



SOCIETY FOR AMERICAN ARCHAEOLOGY

September 16, 1996

The Honorable John McCain
Chairman
Senate Committee on Indian Affairs
838 Senate Hart Building
Washington, D.C. 20510

Dear Chairman McCain:

The Society for American Archaeology (SAA) wishes to take this opportunity to comment on S. 1983, the proposed amendments to the Native American Graves Protection and Repatriation Act (NAGPRA). SAA agrees with the committee that clarification of certain components of NAGPRA is desirable. Clearly the intent of the proposed amendment is to address some of these areas. However, SAA believes that the amendment as currently stated is more than a clarification, and that parts of the proposed language remain unclear and are likely to have major unintended consequences. As it is currently worded, S. 1983 could potentially become a tool for stopping many kinds of development on federal land.

In particular, there are several areas where SAA believes it is both necessary and desirable to modify the proposed language of S. 1983:

In Section 3002(c)(5), SAA suggests that the words "any intentional" and "purposes of study" are too inclusive and ambiguous, and would pose problems for archaeological compliance on federally funded or otherwise sponsored development projects on public lands. Under Section 106 of the National Historic Preservation Act, such projects now require agencies to determine and evaluate project effects on archaeological and historic sites. In some cases, studies involving excavation are carried out to mitigate project impacts on significant sites so that development can go forward. The language of S. 1983 could well make agency compliance under Section 106 virtually impossible without written consent if human remains are suspected of being present or are inadvertently encountered at such sites. This is far more constraining than the current consultation procedure and could result in substantial project delay or stoppage.

The "written consent" component of Section 3002(c)(5) presupposes that there are either "lineal descendants" or an "appropriate Indian tribe or Native Hawaiian organization." There are many parts of the United States where this is simply not the case. In addition, some human remains are simply too ancient for affiliation with any present-day Indian tribe to be credibly determined. Written consent would not be obtainable under these

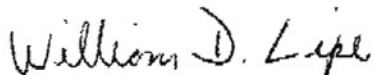
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circumstances, and hence projects that might affect Native American human remains could not proceed after a good faith effort to locate either lineal descendants or an appropriate tribe or Native Hawaiian organization. At a more practical level, SAA would expect that many tribal officials or organizations would refuse to consent, in writing, to intentional removal of human remains, particularly in a time-constrained situation as is typical of construction projects. Such refusal could thus halt any public lands development project that might encounter human remains.

In sum, SAA believes that the proposed amendment to NAGPRA may have unforeseen consequences for federal agency compliance with the National Historic Preservation Act and may result in substantial delays or cancellation of federally funded, permitted, or assisted projects. SAA believes that the implications of the proposed amendment should be further understood before it is presented to Congress. SAA therefore recommends that the committee convene a hearing to take testimony from federal agencies, state historic preservation officers, private businesses operating on public lands, archaeological organizations, and Native Americans and Native Hawaiians.

SAA would be pleased to consult with the committee on drafting amendment language that would avoid the problems it sees with the present version. SAA thanks you for your attention and looks forward to your response.

Sincerely,



William D. Lipe, Ph.D.
President