**The Plaintiff did not receive a reply.**

**II. FAILURE OF ARGUMENT TO DISMISS.**

ARGUMENT	BASIS		FACT OF LAW
1) INTRO : <u>Viability of a Claim</u> Page 2, Line 2 "Motion to Dismiss"	<u>Defense:</u> "Plaintiff cannot establish that NAGPRA imposes any duties upon NPS with respect to her allegations"	vs.	1. <u>NAGPRA</u> accountability. 25 USC ss. 3002 2. Congress assignment of NPS: " <b>make necessary investigations...to obtain true &amp; accurate historical &amp; archeological facts and information.</b> " 36 CFR 65.1b(2) 3. Agency duty to sites <u>Exec. Order 13007</u> and liability for negligence. 42 USC ss. 1986
2) "ARGUMENT A" <u>Jurisdictional Standing</u> Page 2, Line 21 & Page 8, Line 4	<u>Defense:</u> "Constitutional elements of standing." "any individual bringing suit under NAGPRA who is not a Native American tribal member is required to establish constitutional jurisprudential standing."	vs.	1. see: <u>Constitution</u> . 2. Courts have made clear that demanding any distinguishing prerequisite is unconstitutional and thus argument <i>against</i> instead upholds. 3. Regarding "Facial plausibility"—see plausible "face" supporting <i>Cease &amp; Desist</i> .
3) "ARGUMENT B" <u>Viability of a Claim</u> "Motion to Dismiss" Page 8, Line 16 & Page 11, Line 14	<u>Defense:</u> "does not allege facts that may establish the supposed remains as Native American remains, as is required by the statute. 25 USC 3001(9)" "not alleged a claim"	vs.	1. The clause is mis-used glossary term. 2. <i>Actual</i> first requirement of [REDACTED]: " <b>fair, objective consideration of all relevant information and evidence;</b> 3) upon the request of <b>any affected party</b> , reviewing and making findings related to—A) the identity or cultural affiliation of cultural items." 3006(c)
4) "ARGUMENT C" <u>Location Jurisdiction</u> "Motion to Dismiss" Page 9, Line 9	<u>Defense:</u> "the Complaint does not allege that the 'human remains' are located on Federal land" "NHD" not covered	vs.	1. see: <i>Complaint</i> stating "[REDACTED]" 36 CFR 65 2. NHD is not mentioned once in <i>Complaint</i> . 3. [REDACTED]
5) "ARGUMENT D" <u>Waiver of Immunity</u> "Motion to Dismiss" Page 10, Line 15	<u>Defense:</u> "no waiver of sovereign immunity"	vs.	1. <u>FTCA</u> see: 6 mo. default. 28 USC ss.2674 2. <u>APA</u> ( <i>Rosales; Geronimo</i> ). 5 USC ss. 702 3. Liability for injury. 42 USC ss. 1986 4. <u>Courts:</u> waiver is implied if terms of free agreements. see Geneva Conv. & UNESCO 5. U.S. <i>Defendant</i> , expressly stated (p. 7, 1 18: " <u>NAGPRA</u> provides that '[t]he United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act.' 25 U.S.C. ss. 3013." [Motion to Dismiss p. 7, 1. 18].
DECLARATION 1	<u>Defense:</u> "not federal"	vs.	[REDACTED]
DECLARATION 2	<u>Defense:</u> "not tribal"	vs.	May the record be free to speak.

1 **II. LAWFUL APPLICATION.**

2  
3 **“ . . . pleading that the remains are merely ‘human.’ ”**

4 Defendant NPS (pg. 9, ln. 5 *Motion to Dismiss*)

5  
6 **A) COURTS.** If the above statement does not make the Court cringe, then I know what  
7 surely will. Taking the Defendant's suggestion following it: that it be for the Court to take human  
8 remains in their own two hands for making determination. This is completely contrary to the process  
9 of the statute, as clearly outlined by the Defendant's own published guidelines. Whatever internal  
10 dysfunctions the agency is experiencing, there is no excuse for decrepit disregard that would risk  
11 both National policy and International sanctions on human rights. Finally, in the NAGPRA cases the  
12 Defense has cited the Courts verified that of NAGPRA's two primary objectives is the role of  
13 protecting the dignity of graves on U.S. soil. . . leaving *no* individual out in the cold.

14  
15 **B) STATUTES.** The Native American Graves and Repatriation Act was designed to work  
16 together with the Archeological Resources Protection Act and the National Historic Preservation  
17 Act, in order "to secure, for the present and future benefit of the American people, the protection of  
18 archeological resources and sites." (16 USC 470aa (b)) The National Park Service has published on  
19 their website a [REDACTED] of how these Federal Laws for Historic Preservation are to  
20 apply. The protections instituted make clear that "any material remains of human life or activities  
21 which are at least 100 years of age" bear with them a liability toward the National interest that is  
22 strictly enforced.

23  
24 The National Park Service, however, has done a great job laying out exactly what to do, should you  
25 see something on a walk one day that you can't dismiss by yourself as *inadvertent discovery*: "The  
26 unanticipated encounter or detection of human remains, funerary objects, or objects of cultural  
27 patrimony found under or on the surface." 43 CFR 10.2(g)(4). According to their chart [REDACTED]  
28 [REDACTED], "the person who makes the discovery must **immediately notify the**  
29 **responsible Federal official.**" Next, one must "cease the activity in the area of the inadvertent  
30 discovery." The third and final thing a person is held accountable to do is "**make a reasonable**  
31 **effort to protect the human remains and other cultural items.**" This lasts as long as it takes "the  
32 responsible Federal agency" to arrive and "further secure and protect the human remains and other  
33 cultural items," which luckily the National Park Service assures shall be "immediate" by the  
34 responsible Federal Agency who shall have certified receipt of the notification within three working

1 days. Nowhere does the process demand "proof" from the person making good-faith report. If a push  
2 for response be necessary given the remoteness, then opinion of the State Coroner would provide  
3 "human remains" to immediately qualify for all protections as such under Massachusetts state law.  
4 Or, if photos of the material would be requested before on-site inquiry, then the agency's required  
5 response might freely ask for them. Explicitly it is stated though that three days, and three days only,  
6 shall shift from the finder to the agency that responsibility for adherence of materials to Federal  
7 Laws for Historic Preservation ensuring their: protection, conservation, consultation, testing,  
8 determination of affiliation, and the many additional jobs that preservation does entail.

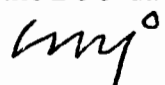
9  
10 **The National Park Service** is that Agency mandated by act of Congress to be Administrator of  
11 Federal Laws on Historic Preservation wherever presiding, including federally-vested National  
12 Historic Landmarks. Congress deems them accountable to *all* "ancient remains," as the 127,000  
13 unidentified individuals under the NAGPRA program will attest. By this measure can Science,  
14 Religion, and the Law of the United States all agree that *no* one must suffer indignity just for lack of  
15 identity. The law furthermore provides for any affected person to bring a claim, whereby the number  
16 one guiding principle for determination is described in depth through training manual of the National  
17 Park Service: ~~XX~~

18  
19 **C) CONSTITUTION.** Most importantly, of course, the Plaintiff pleads for a thorough  
20 consideration of exactly what the Defendant's *Motion to Dismiss* would deny. Puny excuses  
21 including "Sovereign Immunity" will not overcome Constitutional Rights. The many, many acts  
22 instated that demand government accountability have made clear exactly what it is that *We the people*  
23 shall uphold, above any attempt of power to subvert it. To deny a grievance of the most basic civil  
24 principles would be to snuff out our own guiding light, which makes us who we are.

25  
26 May the Court keep the candle burning.

27   
28 Leyah Jensen, Plaintiff *pro se*

29 -----  
30 ***CERTIFICATE OF SERVICE***

31  
32 I hereby certify on this day — June 14, 2015 — that this motion post by electronic means and  
33 directly sent by first-class certified mail for the Court and for Service upon the Defendant by Attorney,  
34 /s/ Anita Johnson via first-class mail of the United States Postal Service. 

**Town and County of Nantucket**  
**Board of Selectmen • County Commissioners**

Arthur L. Desrocher, Chairman  
 Charles "Jack" Gardner  
 Pamela L. Killen  
 Timothy M. Soverino  
 Vincent M. Vacca



Town & County Building  
 16 Broad Street  
 Nantucket, Massachusetts 02554

Telephone (508) 228-7255  
 Facsimile (508) 228-7272

C. Elizabeth Gibson  
 Town & County Administrator

November 5, 1996

RE: Town Pier: #25-00199

Mr. Joel Lerner, Director  
 Division of Conservation Services  
 Executive Office of Environmental Affairs  
 Commonwealth of Massachusetts  
 Leverett Saltonstall Building, 100 Cambridge Street  
 Boston, MA 02202

Attn: Ms. Jennifer Soper

Dear Mr. Lerner:

The purpose of this letter is to update you and your staff on the progress of the proposed conversion of land at Washington Street.

In November, 1995 I wrote to you and outlined a proposed acquisition plan for land located at Washington Street Extension. We received a copy of your letter to the National Park Service dated December 4, 1995 and thank you for your efforts. In your response letter dated April 19, 1996, Ms. Soper wrote "... that it is now time to hire an appraiser to value both the converted property and the replacement land" among other steps. The appraisals have been completed and the results significantly differ from our original proposal which is compared below. The results are as follows:

**Conversion Parcel**

<u>Map/Parcel</u>	<u>Address</u>	<u>Area</u>	<u>Assessed Value</u>	<u>Appraised Value</u>
42.3.6	33 B Washington	1.8	\$552,800	\$725,000*
(* 7/25/96 Affidavit of Appraisal, Denby Real Estate)				

**Replacement Parcels**

<u>Map/Parcel</u>	<u>Address</u>	<u>Area</u>	<u>Assessed Value</u>	<u>Appraised Value</u>
* 55.1.4-9.2	(% interest 1 ) 98 Washington St. Ext.	.475	\$152,180	\$1

<u>Map/Parcel</u>	<u>Address</u>	<u>Area</u>	<u>Assessed Value</u>	<u>Appraised Value</u>
* 55.1.4-9.1	(% interest 1 ) 100 Washington St. Ext.	.228	\$139,580	\$1
	Washington Street Ext.	.500	\$100,000	\$10,000*
	(* 7/31/96 Affidavit of Appraisal, Denby Real Estate)			
55-407	4 Goose Pond Lane	.580	\$21,600	Removed - ?
55-414	6 Goose Pond Lane	.596	\$18,900	\$2,600**
<u>54-53</u>	<u>"Monomoy Creeks"</u>	<u>15.0</u>	<u>\$110,600</u>	<u>\$46,000**</u>
	(** 3/26/96 Affidavit of Appraisal, Denby Real Estate)			

Total appraised value of replacement parcels:

\$58,602

It is my understanding that there must be an equivalent exchange in value between the land being used for other purposes and the land being acquired to replace it. Obviously, this is not the case as originally proposed. There is over \$600,000 in value separating the conversion and replacement parcels.

Because of this situation, the County proposes an additional parcel for consideration. The land in question is a 3.5 acre parcel that would be used for active recreation. The lot would be acquired by the Town or County. It would be open and accessible to the public. A map of the proposed land is attached. An appraisal is underway.

I also note that our appraiser issued an opinion on the value of the Washington Street parking lot factoring in the use of the land for permanent parking. According to the appraisers, the 60 spaces that we are reserving for marine related use have a substantial impact on the value, reducing the actual value from \$725,000 to \$500,000. It seems to me that this restriction is similar to an easement or any other restriction which would prevent the creation of buildable lots and therefore limit value. Consideration must be given to this restriction. A copy of the appraisal is enclosed.

In accordance with the conversion process, correspondence from the Massachusetts Historical Commission is attached for your review.

In terms of scheduling, the County has postponed its public hearing to acquire the land on lower Washington Street and withdrawn its consideration of the owners unknown parcels in the Creeks for the time being. Although we have received an indication from DEM Commissioner Peter Weber that approval for the land acquisition was forthcoming, we have yet to receive his written approval. Any assistance that you could provide would be much appreciated.

1- A survey entitled Washington Street Extension Bicycle Path Easement Plan, by Blackwell and Associates, dated October 22, 1996 (copy enclosed), confirmed that the location of the shares is not in the area originally assumed. Parcels known as Shares 23 and 24, which is land in which fractional interests were owned by private interests, are now located primarily below the mean low water mark with a small area located between the mean low and high water marks of Nantucket Harbor.



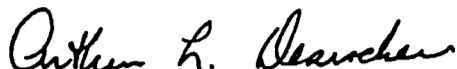
In a related project, the County is proceeding with the acquisition of nearby land for the eventual construction of a bicycle or walking path along an abandoned railroad grade. A vote to acquire the land necessary for the project was voted at its October 30, 1996 meeting. I note that none of this land is included in the proposed conversion although this project will certainly enhance the proposed open space acquisitions. The County has retained the services of Vanasse Hangen Brustlin to review preliminary design issues and environmental concerns. The recently formed "Friends of the Creeks" has adopted a new posture and has pledged to work with Town and County officials to develop an acceptable management plan. Copies of correspondence are attached for your review.

Finally, the Town is initiating some much needed maintenance and reconfiguration of the parking area. A map is enclosed for your review. Please note that we are working within the limits of the originally designed parking lot.

It is my sincere hope that we can bring this matter to closure this year. I believe that this can be accomplished with direct communication between our respective offices. Also, considering the amount of confusion attributed to the proposed 1996 conversion warrant article, I would suggest that the correct language be prepared well in advance. We look forward to working with you.

Please direct correspondence to me via Libby Gibson, Town and County Administrator. Thank you for your consideration and we look forward to hearing from you as the issues contained herein.

Sincerely,



Arthur L. Desrocher, Chairman  
Board of Selectmen/County Commissioners

cc: Libby Gibson  
Andrew Vorce  
J. Sydney Conway  
Board of Selectmen  
Planning Commission

VI

**NANTUCKET PLANNING AND ECONOMIC DEVELOPMENT COMMISSION**  
**PROPOSED WARRANT ARTICLES TO BE SPONSORED BY THE NP&EDC**

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1. **Comprehensive Plan Funding for Year 2**
2. **Funds for the Design of Bicycle Paths Adjacent to Old South Road, Nobadeer Farm Road, and Fairgrounds Road \***
3. **Bulk Fuel Master Plan Funding**
4. **Demolition Ordinance**
5. **Administrative Conversion of Washington Street Parking Lot \***
6. **Conversion of Cemetery Land for Road Use (at Sparks Avenue) \***
7. **Reimbursable Appropriation: Bicycle and Pedestrian Improvements, Eel Point Road and Dionis Beach Road \***
8. **Dedication of Parcels for Road Purposes - Washington Street \***
9. **Enabling Legislation to Implement the Comprehensive Plan**

\* **to be submitted through the Board of Selectmen**

## NOTICE

At a meeting of the County Commissioners for the County of Nantucket, held at Nantucket, in said county, on June 28, 1996, continued from November 27, 1995 the following two petitions were considered:

(1) We the Nantucket Planning and Economic Development Commission, in accordance with the Commission's mission statement, as stated in Section 2 of Chapter 561 of the Acts of 1973, hereby petition the County of Nantucket to acquire by eminent domain pursuant to the authority of Chapters 79 and 82 of the Massachusetts General Laws, or otherwise, the fee simple title or easement thereon to the following parcel or parcels of land, located in an area generally known as the "Creeks" adjacent to Nantucket Harbor in the Town of Nantucket, MA for roadway, park, recreation and open space purposes and for enlarging a "Reservation at South Beach" authorized under Chapter 333 of the Acts of 1954, and excepting any rights of the Town of Nantucket by easement or otherwise in any portion of the below described parcels"

(1) The parcel of land consisting of Washington Street Extension, from its intersection with Francis to its southerly terminus as shown on a plan entitled "Washington Street Extension- 1952 Layout" dated October 30, 1952, by Josiah S. Barrett, Engr., to be described further in plan to be prepared but generally affecting the following parcels of land: Assessor's Map 42.2.3, parcels 19, 20, 21, 22, 23, 24, & 42 and Assessors Map 55.1.4, parcels 5, 6, 7, 8, & 81, as shown on a sketch entitled "Washington Street Extension Taking" dated November, 1995, by the NP&EDC,

Containing an area of land to be determined;

(2) The parcel of land consisting of a portion of Washington Street as shown on a plan entitled "Washington Street Extension-1952 Layout" dated October 30, 1952, by Josiah S. Barrett, Engr.,

Containing 0.063 acres (2,750 square feet) of land;

(3) Share 25, 26, and 27 and the portions of Share 23 and 24 not contained within the boundary of Land Court Plan #8254-E, filed with Certificate 5946 in the Nantucket Registry District, shown as "25", "26", "27" and those portions of "23" and "24" shown on a plan entitled "Plot Plan of Land in Nantucket, Mass (To Accompany Request for Determination)", dated May 1, 1995, by Nantucket Surveyors, Inc.,

Containing an area of land to be determined;

(4) The parcel(s) of land consisting of Proprietors Roads, located easterly from land described in Land Court Plan #8254, described above, shown as "Proprietors (2 Rods Wide) Roads" bordering land of Nautican Realty Trust to the west, portions of share 23, shares 24, 25, 26, and 27 and Nantucket Harbor northerly and westerly and other land to the south on a plan entitled "Plot Plan for Land in Nantucket, Mass (To Accompany Request for Determination)", dated May 1, 1995, by Nantucket Surveyors, Inc.,

Containing an area of land to be determined;

(5) The parcel of land consisting of a portion of Washington Street Extension as laid out by the Nantucket County Commissioners on September 9, 1959, shown as "Washington St. Ext. #2" on a plan entitled "Plot Plan of Land in Nantucket, Mass. (To Accompany Request for Determination)", dated May 1, 1995 by Nantucket Surveyors, Inc.,

Containing an area of land to be determined;

(6) The parcel of land shown as having the following boundaries: 6.39'S 51 24'36"W, 143.08'N47 57'08"E, 396.54' S65 06'16"E,

163.13' and 94.19' S60 41'03"W and 313.18' 51 56'01"W, as shown on a plan entitled "Plot Plan for Land in Nantucket Mass. (To Accompany Request for Determination)", dated May 1, 1995 by Nantucket Surveyors, Inc.,

Containing an area of land to be determined;

AND

Land previously serving as the so-called railroad right-of-way, being 50 feet wide, as shown on a plan entitled "Location Plans", dated 1895 by Frederick R. Page, chief Engineer, on file at the Nantucket County records office, between the terminus of Washington Street Extension as shown on a plan entitled "Washington Street Extension 1952", dated October 30, 1952, by Josiah S. Barrett and Goose Pond Lane,

Containing an area of land to be determined;

(3) We the Nantucket Planning and Economic Development Commission, in accordance with the Commission's mission statement, as stated in Section 2 of Chapter 561 of the Acts of 1973, hereby petition the County of Nantucket to layout and acquire the fee simple title or easement in the following parcel of land by eminent domain pursuant to the authority of Massachusetts General Laws, Chapters 79 and 82, or otherwise, consisting of part of Goose Pond Land located between Orange Street and a parcel of land supposed to be owned by the Town of Nantucket, formerly the railroad right-of-way, in the Town of Nantucket, MA, for the purpose of providing access points to publicly owned land and providing a future bicycle path/walking path between Orange Street and the "Reservation at South Beach on the Island of Nantucket" authorized by Chapter 333 of the Acts of 1954, excepting and rights of the Town of Nantucket in the below described property;

A parcel of land entitled "PARCEL A" on a sketch prepared by the NP&EDC dated May, 1995,

Containing approximately 3,750 square feet of land, owned by unknown owners, Brent B. and Julie A. Young a.k.a Old Spouter Condominium, units 1-6 Barbara Ann Charder, and subject to the rights of passage by unknown owners, Brent B. and Julie A. Young a.k.a Old Spouter Condominium, units 1-6 Barbara Ann Charder, Richard Valero, Reginald W. Jr., and Mona G. Ray, Town of Nantucket.

Upon the foregoing petition, the County Commissioners hereby give notice that said Commissioners will meet for the purpose of hearing all interested parties at the Large Group Instruction Room (L.G.I.) at 7:30 p.m. on October 30, 1996, for the purpose of conducting a public hearing originally scheduled for August 28, 1996 and postponed until September 25, 1996. The meeting regarding this matter scheduled for September 25, 1996 is therefore canceled.

A copy of this notice shall be served upon all recorded owners of land and all other persons who may be interested therein who may be subject to said takings.

This notice shall be served upon the Clerk of the Town of Nantucket and by publishing the same in The Inquirer and Mirror, a newspaper printed in Nantucket, two successive weeks, and also by posting the same in two public places in the Town of Nantucket, all in accordance with Massachusetts General Laws Chapter 82, Section 3. Such notice shall be given by the Sheriff of said County or his deputy, and he shall make return of his doings herein to said Commissioners, at the time and place fixed for said view and hearing.

B87

Patricia Church, Clerk



DEC -9 1993

December 3, 1993

Nathryn S. Barnicle  
Wetland Scientist  
Fugro-McClelland (East), Inc.  
Sextant Hill  
90 Route 6A  
P.O. Box 1840  
Sandwich, MA 02563

RE: Aviation Fuel Transfer Facility, Nantucket, MA; EOE A No. 6364A

Dear Ms. Barnicle:

Thank you for supplying the Massachusetts Historical Commission with additional information, received November 3, 1993, regarding the proposed project referenced above. As you know, the proposed project sites are all located within the Nantucket Historic District which is listed in the State and National Registers of Historic Places, is a Local Historic District, and is a National Historic Landmark.

MHC staff have reviewed the site photographs and brief general descriptions of the four primary alternative locations which you submitted. Currently, MHC staff is still unable to determine what effect, if any, the proposed long-term facility may have on historic resources without the following additional information, which has been previously requested. MHC staff request the opportunity to review more specific site photographs showing the proposed location of the facility at each site, and additional information on the design, height, size, materials and landscaping plans of the proposed long-term facility. MHC staff look forward to reviewing this information as part of the Second Supplemental Final Environmental Impact Report.

These comments are provided to assist in compliance with Section 106 of the National Historic Preservation Act (36 CFR 800), M.G.L. Chapter 9, sections 26-27C, as amended by Chapter 254 of the Acts of 1988 (950 CMR 71.0) and MEPA.

If you should have questions, please contact me.

Suzanne P. McCain  
Preservation Planner  
Massachusetts Historical Commission

cc: Nantucket Historical Commission  
Nantucket Historic District Commission  
FAA  
MEPA Unit, EOE A

Massachusetts Historical Commission  
80 Boylston Street, Boston, Massachusetts 02116 (617) 727-8470  
Office of the Secretary of State, Michael J. Connolly, Secretary



*The Commonwealth of Massachusetts*

*Executive Office of Environmental Affairs*

*Division of Conservation Services*

*Levett Saltonstall Building*

*100 Cambridge Street, Boston 02202*

October 12, 1993

Fred H. Jaeger, A.A.E.  
Airport Manager  
Nantucket Memorial Airport  
30 Macy Lane  
Nantucket, MA 02554

RE: Town Pier - Nantucket Town Dock,  
Project #25-00199

Dear Mr. Jaeger:

In response to your letter of October 6, 1993 I trust the following will clarify some of the issues and EOE policy regarding the use of the Town Pier for off-loading aviation fuel.

As you know, the pier was constructed in the mid 1970's with a grant of \$262,500 from the federal Land & Water Conservation Fund Program (P.L. 88-578). As such, the project is subject to the section 6(f) provisions of the federal legislation which in essence states that fund assisted properties may not be converted to other than public outdoor recreational use. If a conversion occurs the applicant must replace the property/facility with one of equivalent value and utility.

At the time of approval the National Park Service concurred with the commercial fishing use of the dock after the normal public boating season ended in October.

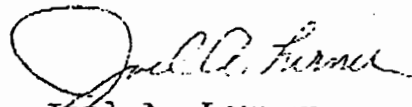
Your proposal gives greater detail than my previous telephone discussions with Ms. Kathryn Barnicle. While I realize the Secretary indicated the town dock may be the most viable location, with this new information it is my opinion that off-leading every seven to nine days during May-September for up to 6 hours per each event would be disruptive to the primary purpose of outdoor recreational use and would constitute an unacceptable conversion.

I would also call your attention to the fact that the parking area at the head of the dock was also acquired with federal funds and is subject to the same state constitutional and federal regulations against alienation. The utilization of all or a portion of the lot for fuel storage or transportation use would also constitute a conversion.

I do hope that your second SFEIR discusses the full implications for the town should the dock be selected as the prime location for the facility.

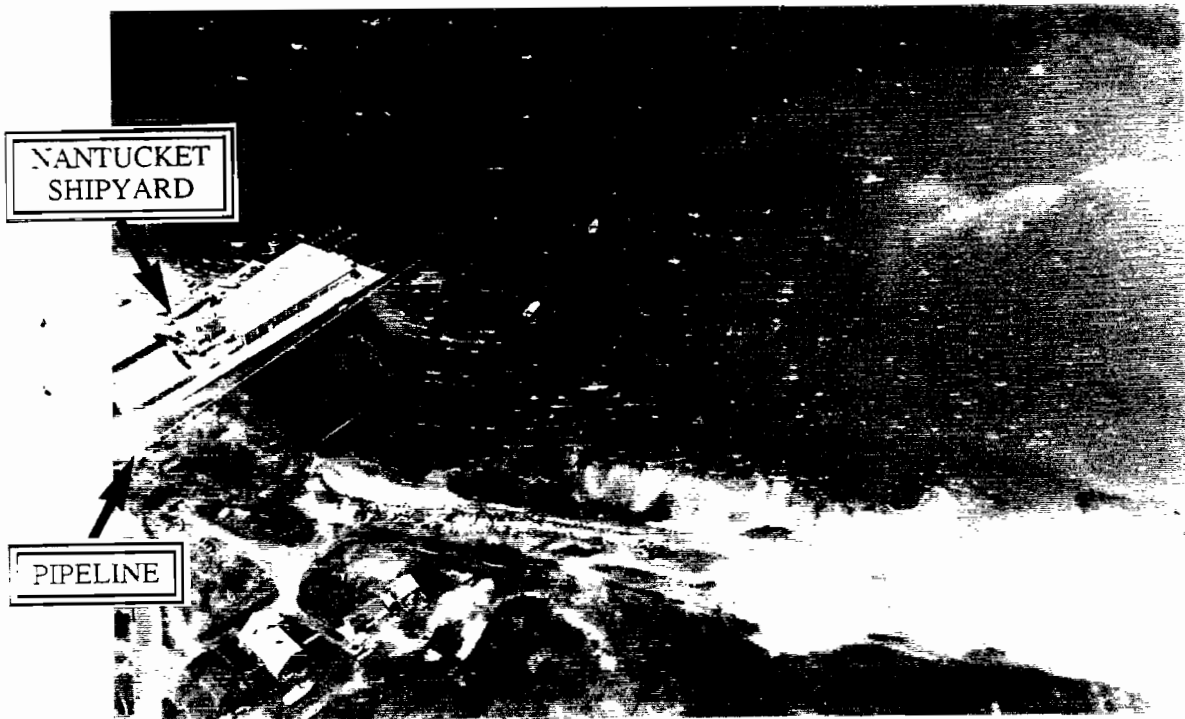
Please be advised that the National Park Service will need to be consulted to verify my opinion.

Sincerely,

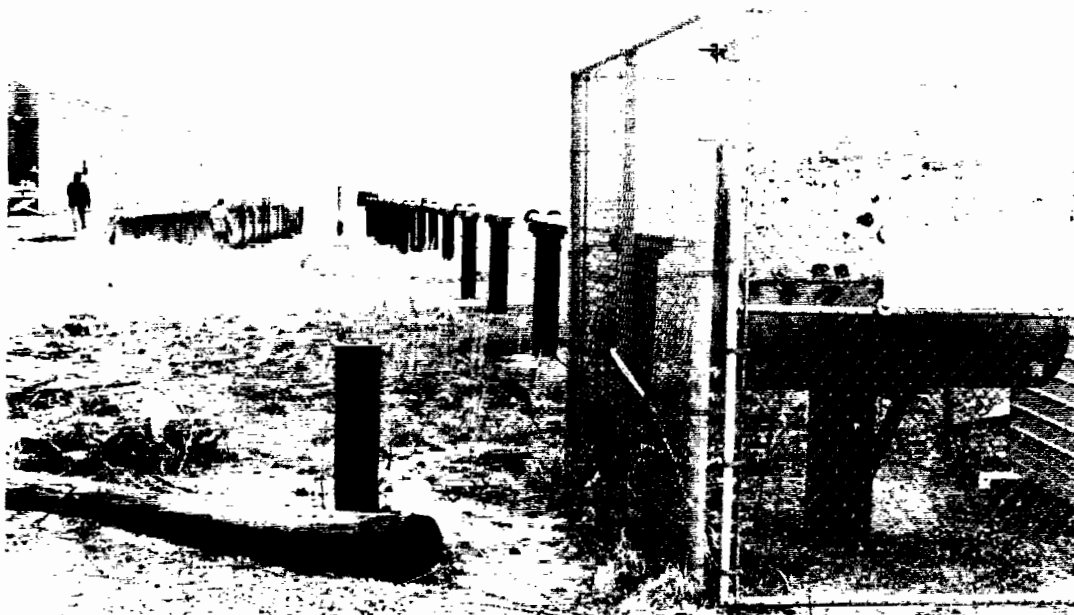


Joel A. Lerner  
Director

cc: Deb Richards, NPS  
Jan H. Rietsma, MEPA



WASHINGTON STREET



Aviation Fuel Transfer Facility  
Washington Street  
Nantucket, Massachusetts

LCB #16232982

DECEMBER 1993

## SITE PHOTOGRAPHS

FIGURE 2



## Inadvertent Discoveries on Federal Lands After November 16, 1990

An *inadvertent* discovery is one for which no plan of action was developed prior to the discovery.

### Notification

The person who makes the discovery must **immediately notify the responsible Federal official** by telephone and provide written confirmation to the responsible Federal official.

### Stop Work

If the inadvertent discovery occurred in connection with an on-going activity, the person must **cease the activity** in the area of the inadvertent discovery and **make a reasonable effort to protect the human remains and other cultural items**.

### Initiating Consultation

No later than three working days after receiving written confirmation of the notification, the responsible Federal agency official must **certify receipt of the notification**, and take immediate steps, if necessary, to **further secure and protect the human remains and other cultural items**. **NOTE:** activity that resulted in the discovery may resume thirty days after the Federal agency official certifies receipt of the notification.

The responsible Federal agency official must also **notify by telephone** (with written confirmation) and **initiate consultation** with **any known lineal descendant** and the **Indian tribes and Native Hawaiian organizations** –

- **who are or are likely to be culturally affiliated with the human remains and other cultural items;**
- **on whose aboriginal lands the remains and cultural items were discovered; and**
- **who are reasonably known to have a cultural relationship to the human remains and other cultural items.**

Consultation is initiated with a written notification. The written notification must propose a time and place for meetings or consultation.

### During Consultation

The **purpose** of consultation is to **help the Federal agency determine who is entitled to custody** of the human remains and other cultural items under NAGPRA so that the disposition process can be completed, and to **discuss the Federal agency's proposed treatment** of the human remains and other cultural items pending disposition.

The Federal agency official must **provide in writing** –

- a list of all lineal descendants, Indian tribes, or Native Hawaiian organizations that are being, or have been, consulted; and
- an indication that additional documentation will be provided on request.

The Federal agency official must **request, as appropriate** –

- names and addresses of the Indian tribe official who will act as the tribe's representative in consultation;
- names and appropriate methods to contact lineal descendants;
- recommendations on how consultation should be conducted; and
- the kinds of cultural items that are considered to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.

### After Consultation – Written Plan of Action

The Federal agency official must prepare, approve, and sign a written plan of action. The plan of action must document the kinds of objects to be considered as cultural items; the planned treatment, care, and handling, including traditional treatment, of human remains and other cultural items; the planned archeological recording of the human remains and other cultural items; the kinds of analysis planned for each kind of object; and the nature of reports to be prepared.

The written plan of action must also include –

- the **specific information used to determine custody** of the human remains and other cultural items; and
- the **planned disposition** of the human remains and other cultural items.

**Custody must be determined in accordance with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody."**

(over)



National Park Service  
U.S. Department of the Interior



National Center for Cultural Resources  
National NAGPRA

## Determining Cultural Affiliation Within NAGPRA

### 25 U.S.C. 3001 (2)

"Cultural affiliation" means that there is 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.

### 43 C.F.R. 10.2 (d)(1)

For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item.

### 43 C.F.R. 10.2 (e)

**What is cultural affiliation?** Cultural affiliation means that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence -- based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion. [Note: preponderance of evidence appears in 25 USC § 3005 (a) (4) where museum has not established cultural affiliation. Museum first determination is "reasonably traced historically or prehistorically." 25 USC 3001 (2)]

### 43 C.F.R. 10.14: Lineal Descent and Cultural Affiliation

**(a) General.** This section identifies procedures for determining lineal descent and cultural affiliation between present-day individuals and Indian tribes or Native Hawaiian organizations and human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently from Federal lands. They may also be used by Indian tribes and Native Hawaiian organizations with respect to tribal lands.

**(b) Criteria for determining lineal descent.** A lineal descendant is an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descent to a known Native American individual whose remains, funerary objects, or sacred objects are being requested under these regulations. This standard requires that the earlier person be identified as an individual whose descendants can be traced.

**(c) Criteria for determining cultural affiliation.** Cultural affiliation means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. All of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and the human remains,

funerary objects, sacred objects, or objects of cultural patrimony of an earlier group:

- (1) Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under these regulations and the Act; and
- (2) Evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to:
  - (i) Establish the identity and cultural characteristics of the earlier group,
  - (ii) Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or
  - (iii) Establish the existence of the earlier group as a biologically distinct population; and
- (3) Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group.

**(d) 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 some gaps in the record.

**(e) Evidence.** Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by using the following types of evidence: Geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

**(f) Standard of proof.** Lineal descent of a present-day individual from an earlier individual and cultural affiliation of a present-day Indian tribe or Native Hawaiian organization to human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by a **preponderance of the evidence**. Claimants do not have to establish cultural affiliation with scientific certainty.

## **Cultural Affiliation FAQ**

### **Who is responsible for determining cultural affiliation?**

The museum or Federal agency that has control of Native American human remains and other cultural items is responsible for determining their cultural affiliation.

### **What is the role of consultation in determining cultural affiliation?**

Museums and Federal agencies must determine the cultural affiliation of Native American human remains and associated funerary objects when they complete their inventories. NAGPRA requires that the inventory be prepared in consultation with lineal descendants, Indian tribe officials, and traditional religious leaders (43 C.F.R. 10.9 (b)). For unassociated funerary objects, sacred objects, and objects of cultural patrimony, museums and Federal agencies must initiate consultation with lineal descendants, Indian tribe officials, and traditional religious leaders not later than the

completion of the summary, and must document information and evidence related to cultural affiliation (43 C.F.R. 10.8 (d) and (e)).

**Must a claimant prove cultural affiliation beyond a reasonable doubt?**

No. Claimants must be given the opportunity to present information during consultation, and museums and Federal agencies must consider this information when making determinations of cultural affiliation. The standard for determining cultural affiliation is the preponderance of the evidence, not scientific certainty.

**What does 'preponderance of the evidence' mean?**

"As standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is **more probable than not.**" (Black's Law Dictionary, 6th Edition)



## National NAGPRA

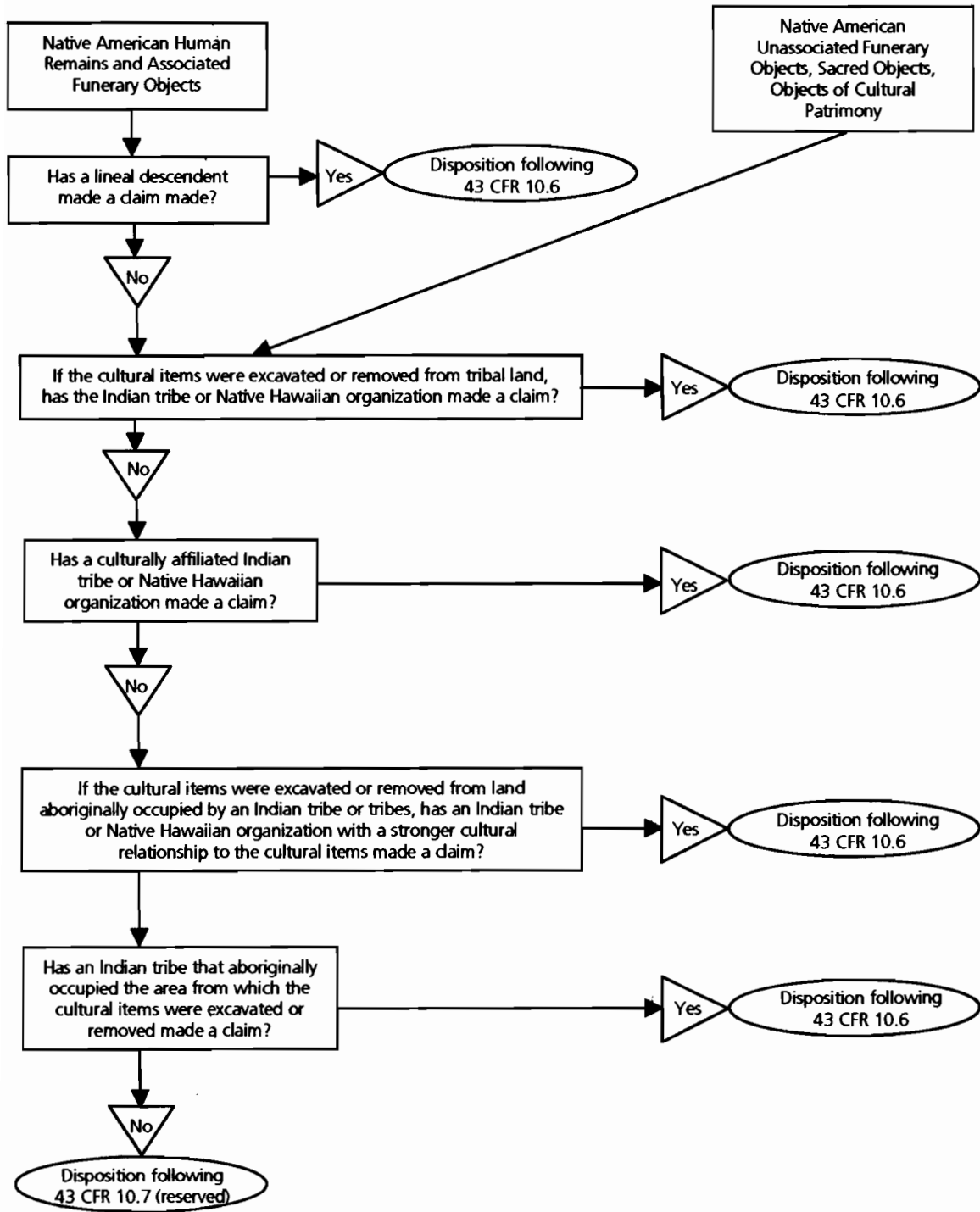
	<b>NAGPRA: Section 3</b>	<b>ARPA</b>	<b>NHPA: Section 106</b>
<b>Applicability</b>	Intentional excavation or inadvertent discovery of Native American human remains and cultural items on Federal lands or tribal lands after November 16, 1990.	Archaeological resources and sites on public lands and Indian lands.	Federal or federally assisted undertakings in any State. Applies to State, local and private land; also Federal land (Section 110) and tribal lands.
<b>Purpose</b>	To determine "the ownership or control of Native American cultural items which are excavated or discovered on Federal tribal lands after November 16, 1990." [25 U.S.C. 3002 (a)] and to facilitate disposition to owners.	"to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands..." [16 U.S.C. 470aa (b)]	"to take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register." [16 U.S.C. 470f]
<b>Triggering Event</b>	<i>Intentional/Excavation:</i> The planned archaeological removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (c) of the Act. [43 CFR 10.2 (g)(3)]  <i>Inadvertent Discovery:</i> The unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (d) of NAGPRA. [43 CFR 10.2 (g)(4)]	Excavation or removal of "any archaeological resource located on public lands or Indian lands" and "activities associated with such removal." [16 U.S.C. 470cc (a)]	<i>Undertaking:</i> a project, activity, or program funded in whole or part under the direct or indirect jurisdiction of a Federal agency, including – <ul style="list-style-type: none"> <li>• Those carried out by or on behalf of the agency;</li> <li>• Those carried out with Federal financial assistance</li> <li>• Those requiring a Federal permit or license, or approval; and</li> <li>• Those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.</li> </ul> [16 U.S.C. 470w (7)] NOTE: The issuance of an ARPA permit does not constitute an undertaking under NHPA (see 43 CFR 7.12)
<b>What</b>	<i>Native American cultural items:</i> <ul style="list-style-type: none"> <li>• Human remains</li> <li>• Funerary objects</li> <li>• Sacred objects</li> <li>• Objects of cultural patrimony</li> </ul> [see 43 CFR 10.2 (d)]	<i>Archaeological resources:</i> any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest [43 CFR 7.3 (a)]  <i>Material remains:</i> physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated. [43 CFR 7.3 (a)(2)]	<i>Historic property/historic resource:</i> any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource. [16 U.S.C. 470w (5)]

<b>Where</b>			
	<p><b>Federal lands:</b> Any land other than tribal lands that are controlled or owned by the United States Government, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act. United States "control" refers to those lands not owned by the United States but in which the United States has a legal interest sufficient to permit it to apply these regulations (43 CFR 10) without abrogating the otherwise existing legal rights of a person. [43 CFR 10.2 (f)(1)]</p>	<p><b>Public lands:</b></p> <ul style="list-style-type: none"> <li>• Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system.</li> <li>• All other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution. [16 U.S.C. 1470bb (3)]</li> </ul> <p><i>Site of religious or cultural importance [on public lands]:</i> a location which has traditionally been considered important by an Indian tribe because of a religious event which happened there; because it contains specific natural products which are of religious or cultural importance; because it is believed to be a dwelling place of, the embodiment of, or a place conducive to communication with spiritual beings; because it contains elements of life-cycle rituals, such as burials and associated materials; or because it has other specific and continuing significance in Indian religion or culture. [43 CFR 7.32 (a)]</p>	<p><b>State:</b> any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau. [16 U.S.C. 470w (2)]</p>
	<p><b>Tribal lands:</b> All lands which are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States; or comprise dependent Indian communities as recognized pursuant to 18 U.S.C. 1151; or are administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920 and section 4 of the Hawaiian Statehood Admission Act. Actions authorized or required under these regulations [43 CFR 10] will not apply to tribal lands to the extent that any action would result in a taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution. [43 CFR 10.2 (f)(2)]</p>	<p><b>Indian lands:</b> Lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or Indian individual. [16 U.S.C. 1470bb (4)]</p>	<p><b>Tribal lands:</b> all lands within the exterior boundaries of any Indian reservation; and all dependent Indian communities. [16 U.S.C. 470w (14)]</p>

<b>Who</b>			
	<p><i>Federal agency:</i> Any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution. [25 USC 3001 (4)]</p> <p><i>Federal agency official:</i> Any individual authorized by delegation of authority within a Federal agency to perform the duties relating to these regulations (43 CFR 10. [43 CFR 10.2 (a)(2)]</p>	<p><i>Federal land manager:</i></p> <ul style="list-style-type: none"> <li>• With respect to public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands.</li> <li>• In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. [16 U.S.C. 1470bb (2)]</li> </ul>	<p><i>The head of any Federal agency</i> having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and <i>the head of any Federal department or independent agency</i> having authority to license any undertaking. [16 U.S.C. 470f]</p>
	<p><i>Indian tribe:</i> 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. [25 USC 3001 (7)]</p>	<p><i>Indian tribe:</i> 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. [16 U.S.C. 470bb (5)] In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:</p> <p>(1) Any tribal entity which is included in the annual list of recognized tribes published in the Federal Register by the Secretary of the Interior pursuant to 25 CFR part 54;</p> <p>(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR part 54 since the most recent publication of the annual list; and</p> <p>(3) 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), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs. [43 CFR 7.3 (f)]</p>	<p><i>State Historic Preservation Officer</i>  <i>Tribal Historic Preservation Officer</i>  <i>State historic preservation review board</i></p> <p><i>Indian tribe:</i> an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of 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. [16 U.S.C. 470w (4)]</p>

	<p><i>Indian tribe official:</i> The principal leader of an Indian Tribe or Native Hawaiian organization or the individual officially designated by the governing body of an Indian tribe or Native Hawaiian organization or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to these regulations (43 CFR 10.0. [43 CFR 10.2 (b)(4)]</p> <p><i>Traditional Native American religious leader/Traditional religious leader:</i> A person who is recognized by members of an Indian tribe or Native Hawaiian organization as: 1) being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or 2) exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe or organization's cultural, ceremonial, or religious practices. [43 CFR 10.2 (d)(3)]</p>	<p>"Notice by the Federal land manager to any Indian tribe shall be sent to the <i>chief executive officer or other designated official of the tribe</i>. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager." [43 CFR 7.7 (a)(1)]</p>	<p>"For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the <i>tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106</i>. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands." [36 CFR 800.2 (c)(2)(i)(A)]</p> <p>"When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a <i>representative designated by such Indian tribe</i> in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands." [36 CFR 800.2 (c)(2)(i)(B)]</p>
<b>Agreements</b>	Comprehensive agreement [43 CFR 10.5 (f)]	Federal agencies issue permits for study on Federal lands and on Indian lands in the absence of tribal law. [16 U.S.C. 470bb]	<ul style="list-style-type: none"> <li>• Memorandum of agreement [36 CFR 800.6 (c)]</li> <li>• Programmatic agreement [36 CFR 800.14 (b)]</li> <li>• Agreements between and Indian tribe or Native Hawaiian organization and an agency official regarding consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations [36 CFR 800.2 (c)(2)(ii)(E)]</li> </ul>

**Priority of Custody (ownership or control) for Excavation or Removal on Federal and Tribal Land**  
**43 CFR 10.6, 10.7**







## 43 CFR 10, Subpart B Overview

