1. Remains for which there is cultural affiliation with Native American groups who are not formally recognized by the BIA

There are remains that can be directly traced by a preponderance of the evidence to tribes, villages, communities of Native Americans which may not be formally recognized by the Bureau of Indian Affairs as "Tribes". In these cases, the remains are only "unidentifiable" because of the wording of the Act. In the Act, the definition of Indian "Tribe" has been interpreted by the Department of the Interior to mean only those groups that have received formal recognition by the BIA as "tribes". There are, however, many groups in the United States that are "eligible for the special programs and services provided by the United States to Indians because of their status as Indians" (25 U.S.C. 3001 (7)), but have not received formal BIA recognition by choice or other circumstances.

In cases where such groups are able to establish cultural affiliation with specific remains it is the unequivocal recommendation of the Review Committee that they should be accorded the same rights and responsibilities given to BIA recognized Tribes for the repatriation of those specific remains. Cultural affiliation in these cases should follow the guidelines of the Act and be determined by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion (25 U.S.C. 3006 a(4)).

The Review Committee Would Appreciate Suggestions on How to Identify and Recognize Those Native American Groups Who Should Be Eligible To Claim Remains For Repatriation But Are Not On The Bureau of Indian Affairs List Of Federally Recognized "Tribes"

2. Ancient remains for which there is specific information about the original location and circumstances of the burial

There is a very large number of remains from across the United States which come from earlier time periods and it is not possible to trace directly ancestry to any known contemporary tribe or group. Remains coming from archaeological excavations at sites that were occupied before the arrival of Europeans will most commonly fall into this category. From available evidence, it is often possible to determine that several groups or tribes may have historical or deeper ancestral ties to the

area. In these cases, it may or may not be possible to establish direct links between the ancient remains and any specific contemporary groups or tribes.

In these cases, responsibility for what happens to such remains rests with those tribes and groups who are able to show an affinity both to the territory and to the general time period from which the remains came. Tribes or groups will demonstrate such geographic and temporal affinity through evidence based on biological, archaeological, linguistic, folkloric, oral traditional or other relevant information or expert opinion. Tribes or groups who are able to demonstrate geographical and temporal affinity to ancient remains will decide on what happens to those remains based on consensual agreement. It is the responsibility of the tribes who claim affiliation to come forward and state their claim and present their evidence of affiliation. Based on information in the inventories received from museums and Federal agencies, the Review Committee will take responsibility for notifying all tribes who may be potentially affiliated with particular remains.

The Act anticipates the circumstances of more ancient remains to some extent in 25 U.S.C. 3006 (e), "Competing Claims". This section deals with situations in which there are multiple claims for remains or objects and advises that museums and Federal agencies retain those remains and objects until the "requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction." Although the case of "unidentified" remains may well not involve a dispute, the same general principles should apply. Specifically, a museum or Federal agency should retain "culturally unidentified" remains and associated funerary objects until such time as all potentially affiliated tribes and groups reach consensual agreement on disposition of the remains and associated objects.

3. Remains which are likely to be Native American but which lack information about their original burial location

There are remains in museums and Federal agencies which are known or appear to be Native American through museum records or simple visual examination but which lack sufficient information to identify more specific cultural or geographical affinities. There are two broad types of remains that may fall in this group. First, there are remains for which there may be some indication that they are culturally affiliated with one federally recognized

Tribe or Native Hawaiian group, but there is insufficient independent evidence to confirm the affiliation. It is possible, for example, to have remains in museums which are labeled as belonging to one tribe or group, but with no supporting evidence of any kind to support that identification. In such cases the remains may be affiliated with one or more additional groups of Native Americans or with non-Native Americans. In these cases, however, the museum or Federal Agency should not have to bear the responsibility of determining whether the remains should be returned to a specific group. The Act actually does speak to this situation to some extent in 25 U.S.C. 3006 (a)(4). In this section there are guidelines for when a museum or federal agency is unable to establish cultural affiliation of remains in the inventory process. In these cases, the burden of responsibility goes to the Tribe to "show cultural affiliation by a preponderance of the evidence".

In cases such as this, when the museum or Federal agency is unable to reasonably confirm the cultural affiliation of specific Native American human remains, the inventory of these remains should be provided to the Review Committee, along with a summary made by the museum or Federal agency of whatever limited information is available that might relate to the identity of the individuals involved. The Review Committee then has the opportunity to review available information. The Committee can either decide there is sufficient evidence to reasonably determine cultural affiliation or that the remains should continue to be treated as "unidentifiable."

Another group of remains with limited cultural or geographical information remains are those for which there is no available information about their origins or any possible contemporary descendent Tribes or groups. There are, for example, remains in museums which are simply identified as "Native American" or "Indian", with no information about where they came from. In these cases, there is insufficient evidence to reasonably identify tribal affiliation either culturally, biologically or geographically. Although this is likely to be a relatively small number of individuals, they are no less important than the other remains held by museums and Federal agencies today.

If it has been determined that these remains are Native American, then broad regional associations of Native American tribes and groups may take responsibility for determining the ultimate disposition of such remains. One possibility that has been raised is