



**NATIONAL ASSOCIATION
OF TRIBAL HISTORIC
PRESERVATION OFFICERS**

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December 10, 2021

The Honorable Bryan Newland
Assistant Secretary, Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington DC 20240
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Copy to: consultation@bia.gov

Dear Assistant Secretary Newland,

The National Association of Tribal Historic Preservation Officers (NATHPO) is a national organization of Tribal government officials who implement Federal and Tribal preservation laws. Our members are Tribal Historic Preservation Officers (THPOs) who are committed to preserving, rejuvenating, and supporting American Indian and Alaska Native cultures, heritage, and practices. Secretary Haaland's Indian Boarding School Initiative is of critical importance to our members. Thank you for your leadership on behalf of the Department of the Interior to conduct Tribal consultation. We appreciate the virtual listening sessions that occurred in November and the extended comment period on this important initiative.

NATHPO recognizes that each Tribe, community, and family has its own specific cultural protocols and concerns regarding respectful handling of information generated from existing records, site work activities, and potential return of the lost children buried in boarding school cemeteries. We encourage the Department to develop flexible case-by-case procedures that can accommodate these diverse cultural concerns to the maximum extent possible within existing laws and regulations.

Importantly, Tribal Historic Preservation Officers (THPOs) are frequently on the front lines of this task. As you know, their offices are already overburdened and underfunded. We encourage the Department to prioritize and support Tribal leadership of this initiative, including through funding of THPO and Tribal historic preservation staff who already are doing and should appropriately continue to do this work.

Considering the Department's recent consultation on the draft proposal to revise regulations implementing the Native American Graves Protection and Repatriation Act (NAGPRA), we make the following specific requests that are directly applicable to the initiative. Historical Indian boarding schools and their associated cemeteries are known to currently be located on lands under Federal, Tribal, State, and private jurisdiction. NAGPRA applies to each of these situations differently.

The excavation or removal of Native American ancestors and associated funerary objects from Federal or Tribal lands (including all lands within the exterior boundaries of an Indian reservation) are covered by Section 3 of the Act and 43 CFR 10 Subpart B. We note that in one situation, the United States Army has chosen to ignore this statutory requirement. We urge Secretary Haaland in her capacity as the individual designated by statute with responsibility for implementing NAGPRA to contact the Secretary of Defense and urge him to ensure that the Army complies with the NAGPRA's Section 3 requirements for the excavation or removal of any Native American human remains and funerary objects from lands under the jurisdiction of the Department of Defense.

PROTECTING NATIVE PLACES

While the excavation or removal of Native American ancestors and associated funerary objects from State lands is not covered by NAGPRA and would instead be covered by applicable State burial laws, the repatriation of any Native American ancestors and associated funerary objects recovered from State lands would necessarily be covered by Section 7 of NAGPRA since all States receive Federal funds and thus would fit the definition of “museum” under the Act. NAGPRA’s Section 7 requirements might also apply to Native American ancestors and funerary objects excavated from private lands if the private land owner receives Federal funds, or if the applicable State burial law establishes sufficient State jurisdiction to constitute State “possession or control” under NAGPRA. 43 CFR 10, Subpart C.

One concern that is applicable to both dispositions under Section 3 and repatriations under Section 7 relates to the current regulatory definition of “lineal descendant.” The NAGPRA statute stipulates that lineal descendants have a right to claim Native American human remains and associated funerary objects but does not define the term. The implementing regulations define lineal descendant as: “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 descentance to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations” 43 CFR 10.2 (b)(1). Most dispositions and repatriations to lineal descendants have been to the biological descendants of the known ancestor, while most of the children buried in boarding school cemeteries died before having children of their own. We recommend adding the text to the regulatory definition to clarify that an individual tracing his or her ancestry directly and without interruption to a sibling or other family member of a known Native American individual may also take custody of the remains.

We also strongly recommend against the proposal in § 10.7 (b) and § 10.7 (c) of the draft proposed revision of the NAGPRA regulations which removed the current requirement for publication of a notice of intended disposition to ensure due process. Identifying all lineal descendants and selecting the most appropriate individual descendant is a notoriously difficult task since, unlike with Indian Tribes, there is no set list equivalent to the list of Federally recognized Tribes from which to begin the search. In determining probate, the Office of Hearings and Appeals relies on a highly trained administrative law judge and public notice at least 21 days prior to any probate proceedings. It is unconscionable that the draft would propose to eliminate the notice of intended disposition when the same type of task for our members’ ancestors is being done by a land manager unfamiliar with this complicated process. We request the current notice requirements be retained in § 10.7 (b) and § 10.7 (c).

NATHPO appreciates the opportunity to work with the Administration to ensure that Tribal voices are heard and considered in the development of Secretary Haaland’s Indian Boarding School Initiative. Please feel free to contact us if we can be of further assistance in implementing this important initiative.

Sincerely,



Valerie J. Grussing, PhD
Executive Director