

Laura Dean

From: Archeol AP. Project
Sent: Tuesday, October 11, 2005 7:55 AM
To: Laura Dean
Subject: FW: Policy Statement Regarding Treatment of Human Remains and Grave Goods

From: Barbara Boyer [mailto:BBOYER-IBR4PRO@uc.usbr.gov]
Sent: Tue 10/4/2005 5:24 PM
To: Archeol AP. Project
Cc: Tom Lincoln
Subject: Policy Statement Regarding Treatment of Human Remains and Grave Goods

I work for the Department of Interior and welcome the new statement on the treatment of human remains.

My comment is only a clarification of Principle 6, the last statement: ".....Federal agencies should have a procedure in place to provide the owners with guidance..... ." The owners of what? The land, the remains, the project? I believe this must be referring to the land owners, but that point may not be clear to those who are not familiar with Section 112(b) of the NHPA.

Thank you again for updating this policy.

Barbara Boyer
Provo Area Office Archaeologist
Bureau of Reclamation
302 East 1860 South
Provo, Utah 84606
801-379-1082 (phone)
801-379-1159 (fax)



United States Department of the Interior

BUREAU OF RECLAMATION

Washington, D.C. 20240

IN REPLY REFER TO:

D-5300
ENV-3.00

NOV 2 2005

Dr. Julia A. King, Chair
Advisory Council on Historic Preservation
Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

Dear Dr. King:

As instructed in the September 1, 2005, *Federal Register*, the Bureau of Reclamation is providing comments (enclosed) on the Proposed Action: Notice of intent to reconsider the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods."

If you have any questions, please contact Reclamation's Federal Preservation Officer Mr. Thomas Lincoln at 303-445-3311.

Enclosure

Sincerely,

John W. Keys, III
Commissioner

Working Principles for Revising the Advisory Council on Historic Preservation's (ACHP) Policy Statement Regarding Treatment of Human Remains and Grave Goods [Federal Register Vol. 70, No. 169, Thursday, September 1, 2005] .

Comments by the Bureau of Reclamation

We thank you for the opportunity to comment on the subject Working Principles, and note that Reclamation has concerns with this policy statement, its relevance, and the process by which the ACHP solicited comments from Federal Preservation Officers.

Reclamation believes that an ACHP policy statement on the treatment of human remains is no longer necessary because of regulations that have been promulgated since 1988. We note that many references in the proposed Working Principles restate existing clauses from either the ACHP's regulation 36 CFR Part 800, or the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulation 43 CFR Part 10. We believe existing regulatory language is adequate to allow Federal agencies to address appropriately the treatment of human remains and associated items. Furthermore, we believe it is confusing for the ACHP to issue a policy that does not address all situations where Federal agencies must consider the treatment of human remains and funerary objects. In Reclamation's opinion, however, such a policy statement would be beyond the scope of the ACHP's authority.

Having stated our recommendation against the need for an ACHP policy on the treatment of human remains, Reclamation has specific comments on both the proposed Working Principles and the current policy. If the ACHP chooses to move forward with revision of its policy, Reclamation recommends that the ACHP modify all references that may be construed as regulatory language (see comment no. 11) so that it is very clear that compliance with section 106 of the National Historic Preservation Act and decisions that derive from Federal undertakings are the Federal agency's responsibility.

1. **Supplementary Information**, 3rd paragraph - The statement "The Task Force solicited the comments of Federal * * * Historic Preservation Officers * * *" misrepresents the actual actions of the ACHP. Reclamation's Federal Preservation Officer (FPO) was not contacted by the Task Force, nor did he receive a request from the Department of the Interior to participate with, or comment on, Task Force activities. Task Force information was provided to Reclamation's FPO, but after Task Force activities had been ongoing for some time, and after decisions had been made.

2. **Background information**, 3rd paragraph, *Nature of the current debate* – The statement "Most people would agree that human remains and the items buried

with them should not be disturbed.” has not been demonstrated. The sentence should be edited to read “Many people * * *.”

3. **Background Information, Objectives of an updated policy** – The statement “* * * the ACHP wishes to assert its leadership in historic preservation for the Federal government * * *” seems to us to be a stretch. The ACHP is an important player in Federal historic preservation, and it has a leadership role, but to claim preeminence, as implied in the draft statement, is not correct. We recommend the statement be edited to read “* * * the ACHP wishes to continue its role as a leader in historic preservation for the Federal government * * *.”

4. **Working Principles** – “Address treatment of all human remains and funerary objects in the context of compliance with section 106 of the National Historic Preservation Act (NHPA).” Reclamation believes this statement is addressed in ACHP regulations 36 CFR Part 800 and is, therefore, not necessary.

5. **Working Principles** – “Encourage Federal agencies to initiate the section 106 process early in their planning process.” Reclamation believes this statement is in ACHP regulations 36 CFR Part 800 and is, therefore, not necessary.

6. **Working Principles, Principle 2** – Reclamation believes the National Park Service (NPS) has the equal, if not preeminent, responsibility to “clarify the intersection between the requirements of section 106 and the Native American Graves Protection and Repatriation Act (NAGPRA).” Thus, we recommend that any statement in this area either copy or reflect NPS statements regarding the interface of NAGPRA and section 106.

7. **Working Principles, Principle 2** – It is not necessary to recognize the responsibilities of Federal agency officials under section 106 in this policy because it is stated in ACHP regulation 36 CFR Part 800.

8. **Working Principle, Principle 4** – The opening paragraph is redundant with ACHP regulation 36 CFR Part 800 and should be deleted.

9. **Working Principle, Principle 4** – The statements: (1) “Agency decisions regarding treatment of human remains and ultimate disposition must be based on a careful consideration of all views” and (2) “The legal Government-to-Government obligations of Federal agencies to Indian tribes * * * should have a bearing on Federal agency decisions regarding the treatment and disposition of Native American human remains and funerary objects” are established in NAGPRA and NHPA and, thus, it is not necessary to repeat them here. Furthermore, some may read these statements to imply that the ACHP would support individual Native American or tribal positions with regard to the treatment of Native American human remains and disregard competing views that would support scientific analysis of Native American human remains. Reclamation

believes that language in this section must include a statement that identifies the benefits and desirability of scientific analysis of Native American human remains.

10. **Working Principle, Principle 5** – Federal law (NAGPRA and NHPA), regulation (36 CFR Part 800 and 43 CFR Part 10), and agency guidance all exist to assist the Federal agency official in making decisions regarding treatment of human remains. We recommend this section be deleted.

11. **Working Principle, Principle 5** – The statement “The policy statement should clarify how the Federal agency official weighs the views presented by the different parties in arriving at a final decision, recognizing that Federal or State law may prescribe a certain outcome” approaches regulatory language and, as such, is beyond the authority of the ACHP which is a consultative agency.

12. **Policy Statement Regarding Treatment of Human Remains and Grave Goods** - Reclamation disagrees with the following statement in the extant policy, “In general, human remains and grave goods should be reburied * * *” and believes it should not be considered for inclusion in the revised policy. This statement is an opinion, and does not represent an official Federal position. The statement presupposes that the ACHP prefers reburial of human remains, and thus, potentially takes decision-making authority required to conclude the section 106 process away from the Federal agency official.

Laura Dean

From: Michael Kaczor [mkaczor@fs.fed.us]
Sent: Friday, November 04, 2005 2:51 PM
To: Laura Dean; Tom McCulloch
Cc: Stephen Delsordo; Dale Kanen; Marsha Butterfield; Martha Kettle
Subject: ACHP Burial Policy - Comments



ACHP - Human
Remains-Federal R.

On Thursday, September 1, 2005, the ACHP published in the Federal Register a "Notice of Intent to Reconsider the Advisory Council's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods.'" The Federal Register notice contains the set of working principles which were developed by the Archeology Task Force to guide reconsideration of the 1988 policy statement. This Federal Register notice will be enclosed with all of the requests for comments that we are sending to Federal agencies, Indian tribes, Native Hawaiian organizations, State and Tribal Historic Preservation Officers, professional organizations and others.

(See attached file: ACHP - Human Remains-Federal Register - 9-1-05.pdf)

Should you have any questions, please contact me at ldean@aachp.gov or Tom McCulloch at tmcculloch@achp.gov.

To: Laura Dean, ACHP

>: Forest Service Heritage Program comments

We have had a select review of the proposed ACHP Burial Policy revision and commend the Council for proposed revisions that will provide for greater sensitivity to indigenous cultural groups. Our own Heritage workforce is already working in this venue and supports many of the approaches outlined in the proposed policy parameters.

It has been noted that the discussion of scientific values in dealing with human remains has been greatly lessened from the 1988 ACHP Policy. We would encourage the Council to consider basically that all human remains have research value regardless of ethnic affinity, but EMPHASIZE that we need to be highly selective in how this translates to working with indigenous cultural groups. It should be an important basic step to fully assess and weigh any proposed research with the cultural significance and spiritual values attached to the discovery of human remains, and allow for legally appropriate options and treatment formulated WITH current, affiliated, living communities.

We are very interested in this policy development and appreciate the opportunity to comment. Mk

Michael J. Kaczor
Federal Preservation Officer and Heritage Program Leader Recreation and Heritage Staff
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www.passportintime.com
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To succeed - do the best you can, where you are, with what you have"

Laura Dean

From: Marsha Butterfield [mbutterfield@fs.fed.us]
Sent: Friday, November 04, 2005 3:02 PM
To: Laura Dean
Cc: Marsha Butterfield; Sonia Tamez; mkaczor@fs.fed.us; Dale Kanen
Subject: Comments on Proposed ACHP Burial Policy

Here are some thoughts regarding the proposed ACHP guidelines.

The wishes of the descendants should prevail whether or not to allow scientific inquiry, even in those situations where someone (who???) could argue that scientific values outweigh cultural values and there should be curation "in perpetuity". This is a human rights issue that is being addressed in other fora. However this isn't the forum (ACHP Burial Policy) to resolve these fundamental issues and the ACHP policy cannot predetermine an outcome; NHPA really is a process for weighing rights, interests and values.

The absence of national resolution, aside from NAGPRA with its balanced approach which influenced this draft policy, puts decision makers in a very difficult position. That hasn't changed from NAGPRA, but at least under those implementing regs there is a time and place for dispute resolution.

It is better than the status quo, but we need more than "clarification" of the intersection between NAGPRA and NHPA.

Laura Dean

From: Kent A Schneider [kaschneider@fs.fed.us]
Int: Friday, November 04, 2005 2:19 PM
To: Tom McCulloch; Laura Dean
Cc: Kent A Schneider; William G Reed; Alan Dorian; Josborn
Subject: FS Southern Region -ACHP Notice of Intent, Treatment



R8 Comments ACHP
proposed rebur...

Hi Laura and Tom. Laura, its been a long time and we've come along way with the DBoone days, thanks to your help back then. Here are R8 comments on Notice of Intent to Reconsider the Advisory Council's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods. They are not sorted according to any criteria. They are just our comments. Thanks.

(See attached file: R8 Comments ACHP proposed reburial policy.doc)

Kent A. Schneider, Ph.D.
Manager, Heritage Program
USDA Forest Service
1720 Peachtree Rd NW
Atlanta, GA 30309
Phone 404-347-7250
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email: kaschneider@fs.fed.us

"Growing old is mandatory...Growing up is optional"

**Southern Region R8 Comments – ACHP Proposed Reburial Policy
November 4, 2005**

General

What need is this new policy addressing? Has there been rampant digging of graves, stock-piling of human remains and/or funerary objects, since 1988 by federal agencies? It states that the policy covers "undertakings" *outside* of the Section 106 process. What role outside of NHPA does the federal agency have? If NHPA does not apply, it's not an "undertaking" (federally funded or on federal or Tribal lands). What does this "policy" win anybody? People go to court for breaking laws, not policies. Agencies typically do not accomplish work associated with unfunded mandates. They certainly won't crank out plans and policies or do any other type work with unfunded "policies" not based in federal law. On the flip side of that same argument, no one needs to hit the panic button if they don't particularly like the new policy because there are no repercussions for not complying with it. It has no teeth.

The two sections in the old policy that are left entirely OUT of the new policy are " - Prior to reburial, scientific studies should be performed as necessary to address justified research topics." And "Conversely, where the scientific research value of human remains or grave goods outweighs any objections that descendants may have to their study, they should not be reburied, but should be retained in perpetuity for study." Those are the sections that guaranteed support from the scientific community in the 1980s.

The implication, on the whole, is that federal agencies haven't been sensitive enough and have room for improvement thanks to the "collective thinking" of the ACHP. Appears ACHP is seeking to diminish the value of research vs reburial and strengthen early planning and consultation which isn't emphasized as much in the 1988 version.

There is a need for legislation enacted for burials related to other ethnicities other than Native American, especially African American. Perhaps this policy statement is the first step in developing new legislation.

Specific

Funerary objects; "As NAGPRA defines them they are "items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual remains". If this new policy is for ALL human remains sites, historic and prehistoric, we may end up having to curate plastic flowers and weird things like they collect from the Viet Nam Veterans Memorial in DC. The "policy" should advise us on exactly what a "funerary item" is.

Principal 5. "The policy statement should guide the Federal agency official in decision making." This sure sounds like Agency decision will be determined by ACHP policy.

"The policy statement needs to recognize that a Federal agency official under Section 106 has a duty for the care of human remains and funerary objects". This seems like back-door lawyer speak for trying to impose a duty. What it should say is the agency official has a duty to follow the law concerning the care of human remains and funerary objects. If that duty is already IN the law, it should be referenced. If NOT, it is imposing a new duty.

"Principle 3: The policy statement should emphasize that avoidance, followed by preservation in place is the preferred alternative to disturbance of human remains and funerary objects." A preferred alternative should be determined by 1-Law, 2-Regulation, or 3- the regular decision making process, not by an advisory agency.

"-Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site's long term preservation."

The policy should tell us what the ACHP will do to assist the agency with those efforts.

Please clarify exactly what constitutes "meaningful consultation".

Much of the internal dialogue seems to center on scientific study and perpetual curation of human remains. The 1988 policy appeared more specific, and to some a bit skewed, partially because scientific values could be perceived as outweighing tribal concerns and curation in perpetuity was a viable option. The time of permanent curation has changed.

Scientific study as a whole, beyond that needed to comply with state laws to determine whether remains are subject to criminal investigation, is a holdover facet of the past; wherein the scientific community often spent less effort in dialogue with the living descendants of the people they studied than was healthy.

The policy needs the flexibility to consider the wisdom of thoroughly justified, case-by-case, consideration of "extraordinary" circumstances warranting scientific study, and that local decisionmakers retain the authority to make those decisions after meaningful, soul-searching, consultations with their Tribal partners - and the scientific community.

--

Tom McCulloch

From: matt.radford@gsa.gov on behalf of rolando.rivas-camp@gsa.gov
Sent: Tuesday, September 20, 2005 10:46 AM
To: Tom McCulloch
Cc: Carolinealderson; claire.hosker@gsa.gov; Joan Brierton
Subject: Re: FW: ACHP's Human Remains Policy/Request for Comments

Thank you for notifying us about the draft updated ACHP human remains policy recently posted on the Federal Register. We appreciate having had the opportunity to review the material prior to the summer ACHP meeting.

GSA supports the new guidance, which could help to avert difficulties like those GSA faced with the African Burial Ground discovery. The Working Principals are sensible and provide a sound procedural framework for developing an appropriate sequence of actions to deal with human remains appropriately. We look forward to working with the Council as we move forward, along with other agencies, to establish procedures for these sensitive discoveries.

Regards,

Rolando

"Tom McCulloch" <tmcculloch@achp.gov>

To "fpo" dpo@achp.gov,

cc

Subject FW: ACHP's Human Remains Policy/Request for Comments

09/14/2005 04:31 PM

The Advisory Council on Historic Preservation (ACHP) is seeking public input on plans to revise and update its "Policy Statement Regarding Treatment of Human Remains and Grave Goods." While the revised policy will apply to decisions made in the context of the Section 106 review process, the ACHP hopes that its policy will assist other agencies, organizations, or governments seeking to develop their own policies on the treatment of all human remains, burial sites, and associated funerary objects.

On Thursday, September 1, 2005, the ACHP published in the Federal Register a "Notice of Intent to Reconsider the Advisory Council's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods.'" This document is also available on the ACHP's website at www.achp.gov.

We would appreciate your comments on the Working Principles section of this document, which was prepared by the ACHP member Task Force on Archeology. The Task Force will use your comments to draft an initial revision to the 1988 policy statement, which will then be distributed and subject to further review and comment. Following this consultation, the Task Force may present a revised policy statement to the full ACHP membership for adoption.

You may e-mail any comments by November 4, 2005 to archeology@achp.gov,

9/20/2005

Laura Dean

From: King, Julia [King@dhcd.state.md.us]
Sent: Monday, October 24, 2005 4:21 PM
To: Javier Marques; Tom McCulloch; Laura Dean
Subject: FW: ACHP Working Principles on Treatment of Human Remains - Comments

FYI...

-----Original Message-----

From: Sullivan, Maureen, Ms, OSD-ATL [mailto:Maureen.Sullivan@osd.mil]
Sent: Monday, October 24, 2005 3:41 PM
To: King, Julia
Cc: Lumley, Paul, Mr, OSD-ATL
Subject: FW: ACHP Working Principles on Treatment of Human Remains - Comments

Julie -- I reviewed my notes from the July 17th meeting, Tom's July 19th version, and the Federal Register notice. I did find some differences, but only one section I never saw before. We can discuss at the meeting on Wednesday.

Most importantly, I rec'd these unofficial comments from our Navy folks and I thought you would be interested. I think they really hit some big issues that we haven't discussed, in particular the intersection of NHPA and ARPA and eligibility of human remains for the National Register. Although these get to the center of our discussions, we haven't specifically discussed either issue.

so, the Navy folks believe we are getting into cemetery management. I'm not sure how, but they see that in the language.

Thought you might find their perspective informative.

See you Wednesday.

Maureen Sullivan
ODUSD(I&E)/ESOH
(703) 604-0519
Fax (703) 607-4237
Blackberry Cell (703) 509-2089

-----Original Message-----

From: Thomas, Jay CIV NAVFACHQ, ENV [mailto:Joseph.B.Thomas@navy.mil]
Sent: Monday, October 24, 2005 1:56 PM
To: Sullivan, Maureen, Ms, OSD-ATL
Cc: Egeland, Tom A CIV ASSTSECNAV IE WASHINGTON DC, OA
Subject: FW: ACHP Working Principles on Treatment of Human Remains - Comments

Maureen, an advance copy of Navy comments on the human remains FR notice, with Tom's permission.

Jay

---Original Message---

From: Hayes, Dan CIV CNI HQ
Sent: Friday, October 21, 2005 15:53
To: Egeland, Tom A CIV ASSTSECNAV IE WASHINGTON DC, OASN(I&E)

10/24/2005

Cc: Campagna, Robert CIV CNI, Environmental; Spicer, William A JR CIV CNI HQ; Thomas, Jay CIV NAVFACHQ, ENV; Trotta, Andy CDR N46; Easter, Chris CTR CNI HQ

Subject: ACHP Working Principles on Treatment of Human Remains - Comments

Tom,

Attached are our comments on the Advisory Council on Historic Preservation's Working Principles for Revising the "Policy Statement Regarding Treatment of Human Remains and Goods." This was prepared jointly with NAVFAC HQ staff. I've also attached a Word version of the comments for your use.

Please let us know if you have any questions.

V/R,

Dan

Daniel E. Hayes, P.E.

dan.hayes@navy.mil

CNI Environmental

202.433.4482

<<ACHP Working Principles on treatment of Human Remains.pdf>> <<ACHP Human Remains Comments - Final - 19 Oct 05.doc>>

10/24/2005

19 Oct 05

Comments on the Advisory Council on Historic Preservation's
Working Principles for Revising the "Policy Statement Regarding
Treatment of Human Remains and Goods"

General comments:

The proposed working principles recognize that the authorities governing agency management of human remains can lead to conflicting approaches, unhappy stakeholders, and uneven results. However, the proposed working principles do not adequately emphasize several important and often challenging areas of ambiguity. The proposal clearly addresses a "Kennewick Man" situation in which remains are discovered, and the agency must decide whether to allow their study, re-inter/repatriate them, or some combination. However, agencies also manage human remains in other situations, like cemeteries, that are not "Kennewick Man" situations but nevertheless will be subject to the proposed policy. The final policy should omit cemeteries and similar collections of identified, managed remains.

- Application of principles. Although the principles are intended to apply to "treatment of all human remains and funerary objects in the context of compliance with" the National Historic Preservation Act (NHPA) section 106, the model that appears to drive the principles is the discovery of unmanaged, probably unidentified remains in the course of other work. While this scenario has probably been the most troublesome over the years, agencies may manage human remains under other circumstances as well; for example in cemeteries. If the principles are indeed to be universal, they must address these other situations (more below).
- Classification of remains and associated features. The principles apply within the context of NHPA section 106 compliance. However, the application of NHPA to human remains is grounded on National Register (NR) eligibility. Graves and cemeteries are not usually eligible for NR listing, although various exceptions exist, including one for archaeological research potential. The Archaeological Resources Protection Act (ARPA) presumably can be interpreted to apply to graves that are over one hundred years old as with other century-old artifacts, but the cultural and political question of when a burial site stops being a grave and starts being an archaeological assemblage of human remains and funerary objects must be considered by

agencies that manage cemeteries or other gravesites. The final policy should provide clarification.

- Management approaches. There are several potential agency management approaches to human remains that should be acknowledged in the final policy.
 - *Presence of remains not known; no management framework in place.* This is the "unanticipated discovery" scenario to which the principles are primarily addressed.
 - *Remains present and located; management framework in place.* This situation applies to known cemeteries or gravesites, which are managed as such. The final policy should consider the extent to which NHPA compliance should be overlaid onto cemetery management, especially for active cemeteries. (This discussion would be similar to that held decades ago on whether certain kinds of artifacts in museum settings should also or alternatively be managed as NR objects.)
 - *Remains likely present but are not located; management framework in place.* This "war graves" scenario applied to unlocated sunken aircraft or ship wrecks, or located sunken wrecks where deaths are known to have occurred but remains have not been located. Navy policy (<http://www.history.navy.mil/branches/org12-12.htm>) is that such remains are to remain undisturbed out of respect for the deceased individuals, as well as to preserve the archaeological value of crash sites. Note that many of these wrecks are outside the United States, either in other countries or in international waters.

Specific comments:

- Principle 1. Respect for human remains. No comments.
- Principle 2: Intersection of NHPA section 106 with other authorities.
 - The final policy should provide a complete listing and discussion of other laws that intersect with NHPA section 106, especially state and local laws that may apply on federal land.
 - The final policy should address the classification questions mentioned above, especially NR eligibility of human remains.
 - The final policy should acknowledge that other agency officials have an interest in or responsibility for

human remains that must be considered along with that of the agency preservation official, for example agency medical, law enforcement, or cemetery management officials. The responsibility of the agency preservation official does not necessarily override the others.

- The final policy should be explicitly limited to the United States. This is already implied by the announcement's focus on NHPA section 106, which only applies in the US and its territories. However, the final policy should be unambiguous, in view of DoD's extensive overseas presence and the existing, potentially confusing overseas component to NHPA.
- Principle 3: Preference for preservation in place. Some management frameworks, such as cemetery management, already include a strong preference for preservation in place. The final policy should address the implications of applying an NHPA-centered policy approach to these existing management frameworks.
- Principle 4. Consultation. The final policy should recognize and privilege family input, when available. Family input is most likely to be available for cemeteries, or for sunken ship/aircraft wrecks for which crew lists exist, but also may be present for other remains.
- Principle 5. Policy as guidance.
 - The working principles recognize that federal or State law may prescribe outcomes regarding human remains. However, they may also prescribe procedures even if no outcome is prescribed, and these processes may conflict with NHPA procedures. For example, local law may require giving a medical examiner access to discovered remains, and medical examiner procedures for remains (even those quickly determined not to be recent) may differ from archaeological procedures.
 - The final policy should provide guidance in determining whether remains are not likely to be of archaeological value (e.g. unstratified, disarticulated material), and the resulting management implications.
- Principle 6. Procedures. The final policy should provide explicit guidance on determining when human remains are subject to NHPA or ARPA.

From: Sue_Renaud@nps.gov [mailto:Sue_Renaud@nps.gov]
Sent: Fri 12/2/2005 10:38 AM
To: Sherry_Hutt@nps.gov
Cc: Bryan Mitchell; Archeol AP. Project
Subject: Advisory Council's Human Remains Policy

Sherry,

Thank you for giving us in the Park Service the opportunity to provide you with feedback on the work of the Advisory Council's Archeology Task Force and its proposals for updated policy and guidance on the treatment of human remains and grave goods (Federal Register Notice of September 1, 2005). I have a few comments for your consideration as you work with the Task Force in finalizing the policy.

As an historical archaeologist, I encourage the Task Force to emphasize and be very clear about the fact that this issue also concerns non-American Indian, historic period human remains. This is recognized in the Federal Register Notice (5th paragraph of the Background Information), but I've noticed in my three decades of practice that all too many people seem to automatically associate burials and human remains with American Indians. That this issue is of concern to a wide range of individuals and groups cannot be stated too strongly or too frequently.

It would be important in Principle 2 to recognize the importance of coordinating with state laws on human remains and marked and unmarked burials/cemeteries, including violation of sepulchre. This is mentioned in the second item under Principle 2, but a state may have relevant laws in addition to those that may be familiar to archaeologists. While federal actions need not be bound by state law, it can be good practice to coordinate with all relevant statutes. In addition, it may be the folks who are charged with administering these state laws who have knowledge that may be useful in effectively carrying out the federal action.

I'm not a big fan of "avoidance" as the sole mitigation strategy, since it often does not result in preservation in place. Rather it leaves the resource in limbo, deferring the decision about the resource's fate to others at a later time. Rather than viewing avoidance as the preferred alternative to disturbance (Principle 3), I recommend including "avoidance" as one of many tools and strategies available for preservation in place.

In fact, this principle should state that preservation in place is the preferred alternative to disturbance, and then discuss a variety of tools and strategies that could accomplish this. For

example, see our web site, "Strategies for Protecting Archeological Sites on Private Lands," at www.cr.nps.gov/hps/pad/strategies, for a variety of tools that are being used to preserve archaeological sites in place. This web site may also be useful to include as one approach for providing property owners with guidance on protecting archaeological sites and burials, as noted in the last item under Principle 6.

As part of Principle 4 on consultation, it would be important to emphasize that this consultation is best done as early in the project planning process as possible, and to provide guidance and examples on when "early" is (e.g., this may actually be during Section 110 activities, before a specific project is identified).

As part of Principle 6, it would be important to recommend that federal agencies should address in their Section 110 responsibilities (historic preservation program and planning) the potential to encounter human remains. An agency policy and procedure established at this stage should facilitate the response to human remains discovered during a project.

Thank you again for giving us the opportunity to review the draft principles; I hope my comments are useful. Please let me know if you have any questions.

Sue Henry Renaud, RPA
Senior Resource Planner, Archaeologist
Heritage Preservation Services
National Park Service
(202) 354-2024



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

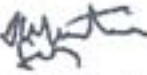
IN REPLY REFER TO:

W48 (2253)

NOV - 4 2005

Memorandum

To: Archaeology Task Force, Advisory Council on Historic Preservation

From: Director 

Subject: Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Graves Goods"

I write to provide comment on the Archaeology Task Force's Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods."

The original ACHP policy statement was written in 1988, at the same time that Congress was considering legislation regarding the disposition of Native American human remains and funerary objects. The Native American Graves Protection and Repatriation Act (NAGPRA) was subsequently enacted in 1990 with responsibility for implementation delegated to the Secretary of the Interior. NAGPRA includes separate provisions for: 1) the disposition of Native American human remains and funerary objects excavated or removed from Federal or tribal lands after the enactment of the Act; and 2) the repatriation of Native American human remains and associated funerary objects in the possession or control of Federal agencies and institutions that receive Federal funds. It is important that these provisions are considered in considering any revision of the ACHP policy statement.

Under the excavation and discovery provisions of NAGPRA, the discovery of Native American human remains or funerary objects on Federal lands triggers an automatic cessation of activity in the area of the discovery, unless there is a binding agreement in place between the Federal agency with jurisdiction over the land and the appropriate lineal descendants, Indian tribes, and Native Hawaiian organizations. During the cessation of activity, the Federal land manager must consult with all appropriate lineal descendants, Indian tribes, and Native Hawaiian organizations to determine if the human remains and funerary objects must be excavated or removed and, if so, their ownership. On state or private land, state law generally defines the jurisdictional authority for the excavation or removal of human remains or funerary objects.

The collection provisions of NAGPRA apply to all Federal agencies, except the Smithsonian Institution, and all institutions that receive Federal funds, including state and local governments. NAGPRA requires Federal agencies and institutions that receive Federal funds to prepare inventories of Native American human remains and associated funerary objects and summaries of unassociated funerary objects in their possession or control; consult with lineal descendants, Indian tribes, and Native Hawaiian organizations; and, upon receipt of a valid claim, repatriate the cultural items to the lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization. Human remains and funerary objects that are removed or excavated from Federal or tribal land after the date of NAGPRA's enactment are not subject to the collection provisions. Human remains and funerary objects that are removed or excavated from state land come under state jurisdiction, and are thus subject to NAGPRA collection provisions as well as

the applicable state laws. Applicability of NAGPRA's collection provisions to human remains and funerary objects excavated or removed from private lands depends upon whether the state assumes control of the items.

The core principle underlying both sets of provisions is that only the lineal descendant or affiliated Indian tribe or Native Hawaiian organization can decide on the ultimate disposition of Native American human remains or funerary objects. Some have chosen to rebury affiliated human remains and associated funerary objects; others have reburied the affiliated human remains and left the funerary objects in the possession of museums; and still others have left both the affiliated human remains and funerary objects in museum possession. This principle is consistent with both the common law regarding disposition of the dead and applicable Federal law regarding disposition of the remains of individuals under Federal custody. I believe that recognizing the rights of descendants and affiliated communities should be paramount to any revision of the ACHP Policy Statement Regarding Treatment of Human Remains and Grave Goods.

In reviewing the ACHP's 1988 policy statement, the first two principles are completely consistent with NAGPRA's provisions. Human remains and funerary objects should not be excavated or removed unless required in advance of some kind of activity such as construction, mining, logging, or agriculture. When necessary, excavation or removal of human remains or funerary objects should be done carefully, respectfully, and completely, in accordance with standard archeological methods such as those required by the Archaeological Resources Protection Act. The remaining principles have been largely superseded by NAGPRA's goal of identifying the individual or community with legitimate authority to make such decisions under the common law. I strongly recommend that the Archeology Task Force adopt a similar approach in revising the policy statement.

Please contact Sherry Hutt, Manager, National NAGPRA Program, if you have any questions regarding my comments. She can be reached at (202) 354-1479.



Natural Resources Conservation Service
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October 14, 2005

Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

Re: Working Principles for the Treatment of Human Remains and Funerary Objects

Dear Task Force Members:

The Natural Resources Conservation Service (NRCS) in Maine appreciates the opportunity to comment on the Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods" (*Federal Register* 70[169]). Our comments are limited to Principle 4, which concerns consultation with all interested parties and considerations of their views subject to other federal and state laws.

Maine NRCS believes that the Advisory Council has an opportunity with this Principle to provide welcome guidance for federal agencies to follow when dealing with undertakings that affect abandoned and forgotten (and often unmarked) human remains and funerary objects. As you know, federal agencies need to make a "reasonable and good faith effort" to identify Native Americans and to seek other members of the public for consultation during Section 106 reviews (36 CFR 800.2[c][2][ii][A] and 800.2[d][1]). The long duration of archaeological time, the effects of migration, the interactions of different cultural groups in the same regions, and the presence of alternative value systems can all confound attempts to determine what is a reasonable and good faith effort to locate Native Americans who may believe identified human remains and funerary objects are significant. (The enclosed article, "Nanticoke Indian Burial Practices: Challenges for Archaeological Interpretation," provides examples of some of these difficulties.) Likewise, family movements, dying out of family lines, and incomplete historical records can make the identification of living relatives of those buried in non-Native American graves problematic.

We suggest that the Task Force provide federal agencies with clear examples or guidelines in Principle 4 to illustrate what are considered to be reasonable and unreasonable efforts when identifying consulting parties for the abandoned, forgotten graves.

If you have any questions, please contact Dr. Gary Shaffer, Archaeologist, of my staff at 207-990-9566 or email gary.shaffer@me.usda.gov.

Sincerely,

NANTICOKE INDIAN BURIAL PRACTICES: CHALLENGES FOR ARCHAEOLOGICAL INTERPRETATION

Gary D. Shaffer

This paper compiles firsthand and contemporary accounts of human burial practices of the Nanticoke Indians and identifies implications of these traditions for archaeological interpretation and repatriation. The Nanticokes, first encountered by Europeans on the Eastern Shore of Chesapeake Bay, were known for disinterring primary inhumations in order to clean bones and reinter them in local ossuaries or in secondary burials at new settlements. Assembled descriptions of mortuary customs include original translations of eighteenth-century German diaries of Moravian missionaries. Consideration of the reported burial behavior of the migrating Nanticokes indicates several challenges for archaeologists in associating interments with specific cultural groups.

INTRODUCTION

This paper compiles firsthand and other contemporary accounts of human burial practices of the Nanticoke Indians and identifies implications of these traditions for archaeological interpretation and repatriation. European colonists first encountered the Nanticokes on the Eastern Shore of Chesapeake Bay. These Euroamericans and their descendants recorded several ethnographic sketches of the Nanticokes that included descriptions of mortuary customs. Nanticokes were known for removing primary burials in order to clean bones and reinter them in local ossuaries or in secondary burials at new settlements—sometimes far removed from the original graves. The current study begins with a summary of certain issues associated with the archaeological examination of Native American burials and with repatriation. It then proceeds to a discussion of Nanticoke history from the seventeenth through the twentieth centuries. Next, there is a presentation of the assembled descriptions of Nanticoke mortuary customs that include original translations of eighteenth-century German diaries of Moravian missionaries. Finally, a consideration of the burial behavior of the migrating Nanticokes illustrates several challenges for archaeologists in associating interments with specific cultural groups. These challenges, of course, would raise difficulties in assessing cultural affiliation of human remains for repatriation.

ARCHAEOLOGY, NATIVE AMERICAN BURIALS, AND REPATRIATION

This section summarizes certain elements of controversies about Native Americans and archaeology and about repatriation of human remains so as to provide some context for the discussion of Nanticoke mortuary practices. Concern with the repatriation of Native American human remains and burial goods is just one part of the debate on the relationship between indigenous peoples and the archaeologists who study their pasts. Much has been written in recent years on how archaeologists interact with the native populations living in the lands where surveys and excavations are done, and these commentaries are not limited to North America

Still, in the last few decades, Native Americans have become more actively involved in archaeology. This activity is reflected in the emergence of tribal historic preservation programs and the contracting of archaeological services, even if the purpose can be to obtain development monies (Begay 1997; Ferguson 1996; Ferguson et al. 1997; McGuire 1992). Many Native Americans have recognized that archaeologists can help with land claims, tourism, education, and the preservation of sites from destruction (Ferguson 1996; Ferguson et al. 1997; Watkins 2000). At the same time, more archaeologists understand that long-term commitments to collaborating with Native Americans can be necessary for investigating certain regions (McGuire 1992). Increased ethnoarchaeology with place-name research and site and artifact interpretation can provide more complete characterizations of archaeological resources (Ferguson et al. 1997; Greer 1997; Passamaquoddy Tribe 2004). Archaeologists might engender trust from Native Americans by asking about tribal goals for archaeology when formulating research strategies and by incorporating the different ways of viewing the past into complementary scientific and humanistic interpretations of material culture (Ferguson 1996; Kristmanson 1997; McGuire 1992; Rice 1997). In the latter regard, North American archaeologists may wish to acquaint themselves better with the methods of the *Annales* school, whose proponents study the past at several scales of time by combining the data and strengths of several disciplines (e.g., Bintliff 1991; Knapp 1992).

Within this larger context of the relationships between North American archaeologists and Native Americans arose the intense debate on the repatriation of human remains and burial goods. Native Americans became more aware of past excesses in medical and physical anthropological studies of aboriginal peoples; and, by the later twentieth century, disgust and frustration with archaeological research on burials increased in Native Americans communities (Bray and Killion 1994; Powell et al. 1993:15-17). Some early archaeologists and museum curators seem to have been on missions to obtain as many Indian skeletons as possible, and one recent estimate of the number of Native American individuals whose remains have been excavated ranges from 100,000 to two million (Trope and Echo-Hawk 2001). These excesses and those projects poorly coordinated with native groups led to limitations on field and laboratory investigations of aboriginal burials and to passage of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990 (25 U.S.C. 3001; Killion 2001).

Archaeologists generally agree that the study of human remains and funerary objects can provide important information on a host of subjects, including past diet, health, population dynamics, evolutionary change, and the variability of mortuary practices (e.g., Brothwell 1972; Brown 1971; Chapman et al. 1981; Pearson 1999; Rose et al. 1996). Of course wholesale repatriation could curtail this activity, even if the studies needed now to assist repatriation provide new data and standards for recordation (Rose et al. 1996). Archaeologists, their colleagues in physical anthropology, and Native Americans hold a number of views on the subject of turning over aboriginal human remains and mortuary items to native communities for reburial (Baker et al. 2001; Rosen 1980). Some scientists wish to accommodate the wishes of Native Americans at least to a degree, while others are adamant that science should prevail against native claims of religious (or sovereignty) rights (e.g., Goldstein and Kintigh 1990; Meighan 1992). Also, some Native Americans appreciate how archaeologists can assist them in describing their pasts and may not request the reburial of certain classes of cultural items, while other Natives may doubt the benefits of mortuary research and insist

involving repatriation will be equally difficult to resolve. However, archaeologists can make certain efforts before these situations arise again in order to achieve a degree of cooperation and understanding. For example, scholars can consult with Native Americans when first developing research plans and try to devise projects that address the interests and concerns of both parties (Goldstein and Kintigh 1990:590; Quick 1985:175; Rose et al. 1996:90; Watkins 2000:172). Archaeologists also can consider together with Native Americans creative approaches to reburial that would permit future study of remains (Socobeson 1994:161). Still, one of the thorniest issues archaeologists and Native Americans will face is the question of whether the cultural affiliation of ancient remains can be successfully determined. As many archaeologists and anthropologists have indicated, there needs to be careful consideration of the burden of proof in assessing such cases (e.g., Goldstein and Kintigh 1990; Rosen 1980; Watkins 2001). Another challenge for those dealing with repatriation concerns the treatment of the past movements and settlements of different aboriginal groups in areas where other Native Americans now claim a homeland. Human migration, the taking of captives, and excursions for trade and visiting all could have led to burials of various ethnic groups in a single region and complicate assignments of cultural affiliation (e.g., Baker et al. 2001; Socobeson 1994).

The current research represents one attempt to gather information on the mortuary customs of a Native American group well known for its historical migrations in order to examine how well one might recognize its burials when it entered the regions of other Indians. It is interesting that this strategy of listing burial practices according to native group to sort out cultural affiliation of human remains came up during the 1985 Conference on Reburial Issues sponsored by the Society for American Archaeology and the Society of Professional Archeologists. The suggestion met with less than an enthusiastic response, largely due to the supposed enormity of the project (Quick 1985:164-165). However, "many hands can make for light work," and the present study of Nanticoke burial practices may offer some useful insights for the larger debate on repatriation.

LATER NANTICOKE HISTORY

This section highlights several, later historical events and cultural interactions of the Nanticokes to provide further context for the subsequent discussion of the group's mortuary customs. Europeans first encountered the Algonquian speaking Nanticoke Indians in the early seventeenth century within the Nanticoke River drainage of Delaware and of Maryland's Eastern Shore (John Smith, in Arber 1910:414-415; Feest 1978:240-241; Speck 1915:6). Nanticoke oral tradition indicated that the tribe had separated from the Delawares before itself growing in size and splitting into several other groups, including the Conoy (John Heckewelder, in Reichel 1881:90-91). (A description of the Conoy is found in Feest [1978]). From the mid-seventeenth century to the mid-eighteenth century Maryland's colonial government entered into a series of treaties with the Nanticokes. These agreements were to guarantee the Indians' use of reserved lands and their right to hunt and fish; additionally, the treaties regulated judicial and political contacts between the Indians and colonists (Feest 1978:243; Speck 1927:15). Unfortunately, the establishment of the Broad Creek and Chicone (Chicacoan) reservations failed to take into account the Nanticokes' seasonal subsistence strategies,

Nanticokes and others from Maryland moved to settlements of Wyoming in Pennsylvania and Otsiningo and Chemung in New York. While the Nanticokes remained neutral during the French and Indian Wars, they sided with the British during the American Revolution. Consequently, a number of them moved to western New York closer to British troops, arriving at Fort Niagara between 1778 and 1779 and at Buffalo Creek by 1781. Following these hostilities, some of these Indians emigrated to Grand River in Ontario to live with the Six Nations. By the early 1900s some 300 residents of Grand River claimed ancestry from these Nanticokes (Feest 1978:246; Weslager 1983:181-183).

Not all Nanticokes ended up in Ontario. Some went west with the Delawares: for example, going in 1769 from Otsiningo to the largely Munsee village of Goshgoshunk along the Allegheny River near Tionesta, Pennsylvania. In the late eighteenth and early nineteenth centuries, Nanticokes also traveled into Ohio and Indiana and on to Kansas. After 1867 some Nanticokes ended their westward journey in Oklahoma, where, by the early 1900s, a few Indians still recognized their Nanticoke origins despite acculturation with the Delawares (Feest 1978:246; Weslager 1983:186). Other Nanticokes remained on the Delmarva Peninsula in the mid 1700s. Following the sale of the Chicone and Broad Creek reservations in 1768, the numbers of Nanticokes in Dorchester and Worcester counties of Maryland dwindled substantially by the early twentieth century. However, a larger group of "off-reservation" Nanticokes resided primarily in Sussex County, Delaware (Feest 1978:247).

FIRSTHAND AND CONTEMPORARY ACCOUNTS OF NANTICOKE BURIAL PRACTICES

Several earlier authors have assembled some information on Nanticoke burial practices (e.g., Bushnell 1920; Davidson 1935; Weslager 1942, 1983). However, the present study attempts to include all available firsthand and contemporary accounts of these mortuary traditions. My research on this subject began in 1998 at the Maryland Historical Trust. The Trust was gathering information on historical Maryland Indians to assist with tribal recognition and other matters. As part of this work, Richard Hughes of the Trust sought data on the Nanticoke Indians in the Moravian Archives (see Fliegel 1970). Moravian missionaries lived and worked mainly with the Delawares, but they had contact with many other tribes including the Nanticokes. The missionaries recorded in diaries day-by-day accounts of events in their settlements, and they summarized these diaries in reports which were submitted to the church headquarters in Bethlehem, Pennsylvania, for circulation among Moravian congregations (Nelson 1970).

Hughes found several Moravian records that mentioned the Nanticokes. Since I was able to read the older German handwriting in which the missionaries' entries were written, I offered to translate them. Three of the diary entries (one by Jacob Schmick, two by David Zeisberger) noted Nanticoke burial practices. I transcribed these missionary accounts into German typescript (Appendixes 1 - 3) and then prepared original translations in English. After completing this work, my research interest grew to a study of other firsthand and contemporary accounts of the Nanticoke's mortuary customs. One goal was to examine the persistence of the cultural traditions through time and space, as the Nanticokes migrated from the Delmarva Peninsula. Another was to see how well Nanticoke burials might be distinguished in areas populated in the past by

understand English and used to live in Maryland. He went on to say:

Their customs in divers respects differ from those of other Indians upon this river. They don't bury their dead in a common form, but let their flesh consume above ground in close cribs made for that purpose; and at the end of the year, or perhaps sometimes a longer space of time, they take the bones, when the flesh is all consumed, and wash and scrape them, and afterwards bury them with some ceremony [in Pettit 1985:328].

Provincial Council of Pennsylvania – 1757.

The secretary for the Provincial Council of Pennsylvania (1851:707) recorded on 6 August 1757 minutes of a meeting held in Easton concerning a Nanticoke request for assistance in the transport of human remains:

After this the three Nanticoke Messengers came to me and congratulated the Governor [William Denny] and myself on the Conclusion of the Peace, and said they had put both their Hands into the Chain of Friendship, as they were ordered by their Chiefs before they left home, and, by a String of Wampum, desired that the Governor might send some Person with them to Lancaster, to take care of them, and supply them with necessaries on the Road, as they were come to take the Bones of their Friends which died at Lancaster to their own Town, to be buried with their Relations.

Heckewelder – 1750s-1780s.

John Heckewelder (1743-1823), who came at the age of 11 with his parents from England to Bethlehem, Pennsylvania, served with Indians at Moravian missions from the 1760s to the 1780s. One of his later projects was to write a description of the work of the Moravians, or Unity of Brethern Church, with the Delaware and Mohegan Indians (Heckewelder 1971 [1820]). Of importance to the present study of Nanticoke, in 1818 he published his *History, Manners, and Customs of the Indian Nations Who Once Inhabited Pennsylvania and the Neighbouring States*. In this volume Heckewelder included a description of Nanticoke mortuary behavior based on his conversations with one of their chiefs named "White" and on his own observations. As Heckewelder related White's statements:

These Nanticoke had the singular custom of removing the bones of their deceased friends from the burial place to a place of deposit in the country they dwell in. In earlier times, they were known to go from Wyoming and Chemenk [Chemung?], to fetch the bones of their dead from the Eastern shore of Maryland, even when the bodies were in a putrid state, so that they had to take off the flesh and scrape the bones clean, before they could carry them along [in Reichel 1881:92].²

Heckewelder (in Reichel 1881:92) added his personal recollection of having seen Nanticoke burial customs when he was a child or teenager:

I well remember having seen them [Nanticoke] between the years 1750 and 1760, loaded with

(1972:87 [1768]) letter to Rev. John Erskine in 1768 noted, "There is one *Tribe of Indians*, called, *Nanticooks* [sic], that, on their removal from their old to new habitations, carry the bones of their ancestors and deceased relations with them" [emphasis in original]. It is not clear if Beatty actually observed such a custom or if he learned of it from another person.

Zeisberger – 1766.

David Zeisberger (1721-1808) was born in what is now the Czech Republic, and in 1738 he followed after his parents to America where they were involved with a mission of the Unity of Brethren (Moravian) Church. After helping to found the settlement of Bethlehem, Pennsylvania, and learning several aboriginal languages, Zeisberger embarked on a 63-year career of conducting Christian missionary work among Native Americans. This service took him from Pennsylvania to New York, Ohio, Michigan, and Ontario. In 1765 Zeisberger and 90 Christian Indians founded the mission of Friedenshütten by the Susquehanna River at Wyalusing, Pennsylvania. Friedenshütten thrived until 1772, when a replacement mission was established at Schönbrunn along the Tuscarawas River in Ohio (Olmstead 1991:xii, 4-8, 1997:141-142). Heckewelder (1971:97-98 [1820]) wrote that in the 1760s members of at least ten Indian groups, including the Nanticokes, visited the Christian Indians at Friedenshütten or at least passed through the settlement. A major attraction of the mission was its provision of food. Zeisberger wrote the following diary entry in Friedenshütten in 1766 (Appendix 1):

February 2nd The sermon was based on today's Gospel. We had a meeting with Anton and Johannes. Among other things it came to light that Sam the Nanticoke had expressed his intention to stay here, about which Anton and Johannes expressed their doubts--to be sure, not because of Sam personally but rather in view of his nation in general. For whenever one of them dies anywhere--no matter where--and is buried, then the friends come, dig him up, cut off all the flesh from his bones and take these with them. Such an instance recently occurred here involving a deceased woman whom they carried through this area; before her death she implored her friends not to do that to her but just to bury her; however, it was all to no avail [Moravian Records 1766: Box 131, Folder 3].³

Schmick – 1769.

Several missionaries, including the Moravian Johann Schmick (1714-1778), recorded the continuation of the distinctive Nanticoke burial practices after the mid-1760s, thereby extending the chronology outlined by Weslager (1983:176). Schmick had helped to found the mission of Friedenshütten with David Zeisberger (Heckewelder 1971:93-94 [1820]). Johann Schmick and his wife, Johanna Heid Schmick, served as head missionaries at Friedenshütten before moving to the Gnadenhütten mission in Ohio (Olmstead 1991:8, 25-26, 1997:209-210). Schmick made the following diary entry in Friedenshütten in September 1769 (Appendix 2):

Tuesday the 26th Several Nanticokes, who yesterday had arrived here from Wajomick with the

Perhaps the most remarkable point raised in this entry is that Nanticoke Indians apparently were transporting the bones of an Indian from another tribe. The individual named George could well have been a Seneca, since members of this Iroquois tribe would travel south of their New York homeland for raiding and trading in the eighteenth century (Abler and Tooker 1978:507). The Senecas themselves may have had several burial customs, but one characteristic practice was first to place the deceased on bark scaffolding or in a tree until the flesh decomposed. Then the bones would be collected and stored in the deceased's former residence or a special bark structure. Finally, after several years or at the occurrence of an event like the relocation of a settlement, skeletons from the entire community would be collected and interred in a common grave (Morgan 1962:172-176 [1851]).

Zeisberger – 1779-1780.

Between 1779 and 1780, and while residing in Ohio, David Zeisberger compiled notes on his ethnographic observations of the Indians with whom he had lived in the Northeast (Hulbert and Schwarze 1910:1, 10). His entry concerning the mortuary customs of the Nanticokes added more detail to that given in his 1766 diary entry:

The Nantikoks [sic] ... have this singular custom that about three or four months after the funeral they open the grave, take out the bones, clean them of the flesh and dry them, wrap them up in new linen and inter them again. A feast is usually provided for the occasion, consisting of the best they can afford. Only the bones of the arms and legs of the corpse are thus treated. All the rest is buried or burned [in Hulbert and Schwarze 1910:90].

Zeisberger – 1797.

The village of Fairfield, occupied by Moravian missionaries and their Indian converts between 1792 and 1813, was located about 2 km east of present-day Thamesville, Ontario, on a terrace overlooking the Thames River (Jury 1945:1-2). David Zeisberger composed the following diary entry—presented in entirety for its social context—in Fairfield in 1797 (Appendix 3):

May 5th From the look-out on Lake Erie our helper Samuel returned, who, owing to his agreement in winter with his brother, had gone there to pick him up, and now that Samuel had come, he was not ready, because he had to go for and bury the bones of some deceased of the Miami according to the custom of the Nanticokes. All the same, he still wanted to send along with Samuel some of his things as proof that he really intended to come once the burial ceremony was over. However, Samuel did not accept the belongings, for he did not believe his brother.

In the evening 28 canoes came down from above us with Chippewas and camped here. Their chief had sent ahead a scout to report their imminent arrival, and at the same time to request food and tobacco. The scout said they all intended to fire off their rifles on their arrival as a salute. We sent word to them, firstly, why should they request permission to arrive here? But secondly, they could

This passage is most interesting for its discussion of a Nanticoke Indian burying the bones of Miami according to Nanticoke practices. At the time of Zeisberger's late eighteenth century writing, most Miami were located in western Ohio and central Indiana (Callender 1978b:681). C.C. Trowbridge, an administrator for Indian affairs, described Miami burial practices in an 1824-1825 report to Governor Lewis Cass of the Michigan Territory (Kinietz 1938:v-vi, ix-x). The report by Trowbridge notes that the Miami would bury the deceased in an extended position in an individual grave generally lined with planks or bark. On the other hand, some individuals would request burial above ground in either a log-enclosed structure, where the deceased would be in a sitting posture, or upon a scaffold. Trowbridge was emphatic that the Miami Indians did not retrieve the bones of the deceased as did the Nanticokes (Kinietz 1938:30-32).⁶

Bachman – 1846.

While some of the Nanticokes were staying with the Delaware and other Indians in Kansas in the mid-nineteenth century, Rev. H.C. Bachman recorded the perpetuation of several Nanticoke mortuary practices at the Moravian mission in Westfield. His diary entry of 24 September 1846 described the following scene:

Today the heathen (1 1/2 miles [2.4 km] from here) dug up a body or corpse that had been buried for a year. It belongs to the Nanticoke Nation, and according to the usage of that Nation it was re clothed and for more than a day there was dancing and whiskey drinking. Although this celebration was so far from us, we could clearly hear the racket evening, night, and morning [in Weslager 1983:187].

Weslager (1983:187) commented that Rev. Bachman most probably was referring to the Skeleton Dance of the Nanticokes (see Harrington 1921:183-184; Speck 1937:143-144). Evidently this dance or ceremony was practiced till around 1860 by those Nanticokes living with the Delaware Indians in Kansas. Speck (1937:145-146), who conducted ethnographic research from 1928 to 1932 with Delawares and descendant Nanticokes living in Oklahoma, concluded that Nanticoke assimilation and loss of native language caused the ceremony to cease. However, Speck (1937:146-149) succeeded in obtaining a description of the Skeleton Dance or Ghost Dance.⁷ The ceremony, which occurred after initial platform burial and subsequent interment of the corpse's remaining soft tissue, entailed placing skulls and other bones on and near posts erected to correspond with the year's number of deceased, and it continued with drumming, singing, and dancing throughout the night. A Delaware informant of Speck (1937:149) whose mother had participated in the Ghost Dance back in Kansas recalled additional details of the ceremony, including shaking of the bones and feasting. It seems that Delawares, at least those of the Wolf clan (Munsee, according to Marshall Becker, personal communication 2005), practiced the ceremony till the mid-nineteenth century, while recognizing that it originally was from the Nanticokes (Harrington 1921:183-184; Speck 1937:143-144).

southern tribes. In this connection, Feest (1973:6) has pointed out that groups throughout the southeastern Algonquian region used the term "Quioccosan house" to refer to temples which could enclose the remains of the ruling classes. Speck (1927:35, 1937:124) further argued that the Nanticokes passed on the practice to the Delawares through a common Wolf clan. Apparently some Delaware Indians transported human bones from one place to another following initial treatment of the remains at least by the 1600s (Thomas 1912:340 [1698]).

Feest's (1973) survey of ethnohistorical evidence for burial customs in Algonquian groups of North Carolina, Virginia, and Maryland generally found that treatment of the dead varied by social class. Additionally, despite archaeological evidence to the contrary, he found no written sources on ossuary burials. This absence of ethnohistorical records may be due to the difficulties colonists would have had observing such infrequent burials (Feest 1973:7).

One reason why the Nanticokes continued into and throughout the eighteenth century the practice of secondary burial with the carrying of human remains to new settlements is related to the exposure of the Indians to Christian customs. Rountree and Davidson (1998:133) have assembled evidence that the Anglican clergy of the Eastern Shore did not actively pursue missionary activities with the Nanticokes. While Christian proselytizing was much more prevalent to the north, these mortuary customs—basic elements of human culture—were also slow to change. In addition, it may be that some Nanticokes retained this facet of their culture in the mixing bowl of interacting peoples in Pennsylvania and beyond in order somehow to reduce the stress of migration and to assert their uniqueness.

Apparently the Nanticokes' mortuary traditions began to change in the nineteenth century. As noted earlier, assimilation and native language loss apparently led to cessation of the Skeleton Dance among Nanticokes in Kansas by 1860 (Speck 1937:145-146). Researchers of the late nineteenth and early twentieth century Nanticokes of southern Delaware noted no continuation of the earlier mortuary custom (Babcock 1899; Speck 1915). Also, after Speck (1922:4, 9) studied Nanticoke descendants near Brantford, Ontario, he reported that the custom of secondary burial, which had been carried by emigrants from the Delmarva Peninsula, eventually was forgotten by the early twentieth century and replaced by Christian practices.

A final but significant aspect of ethnographic commentaries on the Nanticoke burial practices concerns the symbolism or meaning of the customs. Unfortunately, as Weslager (1983:174) astutely pointed out, "none of the early explorers or settlers bothered to learn the reason for what must have seemed a curious way of treating their dead." If they did ask Nanticokes why they had their specific mortuary customs, they failed to record the answers. Regrettably, even the later observers of the Nanticokes did not focus on explaining the burial traditions. One hint on why the Nanticokes transported bones from one region to another is found in the Provincial Council of Pennsylvania's (1851:707) 1757 minutes, which noted that they wanted the bones of their friends "buried with their Relations." Also, an explanation for another aspect of the mortuary practices is in R.C. Adams' 1890 account of the Skeleton Dance which had been borrowed from the Nanticokes by the Wolf clan of the Delawares: The dance was "given as a memorial to the dead [and] was supposed to clear a way for the spirit of the deceased to the spirit land" (in Speck 1937:143). Speck (1937:142) found a parallel here with certain southeastern tribes who believed that secondary burials released the souls from association with their living relatives.

were cleaned was a practical one--to make them easier for carrying from one settlement to another (Odette Wright, personal communication 2005). Of course, a systematic survey of Nanticoke elders from southern Delaware and from descendant groups elsewhere might reveal additional explanations of the traditional mortuary practices not influenced by modern publications. However, such an ethnographic field project is beyond the scope of this paper.

ARCHAEOLOGICAL EVIDENCE

The Nanticokes probably are descended from the Late Woodland Indians of the Slaughter Creek complex (ca. A.D. 1000 – European contact) who used Townsend pottery in central and southern portions of the Delmarva Peninsula (Custer 1984:149; Custer and Griffith 1986; Rountree and Davidson 1998:26). It is difficult to identify prehistoric precursors of ethnohistoric tribes in this area of diverse ethnic and political groups, but archaeologists have found human remains evidencing reburial (Custer and Griffith 1986:34, 52-4). Unfortunately, much of the information on early excavations of Slaughter Creek sites is minimal and does not include results of inspections of skeletons for bone scraping; on the other hand, some of these data indicate partial dismemberment of corpses (Thomas 1973). The following paragraphs highlight several archaeological projects involving human burials in areas once occupied by the Nanticokes from the Eastern Shore of Chesapeake Bay to their migratory settlements.

With respect to archaeological research in Maryland, in the late 1940s Weslager (1948:119-123) noted the lack of data on the Nanticokes and their burials. However, during his own avocational investigations he learned that Indian skeletons had been unearthed during commercial excavations at Riverton, Maryland; regrettably there was no information on the nature of these burials (Weslager 1948:122). Curry's (1999) summary of data on ossuaries in Maryland notes that at least two such Indian burial places have been identified in the Nanticoke's heartland of the Nanticoke Drainage. Indian Bone Ossuary (18DO96), near a tributary of the Transquaking River, evidenced 20 to 25 adult burials along with "8 or 9 'French Beads,' one pendant, one coiled copper earring, two glass beads, two gorgets, three rolled brass tubes, a stone knife..., one dart, and a copper pendant (or breastplate)", dating from the Contact period of about 1635 to 1665 (Curry 1999:57-58, Table 3). Also, Henson Ossuary (18SO149), by the Manokin River, appeared as a 1-m long oval pit with the remains of one or two adults and one juvenile. The concentration and orientation of the long bones at the Henson site may indicate bone bundling. With the lack of associated artifacts, it was not possible to assign a secure date to the ossuary, but Curry (1999:58-59, 69, Table 3) supposed it might be from around A.D. 1500. The location of these sites in the Nanticoke Drainage and some evidence for skeletal reburial at Henson Ossuary indicate they could well be associated with Nanticoke Indians or their precursors (see Curry 1999:69).

Busby (2000) later conducted a survey and limited excavation within the post-Contact Chicone Indian Reservation (Chicacoan per Feest 1978:Figure 2) in Dorchester County, Maryland. Her research focused on site 18DO11, which had earlier been identified as the Nanticoke village of Chicone Indian Town. She discovered that the site's main occupation dated from the Late Woodland through Contact periods. Her finds

the remains were transferred to Native American representatives for reburial. While archaeological details of this ossuary must await publication, results of the skeletal examination are available. Among the 35 skeletons were 14 males, 13 females, and 8 individuals of undetermined sex. Their ages at death ranged from newborn to 60 to 69 years with an average age of 30.5 years. Despite considerable damage associated with their discovery, the skeletons evidenced no perimortem skeletal processing. However, there had been some postmortem burning of defleshed skeletons and one example of the "collection of ash and burned bone in an unburned cranial cap" (Dana Kollman, personal communication 2005). Given the location of the Harbor Point Ossuary and the evidence for some postmortem processing of skeletons, the remains could be related to the Nanticokes or a neighboring Algonquian group.

Regarding finds in Delaware, an early nineteenth century discovery of aboriginal human remains in the Nanticoke drainage took place near Laurel. Workmen who were digging earth for fill near a stream encountered "several wagon loads of bones and left a large quantity still remaining in the earth. The skeletons ... [were] laid side by side and each bone in its proper place" (William Huffington cited in Weslager 1942:144). Elderly individuals who lived nearby recounted how Nanticoke Indians had gathered here in the mid 1700s shortly before emigrating. The Indians had brought the bones of their dead here for reburial amid ceremonies (Weslager 1942:144-145). Weslager (1983:175) believed that this ossuary was probably associated with Nanticokes who left the Broad Creek reservation in the 1740s. While recording oral traditions of the Nanticoke community of southern Delaware, Speck (1915:37) learned of a low sandy mound near Millsboro and about 2.5 km from Indian River. The mound evidently once had served as a "repository for the dead" or site of a mortuary house. A test pit conducted with his Nanticoke guide recovered brick and glass bottles said to have been obtained from early European traders.

In the mid-1930s D.S. Davidson (1935) of the University of Pennsylvania excavated five human burials at the Slaughter Creek site (7S-C-1), located some 16 km southeast of Milford. Later work has shown that the site is a macroband base camp of the Late Woodland (Woodland II/Slaughter Creek complex) period (Custer 1984:159-161). According to Davidson (1935), the burials included males and females and evidenced different mortuary treatment. One female had a partially disarticulated skeleton in an undisturbed pit and was covered by a thin layer of charcoal. It seems that there had been an attempt to place her bones in the pit in anatomical position. A second female skeleton was situated "in a partially upright flexed position" with skeletal elements which generally were articulated. Finally, three disarticulated male skeletons were found nested in a single grave that had been dug into a refuse pit. Davidson (1935:91) believed that the skeletons were of Nanticoke ancestors, and the graves' age and location would seem to affirm this. While the variety of mortuary treatments may indicate changes in burial practices over time, they might instead reflect different stages in the interment of the dead for a society with a single tradition.

More burials at sites of the Slaughter Creek complex are reported near Lewes (Townsend site [7S-G-2]) and Rehoboth Beach, Delaware (Custer 1984:161-162). These could also be from early Nanticokes (cf. Goddard 1978: Figures 1, 2). Human remains at the Townsend site by Lewes were recovered from several pit features, including a plow-truncated "trench" measuring 1.2 m wide and 6.1 m long. T. Dale Stewart identified 14 males and 29 females among 58 individuals (36.2 percent aged between birth and 20 years). His analysis recorded several pathologies but noted no marks on bones indicating perimortem skeletal

monument identified fire hearths, as well as Late Woodland artifacts and eighteenth-century Euroamerican items. In spite of these finds (from site 36BR80), the interpretation of aerial photographs showed that Friedenshütten proper was some 60 m away (Delaney 1973). Apparently additional testing of Friedenshütten and more thorough publication of the earlier work did not occur (Kent 1993:305; Noel Strattan and Stephen Warfel, personal communications 2005).

One example of archaeological research in Ohio concerns Schönbrunn, a mission of the Moravians in the Tuscarawas drainage during the 1770s. Moravian records list the individuals who were interred in the Indian cemetery between 1772 and 1777; the persons include Delawares, a Cherokee, and three children of Samuel and Sarah Nantikok (sic) (Weinland 1925). Archaeological testing took place in 1927 to help with marking the graves and reconstructing the village. That work located 45 burials, which apparently had been done in a Christian manner. It was possible to identify at least some specific individuals, but no details of physical anthropology were published (Olmstead 1991:xii, 1997:213; Weinland 1927).

A final illustration of archaeology at a site frequented by Nanticokes concerns Fairfield, Ontario. In the 1940s Wilfrid Jury of the University of Western Ontario conducted excavations at Fairfield to find remains of the Moravian/Indian village's buildings and associated cultural material and to compare these finds with descriptions of the settlement in Zeisberger's diary and a village map of 1793 (Jury 1945, 1946, 1948). His research found house floors, cellars, burnt clay chinking from log walls, a variety of aboriginal and Euroamerican artifacts, and preserved foodstuffs. Additionally, the layout of the excavated structures well matched that of the late eighteenth century map. Jury (1945:3-5, 24) was aware of the location of Fairfield's associated cemetery, but his research plans did not include investigation of Native American graves.

ISSUES FOR ARCHAEOLOGICAL INTERPRETATION AND REPATRIATION

The firsthand and contemporary accounts of Nanticoke burial practices compiled here offer a more complete sense of the traditions than those provided by earlier historians and anthropologists. The accounts reveal several common elements plus a few rarely reported particulars. In addition, the ones of the eighteenth century and the nineteenth century have somewhat different emphases. These differences may relate to acculturation of the Indians, other variability in the burial traditions, and changing goals of the Euroamerican chroniclers. In any event, it is useful to summarize the mortuary practices according to the observations made in the two centuries.

During their eighteenth century migrations to and within Pennsylvania, Ohio, and Ontario, the Nanticokes generally placed the body of a deceased person in either an excavated grave or in a crib-like structure above the ground. After a period from three months to a year or more following the funeral, they would remove the corpse, cut and scrape off the remaining flesh, and wash the bones. The Nanticokes would then bury the cleaned bones. At least sometimes they treated only the limb bones in this manner—binding them somehow in linen; and they more simply buried or burned the remainder of the corpse. A ceremony and feast accompanied the reinterment.

The additional noteworthy component of the mortuary practices in this period was the transport of

The few accounts of nineteenth century Nanticoke burial practices in Kansas concerned the Skeleton Dance. This event began with the removal from graves or above-ground platforms of the corpses of those who had died within the past year. (Remaining flesh apparently was buried.) Representatives then would erect a post for each of the deceased, place the skulls on top of the posts, and dress the posts and/or remaining bones of the deceased individuals in clothing. Thereafter, a celebration with feasting, singing, and dancing around the posts took place from evening till morning. Presumably, the bones were interred in an ossuary following the ceremony.

These descriptions of Nanticoke mortuary practices present several issues for archaeologists who interpret aboriginal graves in regions where the Nanticokes dwelled and where other migrating peoples sojourned. There have been few detailed examinations of archaeologically retrieved burials that may be Nanticoke. The studies which have been done in their early historic heartland of the Delmarva Peninsula reveal a measure of variability in the graves: for example, single and group or ossuary burials; articulated and disarticulated bones, some of which may have been bundled or burned. Of course, it is not surprising that a single sociocultural group will exhibit diversity in its mortuary practices according to the social persona of the deceased and the dynamics of the living grievers (Binford 1971; Pearson 1999:32). Archaeologists could match several of the burial attributes observed in the excavations of Delaware and Maryland with the Nanticokes, including the disarticulation of skeletal elements and reinterment with possibly bundled bones.

One of the challenges in identifying Nanticoke burials archaeologically is to recognize that some of the observed mortuary variation could derive from a particular grave representing just one stage in the series of events constituting Nanticoke burial practices. Also, it is important to realize that the ethnographic descriptions of the mortuary traditions are probably far from thorough (e.g., lacking information on topics like the spatial patterning of burials within settlements). Furthermore, when neighboring groups acquired aspects of a burial custom as the Delaware Wolf clan evidently did from the Nanticokes, it could be most difficult to assign interments to one of the societies.

Migrations and relocations of sociocultural groups like the Nanticokes can further encumber the identification of the ethnicity of human burials. The Nanticokes' burial traditions persisted for over a century as the group spread to the north and west in regions with a multitude of tribes. The Nanticokes' contact with other aboriginal cultures may have been especially frequent when they were in Pennsylvania, New York, Ohio, and Ontario (Bliss 1972 [vol. 1]:xxvii; Elliott 1977; Jordan 1922:72; Weslager 1943:350, 1983:181-184). A mapping project focusing on eighteenth-century Indian towns in Pennsylvania found that certain settlements were occupied sequentially by one or several different tribes, while other individual towns were inhabited contemporaneously by members of a number of aboriginal groups (Kent et al. 1981:12-13; cf. Becker 1988). Nanticoke burials, including the secondary interments of transported remains, might appear to be out of place in the new regions, but it would be difficult to confidently assign the graves to Nanticokes without detailed historical records. Several archaeologists have noted similar problems with identifying particular ethnic groups among refugee Indians (e.g., Kinsey and Custer 1982).

Finally, the Nanticokes presented the ultimate interpretive challenge with burying friends from other tribes according to Nanticoke customs. This situation could occur elsewhere with the deaths and interments of captives or traders. It would seem hardly possible to identify the cultural affiliation of the deceased in such

archaeologists to state their evidence for or against determining cultural affiliation of specific remains and provide Indians swifter yet considered resolution of cases. Hopefully the insights learned from this study of the Nanticokes may encourage archaeologists and Native Americans to formulate and implement research plans together in a spirit of cooperation when burials might be found.

END NOTES

¹Ubelaker (1974:11) has stated that a 6 May 1686 entry in the Maryland Archives indicated "Nanticokes at Assateague saved the bones of their leaders." However, the passage in question, while relating the theft by an English colonist of the skins and roanoke wrapped around a deceased Indian king's bones, does not refer to Nanticokes in the list of Indian groups living in this town (Archives of Maryland Online Vol 5:479-480).

²Weslager (1983:174) believed that this passage by Heckewelder could refer to removal of bones from a Chiacason House rather than unearthing of remains (and see Weslager 1945:106).

³According to Bliss (1972 [vol. 1]:xxvii), most of the Christian Indians in the Moravian missions – at least in Ohio – were Munsee-speaking Delawares. However, it is clear from even the few diary entries of the missionaries reported below that a number of other Native American groups, including Nanticokes and their descendants, spent at least some time visiting or living in the missions from Pennsylvania on to Ontario.

Jordan (1922:78) provided an abridged translation of this diary entry with less social context. He also noted that Anton was a Delaware Indian who continued to live and serve with the Moravians as they moved to Ohio (Jordan 1922:70; and see Olmstead 1997:213). Johannes was the baptismal name of Papunhank, a Munsee-speaking Delaware from near Wyalusing who had requested a Moravian teacher for his village; this led to Zeisberger's visit and their long association (Olmstead 1991:181, 1997:113, 384-385). Olmstead (1997:382) commented that later in 1766 Zeisberger baptized Sam the Nanticoke and the latter was active in the Moravian congregation for 40 years.

⁴In this passage, "Wajomick" probably refers to Wyoming. Lawanakhanack (or Lawunakhanek) was a settlement where David Zeisberger had undertaken missionary work along the Allegheny River (Olmstead 1991:10).

⁵In this passage, "the look out (*die Warte*) on Lake Erie" apparently refers to "The Watch Tower," the Moravian mission on the Detroit River by Malden Centre, Ontario (Olmstead 1991:87). Samuel was the baptismal name of Sam the Nanticoke (Olmstead 1997:382). Alexander McKee was a British Indian Agent based in Detroit who assisted Zeisberger in finding land for the Fairfield mission (Olmstead 1991:37, 92-93). Gottlob Sensemann (1745-1800) was a Moravian missionary who served at several missions, including Fairfield (Bliss 1972 [vol. 1]:xxiii). Bliss (1972 [vol. 2]:482) provided another version of Zeisberger's May 5th diary entry; while his freer translation still noted the burial of Miami remains according to Nanticoke custom, it contained additional unrelated notes that Zeisberger apparently had not fully copied from his private journal for the official records sent to the Moravian headquarters in Bethlehem, Pennsylvania (see Bliss 1972 [vol. 1]:ix).

⁶Earlier contact-period accounts of burial practices cited by Kinietz (1965:161-162, 208-211) may mix customs of the Miami and Illinois Indians (cf. Callender 1978a:676).

decaying and falling off, to be gathered and buried right in front of where the corpse stood. And there, sometime afterward, all the bones and the skull to be used when they had their Ghost Dance.

According to the number of persons who had died during the year, they chose representatives of the dead persons. And they erected as many posts, as high as a person's head, as the number of dead during the year and there they fastened the skulls (one at the top of each post). And besides, they tied a cross piece of wood and dressed up the figure of the man or woman like a doll, upon it (beneath the skull). And they put the bones of the deceased right opposite each of the posts. Now, when it has become dark, they begin their dance. Everybody who is to take part in the dance is named, also those who do the singing. And each performer is ceremonially presented with wampum, also the leader of the dance. They dance (in a circle in front of the posts, bearing the skulls and effigies moving counter-clockwise) all night. And when it is beginning to be daylight, they sing the last song, these drummers and singers. This is what they say in the song, according to tradition, "You said before you died, 'I will come when you call me!' Now here I am calling you."

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APPENDIXES

The following appendixes contain the three diary entries from Moravian missionaries David Zeisberger and Johann Schmick that I transcribed from photocopies of the original, older German handwriting. Prof. Emeritus James C. King of The George Washington University edited the content and style of my transcriptions and subsequent translations. Occasionally the missionaries mixed English letters with their German script. More commonly their journal entries evidenced unusual spelling and grammar. Sections of the transcriptions in brackets indicate words or phrases that are abbreviated, missing, syntactically peculiar, or incompletely legible in the photocopies. Elements in parentheses represent alternative spelling and punctuation. One may compare the German transcriptions with the copied diary entries (Figures 1-3) or with the original journals at the Moravian Archives in Bethlehem, Pennsylvania.

Appendix 1. David Zeisberger's Diary from Friedenshütten (Wyalusing), Pennsylvania, February 2, 1766.



Figure 1. David Zeisberger's February 2, 1766, diary entry from Friedensshütten (Wyalusing), Pennsylvania. Courtesy Moravian Archives.



Appendix 2. Johann Schmick's Diary from Friedensshütten (Wyalusing), Pennsylvania, September 26, 1769.

[Dienstag]. d[en] 26[s]ten Gingen etliche Nantigogs[,] die gestern von Wajomick mit des kürzl[ich] in der Susqueh[anna] ersoffenen Senneker Georgs Gebeinen hier angekommen [waren.] wi[e]der fort u[nd] nahmen im Weggehen Welschkorn von der Geschw[ister] Plantagen mit. Abends kamen zu unsrer u[nd] der Ind[ianer] Geschwister grossen Freude 2 Indianer von Lawanakhannack in 19 Tagen hier an, einer der A[.] Johanna u[nd] der andre der Eva Freund. Sie brachten uns auch einen erfreul[ichen] Brief von unserem I[lieben] Br[uder] David Zeisberger[,] woraus wir manches [E]rfreuliche u[nd] besonders, dass sie alle gesund u[nd] in Ruhe u[nd] sel[igen] Got[tes] Frieden [beisammen sind,?] ersahen, u[nd] [wir Ihm?] da[für] von Herzen dan(c)kten. Diese 2 Männer brachten der Regina leibl[ichen] Bruder[,] einen [ordentl[ichen]?) Knaben[,] von Coschoscshiny zum Hierbleiben, weil seine Mutter daselbst gestorben se[i]. [Moravian Records 1769: Box 131, Folder 6]

Appendix 3. David Zeisberger's Diary from Fairfield, Ontario, Canada, May 5, 1797.

d[en] Sten Ma[i] Von der Warte am Lake Erie kam der Helfer Samuel zurück, der seiner Abrede zufolge im Winter mit seinem Bruder[,] dahin gegangen war[,] ihn abzuholen, u[nd] nun da Samuel kam[,] war er nicht fertig, weil er die Gebeine einiger Verstorbenen von der Miami zu holen u[nd] zu begraben hatte nach Gewohnheit der Nantigogs. Insof[er] wollte Da

sie [bitten] sol[|]ten[, hier einzulangen], das andre aber könnten sie unterlassen, welches auch geschah. Ein paar Diener gingen von Haus zu Haus, samm[el]ten Essen u[nd] Korn[,] welches sie dann abholten u[nd] sehr dankbar waren.

Vom Al[exander] McKee[,] Agent of Indian Affairs, an welchen Br[uder] Sensem[ann] geschrieben hatte, erhielten wir etwas Kleidung für unsre Alten u[nd] Schwachen mit dem Versprechen[,] künftigen Herbst im Stande zu se[i]n[,] uns mehreres zu t(h)un[,] da er je[t]zo knapp an Vor[r]at se[i].

Abends sangen wir: Jesu deine Passion ist mir lauter Freude.
[Moravian Records 1797: Box 161, Folder 3]

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Figure 3. David Zeisberger's May 5, 1797, diary entry from Fairfield, Ontario, Canada. Courtesy Moravian Archives.

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Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1409

November 1, 2005

Dr. Tom McCulloch
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, Northwest
Suite 809
Washington, DC 20004

Dear Dr. McCulloch:

This is in response to your September 14 request for comments concerning the Advisory Council on Historic Preservation's (ACHP) "Working Principles" section of its "Policy Statement Regarding Treatment of Human Remains and Grave Goods." TVA agrees with the "Working Principles" that ACHP has established for revision.

Thank you for the opportunity to review and comment on this policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn J. Jackson".

Kathryn J. Jackson
Executive Vice President
River System Operations & Environment

Laura Dean

From: Archeol AP. Project
Sent: Friday, November 04, 2005 3:33 PM
To: Laura Dean
Subject: FW: Working Principles on Treatment of Human Remains and Grave Goods - comments

From: jack trope [mailto:jt.aai@verizon.net]
Sent: Fri 11/4/2005 1:09 PM
To: Archeol AP. Project
Subject: Working Principles on Treatment of Human Remains and Grave Goods - comments

To Whom It May Concern:

Thank you for the opportunity to comment upon the draft principles for revising the Advisory Council's Policy Statement on Human Remains and Grave Goods.

The Association on American Indian Affairs is an 83 year old Indian rights organization located in Maryland and South Dakota that is governed by an all Native American Board of Directors. The Association played an active role in obtaining the enactment of NAGPRA and has worked to repatriate both human remains and sacred objects to Indian tribes. We are also very familiar with the section 106 process as we have used that process to advance our efforts to protect Native American sacred sites.

We have reviewed the "Draft Working Principles for Revising the Advisory Council on Historic Preservation's Policy Statement Regarding Treatment of Human Remains and Grave Goods" and have the following comments.

We support Principles 1 through 3 and Principle 6, particularly the emphasis that is placed upon avoidance, followed by preservation in place. We believe that this emphasis reflects the preferences of tribal communities. We also agree that it is desirable for agencies to have policies in place.

We have serious concerns, however, about the underlying approach of Principles 4 and 5, however. In short, Principles 4 and 5 set out a process where all parties are consulted and decisions are made after considering all viewpoints. The Government-to-Government relationship is said to have "a bearing" on agency decision-making and the principles suggest that agencies develop policies as to how the views presented by the different policies ought to be weighed.

On its face, this appears to be a substantial retreat from the principles recognized as federal policy in the Native American Graves Protection and Repatriation Act. Congress enacted NAGPRA to address what it deemed to be a human rights issue -- the sordid treatment of Indian human remains and funerary objects over the ages. Remains of tribal ancestors had been treated as artifacts to be studied, without the sanctity accorded to the burials of non-Indians. To address this historic and ongoing wrong, Congress specifically provided for ownership and control by tribes of imbedded human remains and funerary objects discovered on federal and tribal lands where a tribe is culturally affiliated with the remains or the remains are discovered on tribal land or land that has been legally recognized as the aboriginal land of a tribe. In such cases, there is no weighing of interests that takes place. The tribe is entitled to make decisions about the disposition of the remains and objects.

Your proposed policy statement rejects this approach and goes back to the pre-NAGPRA idea of a case-by-case balancing with no special deference to the tribe's point of view. We believe that this is an unacceptable retreat from the principles recognized by Congress when it enacted NAGPRA. Any proposed policy that addresses the treatment of human remains and funerary objects discovered as part of the section 106 process -- regardless of whether they are technically covered by NAGPRA -- should adopt NAGPRA principles. Specifically, the policy should recognize the overriding tribal interest in such remains and objects -- particularly where the remains and objects are culturally affiliated or discovered on tribal or aboriginal land.

We recognize that there are disagreements about how so-called "unaffiliated remains" that are discovered on non-tribal/aboriginal land should be handled. (In general, tribes have stated that tribes ought to have the decision-making

11/4/2005

authority in regard to those remains as well -- a position that our organization supports.) Perhaps in that limited circumstance, a process such as the one laid out in the draft principles would be appropriate on a temporary basis --until that issue has been resolved. But a neutral balancing process should not be the basis for a federal policy that applies to all human remains and funerary objects that are discovered during the section 106 process.

Moreover, we would note that it is likely that in most of the instances where grave sites are discovered during the section 106 process, NAGPRA will apply. That should be made clear in the Policy Statement.

Finally, we believe that the draft principles should encourage agencies to provide financial assistance to tribes to fully engage in this process and to repatriate human remains and funerary objects. Too often, tribes are unable to exercise their rights in regard to human remains and funerary objects because of financial considerations.

Thank you for considering these comments.

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November 1, 2005

John M. Fowler
Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Washington D.C. 20004

Re: Working Principles for Revising the Advisory Council for Historic Preservation's
"Policy Statement Regarding Treatment of Human Remains and Grave Goods" (Federal
Register Vol. 70, No. 169, September 1 2005)

Dear Mr. Fowler:

The American Cultural Resources Association is pleased to offer comments on the Working Principles developed by the Archaeology Task Force. We applaud the Council's efforts and stand ready to assist in any way we can.

As we emphasized in our July 15th letter, no area of the Council's responsibilities is more complex than the issue of human remains and associated grave goods. The subject arouses strong emotions and has the potential to create polarized positions of the type that are only too familiar today in our wider culture. The chief dichotomy is normally seen as that between a secularist "scientific" worldview, and a religious or "spiritual" one. The former view, at its most extreme, sees human remains as essentially another type of archaeological resource to be studied in whatever way seems appropriate in order to extract from them information about the human past. The latter view, at its most extreme, sees human remains as inviolable entities falling completely outside other categories of material from the past, and therefore not to be subjected to any form of human disturbance or invasive investigation.

As with all extreme positions, we believe that these ones are held by only a small number of those with an interest in this matter. There is a large and, we believe, a growing middle ground on which discussion and agreement is possible.

The situation is of course made more difficult by the fact that, until the relatively recent past, variations of the scientific worldview have been imposed by the dominant culture on groups who did not share it. These groups, particularly of course Native Americans and people of African descent, often held more closely to the second viewpoint, but were unable to have their voices heard. Disrespectful and cavalier treatment of human remains has undoubtedly occurred against the wishes of those with strong ties to those remains. It is not hard to understand that there are issues of power and racism embedded deep within this issue.

The reflexive, emotional, concern in the archaeological community has been that its reasonable and legitimate interests in furthering understanding of the human story,

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through the scientific examination of human remains, will be overlooked in an over-zealous interest in following the wishes of groups having, or claiming affinity with, the remains. We say this not because that has necessarily been the general experience in reality, but rather to make explicit some of the feelings that remain associated with this topic.

The Working Principles have been reviewed by our Government Affairs Committee and by Cory Dale Breternitz, President, Soil Systems, Inc., Christine K. Robinson, Vice President, Soil Systems, Inc., and Rebecca Hill, Staff Osteologist, Soil Systems, Inc. Soil Systems, Inc. has excavated, analyzed, and repatriated over 3,000 human remains and associated funerary items to various Tribes throughout the American Southwest in the past 15 years, and therefore have much experience in this complex area.

The four preliminary points set out the parameters of the policy. The inclusion of "all people" in the policy is to be welcomed.

Principle 1 is an obvious but important one.

Principle 2 is a very-much needed objective. Clarification of the relationship between Section 106 and NAGPRA, for example, will be very helpful for Federal agencies and those working on their behalf.

Principle 3. Is it the implication of this principle that human remains are de facto eligible for the National Register? The question of the eligibility of human remains is likely to come up in a Section 106 context. In view of the current moves in Congress to limit the applicability of 106, this may be a matter that the Task force should consider.

Principle 4: "...meaningful consultation with all *interested parties*..." (emphasis added). It has been the experience of our member company, Soil Systems Inc., that the concept of interested parties is currently a gray area and one that is, or can be, a source of frustration on the part of the participants during consultation. The concept of "interested parties" seems vague. Perhaps this is the intent, but in our experience it can lead to frustration and potential conflict during the consultation process. We suggest that the Working Principles include a list of "potential" interested parties that include; groups claiming ethnic and/or genetic affiliation, archaeologists, osteologists, the agency responsible for compliance under Section 106, the company or agency responsible for the development project, SHPOs, THPOs, etc.

Principles 5 and 6 are very helpful and should provide clarity for Federal agencies working with 106.

Overall, the Working Principles as outlined in the Federal Register make an effective basis for the policy revision, and we believe that the future development of these principals will clarify the repatriation and consultation process to be conducted under Section 106.

Thank you again for allowing us to comment on this issue. We look forward to continuing to work with the Council.

Yours sincerely



Ian Burrow, Ph.D., RPA, FSA
President

NOV - 4 2005

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November 4, 2005

Archaeology Task Force
Advisory Council on Historic Preservation
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Washington, D.C. 20004

Re: Comments on Working Principles for Revising the ACHP "Policy Statement
Regarding Treatment of Human Remains and Grave Goods."

Dear Archaeology Task Force Members:

I am writing in response to the Federal Register Notice, dated September 1, 2005, to provide comments on the Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods." These comments are respectfully submitted on behalf of my client, the Working Group on Culturally Unidentified Native American Human Remains ("Working Group"). The Working Group is composed of prominent Native American leaders who are experienced in grave protection and repatriation issues and who are especially concerned about the classification, treatment and disposition of unknown Native American dead (i.e., that category of Native American dead whose next-of-kin or cultural affiliation are currently unknown).¹ We appreciate this opportunity to provide comments to assist the Task Force in better understanding unique issues, values and law pertaining to Native American dead in the United States.

As we understand the Notice, the Task Force is presently considering whether and how to update the ACHP's 1988 "Policy Statement Regarding Treatment of Human Remains and Grave Goods" to guide decision-making by federal agencies in "questions

¹ Working Group members include: Wallace Coffee, Chairman, Comanche Tribe; Mervin Wright, Jr., Pyramid Lake Paiute Tribe; Peter Jemison, Seneca Nation NAGPRA Representative; James Riding In, historian and repatriation consultant to the Pawnee Nation; Suzan Harjo, President, Morning Star Institute; Ho'oiopokalaena 'auao Nakea Pa, Chairwoman, Native American Rights Fund; Kunani Nihipali, Hui Malama. Mr. Jemison is, of course, a member of the Advisory Council on Historic Preservation (ACHP) and will have his own additional comments in that capacity.

involving the treatment of human remains and funerary objects in the absence of Federal or State law circumscribing the treatment of human remains and funerary objects." Federal Register, Vol. 70, No. 169 (Sept. 1, 2005) at 52067. To that end, the Task Force is requesting comments on five Working Principles for use in revising the 1988 policy. Our comments on the Working Principles follow.

A. There Is Little or No Need For An ACHP Policy. As a preliminary matter, it is clear that the 1988 policy, which was aimed primarily if not exclusively at Native American dead, is outmoded by the passage of federal and state legislation and should be rescinded. In particular, the portion of the policy that places the interests in scientific research over the rights of next-of-kin flies in the face of the Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. 3001 *et seq.* (NAGPRA) and statutes in all fifty States. However, we respectfully question the need to promulgate an ACHP policy for Native American dead. Existing Federal and State laws that specifically pertain to, or otherwise protect, Native American dead are comprehensive in most jurisdictions. Consequently, situations needing ACHP policy guidance may be rare because Federal and State laws already prescribe certain outcomes.

For example, all federal agencies and museums, except the Smithsonian Institution, are now subject to the policies, procedures and requirements of the Native American Graves Protection of 1990, 25 U.S.C. 3001 *et seq.* (NAGPRA). The Smithsonian Institution is subject to the repatriation provisions of the National Museum of the American Indian Act of 1989, 20 U.S.C. §§ 80q *et seq.* These federal laws set minimum human rights standards governing the classification, treatment and disposition of Native American dead who are in the possession of federal agencies and museums and those Native American dead who will be found on federal or tribal land in the future. No ACHP policy can, or should, supplant or water down those minimum standards and requirements, nor create inconsistent federal standards regarding Native American dead.

In addition, many states have enacted laws since 1988 that specifically protect Native American graves and govern the disposition of disinterred Native American dead. Those laws which were in effect as of 1991 are referenced and summarized in the following sources: H. Marcus Price III, *Disputing the Dead: U.S. Law on Aboriginal Remains and Grave Goods* (Univ. of Missouri Press, 1991), pp. 41-115 (identifying 27 state laws as of 1989 that specifically pertain to Native American dead and burials; and other additional laws that provide extensive protections for Native American dead under general desecration and cemetery laws); David J. Harris, Note, "Respect for the Living and Respect for the Dead: Return of Indian and Other Native American Burial Remains," 39 Wash. L. J. Urb. & Contemp. L. 195, 215, n. 105-108 (1991) (As of 1911, 8 states prohibited the display or sale of Native American human remains; 7 states banned future collections of dead Indians; 17 states specified procedures for newly found remains; 9 states controlled the acquisition of human remains primarily by permit, and nearly all states have general laws that specify who has burial rights and responsibilities, describe what is to be done with unclaimed bodies, and criminalize grave robbing, grave

tampering, and unauthorized exhumation²); Catherine B. Yalung and Laurel I. Wala, "Statutory Survey: A Survey of State Repatriation and Burial Protection Statutes," 24 Ariz. St. L. J. No. 1 (Spring 1992) at 419-433 (Surveying repatriation and burial protection statutes in 17 states). Consequently, very little room is left for policy guidance.

B. Additional Working Principles Are Needed To Address Native American Concerns. In those narrow situations where no law governs the classification, treatment and disposition of Native American graves and burials, three additional Working Principles should guide the development of any ACHP policy to assist federal agencies in the classification, treatment and disposition of Native American dead.

1. *Any Policy Concerning the Classification, Treatment and Disposition of Native American Dead Should be governed by Native American human rights; and those Human Rights take Precedence over Interests in Scientific Research.* This principle was adopted in the Report of the Panel for a National Dialogue on Museum/Native American Relations (Feb. 28, 1990) (Principles 2-3); and the Panel Report provided the framework for the NAGPRA legislation. See, Trope and Echo-Hawk, "The Native American Graves Protection and Repatriation Act: Background and Legislative History," 24 Ariz. St. L. J. No. 1 (Spring 1992) at 57-58, 487-500. The need to recognize and protect Native American human rights with respect to the classification, treatment and disposition of Native American dead is of the utmost importance given the history of mistreatment of Native American dead in the United States. There is no question that scientific research done at the expense of human rights is inherently immoral. See, e.g. Robert J. Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (New York: Basic Books, Inc., 1986). That mainstream society cannot abide such conduct is well-illustrated by laws in nearly every state that carefully regulate the medical or scientific use of dead bodies and permit such research only under carefully prescribed conditions involving informed consent by the deceased or next-of-kin, such as those conditions, for example, that are prescribed in the Uniform Anatomical Gift Act (UAGA).³ All too often in American history the human rights of Native Americans were subservient to non-Indian scientific interests, giving rise to serious Equal Protection problems of disparate racial treatment that have been particularly acute in matters respecting the treatment of the dead. See, Trope and Echo-Hawk, *supra*, 24 Ariz. St. L. J. at 38-43 (and citations therein).

2. *All Native American dead are entitled to a decent burial.* The mainstream social principle that every person is entitled to a decent burial is taken for granted by most Americans. That belief is shared by Native Americans as well. Their sensibilities are expressed in the attached Resolution No. ABQ-03-068 (Nov. 21, 2003) of the National Congress of American Indians (NCAI) which is composed of over 250 tribal

² This latter category of statutes may not be directly applicable to skeletal remains, but do illustrate the deeply-embedded mainstream social values and principles that guarantee a decent burial to each person. As argued *infra*, these mainstream values and protections should be extended to Native Americans.

³ As of 1990, UAGA laws are in effect in: Alabama, Arizona, Arkansas, California, Connecticut, Georgia, Hawaii, Louisiana, North Dakota, South Dakota,

governments. According to the Resolution, disposition of Native American human remains, including culturally unidentifiable Native American dead, "must be made by the appropriate Tribes and Native Hawaiian organizations in concert with the group's customary traditional practices, wishes and beliefs" and those dead should be "speedily repatriated to Native peoples in accordance with procedures to be determined by contemporary Native American groups" for disposition without further scientific study and at government expense. The NCAI statement should be incorporated into the ACHP policy and Working Principles, because the time is now long-overdue for our Nation to take into account the needs and values of its indigenous peoples in developing American law and social policy, especially when their fundamental rights and sensibilities are affected.

Furthermore, the principle that all persons are entitled to a decent burial is embedded in the laws and policies of all 50 States and the District of Columbia that guarantee a decent burial for every person, including paupers, strangers, prisoners, unclaimed dead, and persons who die without any next-of-kin. The fundamental social values which underlie those laws should be applied to Native American dead as a simple matter of equal protection of the laws and inform, if not control, ACHP policy on this sensitive subject. Thus, where no other law is directly applicable, ACHP should look to the general statutes that guarantee a burial to inform ACHP's proposed policy with respect to Native American dead and respect the mainstream values and sensitivities of America's Native peoples. Those laws, which are summarized below, provide the appropriate policy backdrop because they firmly establish that a proper burial for the dead is a deeply engrained social norm that is widely held in mainstream American society. Federal policy should reflect widespread social norms, including Native American norms, in this sensitive area and not serve to exclude Native Americans from widely held values and protections enjoyed by Americans of other races. Otherwise, the policy would be seen as racially discriminatory and not in keeping with trust responsibility owed to Native Americans by the Federal Government. Section 106 of the National Historic Preservation Act was not intended to, nor can be relied upon to, deny Native American communities the same legal and social protections afforded to other Americans in matters respecting the dead.

For the above reasons, when no other federal or state law controls the disposition of disinterred Native American dead, ACHP policy should guarantee a decent burial for Native American dead. The principle that every person is entitled to a decent burial originated in American common law. See, Percival E. Jackson, *The Law of Cadavers and of Burial and Burial Places* (New York: Prentice-Hall, 1950) at 30-40. Statutes in every state codify that principle. ACHP policy can be derived from the following state laws that guarantee a decent burial for all persons:⁴

⁴ Many States listed below have laws that specifically pertain to Native dead, unmarked graves or have general statutes which afford Native dead significant protection. The statutory survey presented here simply identifies general states laws that guarantee a burial for every person. Such laws should inform federal policy with respect to the disposition of Native dead in those narrow circumstances when no other state or federal law applies to their disposition.

Alabama: Impoverished or unclaimed inmates, patients and unidentified bodies will be buried at public expense. ALA. CODE § 22-19-22 (2005). In the case of abandoned cemeteries, Sections 11-47-60 *et seq.* require the reinterment of human remains in a suitable cemetery.⁵ Dead Indians disinterred from burial places are at minimum entitled to the same consideration by federal agencies as part of their Section 106 compliance.

Alaska: The state pays for the proper burial of any person unable to pay for burial. ALASKA STAT. §12.65.025 (Michie 2004). This policy should be adopted by federal agencies to ensure that deceased Alaska Natives disinterred from burial places are granted a proper reinterment..

Arizona: There is a statutory duty to properly bury dead bodies, including indigents, and it is a crime to disinter or mutilate the dead. ARIZ. REV. STAT. §§ 11-303, 36-804, 36-831, 36-861 (Michie 2004). When cemeteries are vacated, Section 9-451 requires unclaimed remains to be relocated to a proper cemetery. These policies should be applied by federal agencies as part of their Section 106 compliance to afford reinterment for any dead Indian disinterred from any burial place in Arizona.

Arkansas: It is a crime to abuse a corpse; and unclaimed bodies must be properly buried after use by the University of Arkansas. ARK. CODE ANN. §§ 5-60-101, 20-17-708 (Michie 2005). Upon abandonment of a cemetery, human remains must be relocated to a proper cemetery. *Id.* §20-17-905. These policies should be applied by federal agencies as part of their Section 106 compliance to ensure that any deceased American Indian disinterred from any burial place in Arkansas is afforded proper reinterment.

California: State law prohibits the deposit of human remains in any place except a cemetery. CAL. HEALTH & SAFETY CODE § 7054.1 (West 2005). Where no person is found to take responsibility for the proper burial of indigents, the duty devolves upon the coroner at county expense. *Id.* §§ 7100, 7104. These policies support decisions by federal agencies to guarantee proper reinterment of any deceased Native Americans disinterred from any burial place in California as a part of Section 106 compliance.

Colorado: The county where a deceased indigent or welfare recipient resided shall pay for burial. COLO. REV. STAT. § 26-2-129 (2005). When human remains in abandoned cemeteries are removed, they must be reinterred in another cemetery. *Id.* §25-1-658. These policies support decisions by federal agencies to grant disinterred Native dead a proper reinterment.

Connecticut: The town in which deceased patients or indigents are found is responsible for their proper burial. CONN. GEN. STAT. § 17b-131 (2005). Even human remains

⁵ In discussing the laws which permit exhumation in *The Law of Cadavers, supra*, Jackson states at 106-122 that exhumation "is abhorrent to custom, sentiment, and the law" but allowed in limited "circumstances of extreme exigency" arising from reasons of public interest (such as criminal prosecutions) or private purposes (such as kin requesting to move the remains to a more suitable place of burial). However, exhumation simply for scientific research is not listed by Jackson as one of the "circumstances of extreme exigency" that justify exhumation of a body once permanently buried.

subjected to scientific use must be properly disposed of under Section 19a-270(a). These policies mandate that any disinterred Native dead are entitled to a proper burial.

Delaware: Indigents and unclaimed bodies are buried at public expense. DEL. CODE ANN. TIT. 31 § 110, TIT. 29 § 4711 (2005). Disinterment must be accompanied by reinterment. *Id.* TIT. 16, § 3159. The same considerations should pertain to disinterred Native dead.

District of Columbia: Bodies must be properly buried, even after medical use (D.C. CODE ANN. § 3-205 (2005)); and cemeteries must provide lots for the burial of strangers and indigents (*Id.* § 43-102). Trafficking in human body parts and grave robbing is illegal. *Id.* §§ 7-1501.01, 22-3303. These same policies can be relied upon by federal agencies under Section 106 to guarantee a proper burial for Native dead according to proper specifications provided in Section 43-122.

Florida: Accidentally discovered dead are turned over to a medical examiner if less than 75 years old and the State Archaeologist must notify kinship community members to determine the proper disposition of older remains. FLA. STAT. ANN. § 872.05 (2005).

Georgia: The state buries indigents and unclaimed dead at public expense.. GA. CODE ANN. § 36-12-5 (West 2005). Any dead studied for medical education purposes must be decently interred by the school after use. § 31-21-23. Dead bodies and human remains of American Indians may not be put on public display except with the express consent of lineal descendants of the deceased or in their absence the Council on American Indian Concerns. § 31-21-45.

Hawaii: After bodies have been properly used for medical education, they must be properly buried or cremated (HAW. REV. STAT. § 711-1107 (2004)); indigents, unclaimed bodies and welfare recipients are buried at public expense (§§ 346-15, 27-1). State law guarantees that all persons be buried, and this policy should be applied by federal agencies to Native Hawaiians.

Idaho: Unclaimed bodies and the poor are to be decently buried by the coroner. IDAHO CODE §§ 31-2802, 31-1505 (Mickie 2005). The same should pertain to disinterred Native American dead, otherwise federal policy under the NHPA would violate the public policy of the State of Idaho as expressed in the above statutes.

Illinois: Before a cemetery is abandoned, the removal and reinterment of all human remains is required. 765 ILL. COMP. STAT. 830/1 (2005). Neglected graves must be restored and cared for by the county. 55 ILL. COMP. STAT. 70/1, 70/2 (2005) Though the bodies of institutionalized indigents to be buried at public expense may be used for medical education and scientific purposes when friends or relatives do not first request burial, the bodies must be properly buried or cremated after use. 410 ILL. COMP. STAT.

510/1.⁶ Where no other state law applies, the policies which underlie these statutes should inform federal policy concerning the disposition of Native American dead.

Iowa: Bodies properly received for scientific uses must be properly cremated or buried after use (IOWA CODE § 142.8 (2005)); ancient remains must be reinterred when discovered in a cemetery established for that purpose (§ 263B.7-8); and hospitals must bury patients at state expense when necessary (§ 225.33). Any NHPA policy affecting deceased Native Americans in this State should adopt the burial policies of these statutes when no other statutes apply.

Kansas: The coroner will properly bury an unclaimed body at county expense (KAN. STAT. ANN. § 22a-215 (2005)); and the county treasurer must properly bury welfare recipients (§ 39-713(d)); and bodies used for scientific purposes must be decently buried after use (§§ 65-902(b) to 904). Federal NHPA policies affecting the disposition of Native American dead in Kansas should be consistent with these laws when no other statute applies.

Kentucky: The coroner is responsible for burial of unclaimed bodies when relatives cannot be located (KY. REV. STAT. ANN. § 72.450 (Michie 2005)); when bodies are used for scientific purposes, they must be properly buried after use (§ 311.340); and when cemeteries are abandoned, the dead must be reinterred in another cemetery (§§ 381.730 to 770). Even the bodies of executed criminals must be decently buried by the State. *Id.* §§ 431.250 to 270. When no other law applies the foregoing statutory policies should be adopted by federal agencies to ensure that deceased Native Americans disinterred in Kentucky are guaranteed a proper burial.

Louisiana: Every dead body which has been dissected shall be properly buried or cremated within a reasonable time. LA. REV. STAT. ANN. § 8:651 (West 2005). Disposition of human remains anywhere but a cemetery is prohibited. § 8:652. Any authority in charge of human remains is responsible for their interment. § 8:661. Paupers must be buried at state expense, with organ donations allowed in the absence of objections by relatives. § 33:1565. Where no other federal or state law pertains, these policies support decisions by federal agencies under the NHPA to grant disinterred Native American dead a proper burial in Louisiana.

Maine: Every body within the state shall be decently buried or cremated and deposited in a proper cemetery or mausoleum (ME. REV. STAT. ANN. TIT 13 § 1032 (West 2005) and bodies removed from improper burial structures must be reinterred (TIT. 13 § 1349). Even bodies which have been used for scientific purposes must be decently buried. TIT. 22, § 2886. All deceased persons must be decently buried in Maine.

Maryland: When next of kin cannot be located, "any other person willing to assume the responsibility" for burial may dispose of the dead, otherwise the state will assume that

⁶ Disinterred Native Americans are not properly within the purview of statutes of the above kind that allow scientific study since they were not "institutionalized" in a prison or mental hospital or similar state institution, and they or their relatives never gave consent for scientific study of their remains in life.

responsibility. MD. HEALTH CODE TIT. 7, § 7-410(c)(7), (e) (2005). Remains in burial sites or abandoned cemeteries must be reinterred. TIT. 16, § 119, Tit. 10, §10-402(d).

Massachusetts: Bodies of institutionalized persons and executed criminals are buried at public expense but may be used for anatomical scientific unless they are veterans or persons who expressed wishes to the contrary. MASS. COMP. LAWS, Ch. 113, §§ 2, 6 (2005). The state will bury indigents, aged and welfare recipients. Ch. 118A, § 7.

Michigan: Bodies in abandoned cemeteries must be reinterred (MICH. COMP. LAWS § 128.31); unclaimed bodies distributed for scientific use must be properly buried after use and unclaimed bodies not so used must be properly buried (§§ 333.2655, .2678, .2658). Burial is contemplated in all instances in Michigan. Any federal NHPA policy regarding the disposition of American Indian remains in Michigan should be comport with that State's policy expressed in the foregoing statutes.

Minnesota: Equal respect must be given for all human remains, including unidentified human remains. MINN. STAT. § 307.08 (2005). The State's Indian Affairs Council is involved in decisions pertaining to the disposition of Indian skeletal remains by turning them over to appropriate Indian tribes for disposition. *Id.* §

Missouri: The coroner is responsible for the burial of unclaimed bodies (MO. REV. STAT. § 58.460 (2005)); and institutional officials are responsible for the proper disposition of paupers in their care at public expense (§ 194.150) but the use of their remains by science is first permitted (§ 194.160); and otherwise any person will be buried at county expense as may be determined by a county court (§ 205.620).

Mississippi: Institutionalized unclaimed and patient dead may be used for anatomical science but must be decently buried afterwards (MISS. CODE ANN. § 41-39-1 (2005)); paupers and strangers must be properly buried by the county in which they are found (§§ 43-31-27, -29, -31).

Montana: Federal policy should comport with Montana's mandate that unclaimed bodies are decently buried by the coroner at public expense under MONT. CODE ANN. § 35-20-209 (2005).

Nebraska: Paupers are properly buried by the county. NEB. REV. STAT. § 68-114 (2005). The bodies of deceased institutionalized persons are buried at public expense but may first be subjected to anatomical study. §§ 71-1002 to -1007. Abandoned cemeteries, including American Indian burial grounds, must be cared for by the county. § 12-805. Nebraska contemplates burial for all persons.

Nevada: Every dead body lying within the state, or the dissected remains thereof, shall be decently buried (NEV. REV. STAT. § 451.020 (2004)) at public expense if necessary (§§ 259.180; 451.025). This policy applies to disinterred American Indian remains who must be reinterred following examination. § 383.150. Federal policy concerning the

disposition of dead Native Americans should comport with Nevada policy embodied in the foregoing statutes, when no other statute applies.

New Jersey: Human remains from abandoned cemeteries must be reinterred. N.J. STAT. ANN. § 40:60-25.39 (West 2005) Unclaimed remains are given a decent and proper burial at county expense. § 40A:9-49. These goals should be adopted by federal policy for disinterred Native American remains found in New Jersey.

New Mexico: The State buries indigents and welfare recipients. N.M STAT. ANN. §§ 24-13-1, -2 (Michie 2005). The county buries unclaimed remains no less than 30 days after it has determined that they are unclaimed. §§ 24-13-1, 23-12A-3.

New Hampshire: Abuse of a corpse is unlawful. N.H. REV. STAT. ANN. § 644:7 (2005). Indigent inmates, aged, welfare recipients, paupers are buried at public expense. §§ 167:11, :13.

New York: Except in cases where the right to dissect is expressly provided for by law, every body of a deceased person in the State of New York is to be decently buried within a reasonable time after death. N.Y. PUB. HEALTH §. 4200 (McKinney 2005).

North Carolina: Unclaimed bodies must be properly buried even though they may be used for anatomical study beforehand. N.C. GEN. STAT. § 130A-415 (2005).

North Dakota: The statutory duty to bury the dead devolves upon specified individuals and then ultimately upon the county (N.D. CENT. CODE § 23-06-03 (2005)); failure to bury within a reasonable time is punishable (§§ 23-06-05, -06). All bodies will be buried and that will be done by the State if necessary. §§ 11-19.1-15, 12-45-05. Remains removed from abandoned cemeteries must be reinterred. § 23-21-02.

Ohio: Unclaimed bodies or bodies of tramps may be used for anatomical study followed by a decent burial at state expense. OHIO REV. CODE ANN. §§ 1713.34, .36, .38 (2005).

Oklahoma: Bodies of inmates and institutionalized persons are buried at state expense, but may first be subjected to anatomical study. OKLA. STAT. TIT. 8, §§ 87, 88; TIT. 63, § 97 (2004). There is a statutory duty to bury within a reasonable time. TIT. 21, § 1152. Refusal to inter on account of race is prohibited. TIT. 8, § 31.

Oregon: Unclaimed or indigent bodies may be used for anatomical study but must be decently buried. OR. REV. STAT. § 97.170 (2003).

Pennsylvania: The county in which the body lies is responsible for burial. 16 PA. CONS. STAT. § 2166 (2005). The state will bury institutionalized persons. 50 PA. CONS. STAT. § 4424 (10).

Rhode Island: Unclaimed bodies and inmates are buried at state expense. R.I. GEN. LAWS §§ 23-18.1-1, 42-56-23 (2004).

South Carolina: Unclaimed and indigent dead may be studied before burial at public expense. S.C. CODE ANN. §§ 17-5-590, 44-43-530 (2004).

South Dakota: Indigent dead are buried by the county. S.D. CODIFIED LAWS §§ 28-17-1, -2 (Michie 2005). Dissection may be done only when authorized by the deceased in life, by the spouse or next of kin (§§ 34-26-3, -4) and the remains must be decently buried afterwards (§ 34-26-11).

Tennessee: Paupers and indigents are buried at public expense. TENN. CODE ANN. §§ 5-9-311, 38-5-118 (2005).

Texas: The county shall bury indigent dead. TEX. GOV'T CODE ANN. § 694.002 (Vernon 2005). The state will bury inmate dead who may be studied prior to burial. § 501.015. The law contemplates that remains disinterred from a cemetery be reinterred. § 711.004

Utah: Cities bury their indigent dead. UTAH CODE ANN. § 10-8-74 (2005). Counties buried unclaimed dead, unless delivered for anatomical study in which case they must be buried in a timely fashion. § 26-4-25.

Vermont: Burial of the aged, blind, and welfare recipients is done by the state if necessary. TIT. 33, §§ 3101 *et seq.*

Virginia: Unclaimed dead are buried by the county where death occurred (VA. CODE ANN. § 32.1-288 (Michie 2005)); and remains from abandoned cemeteries must be reinterred in another cemetery (§ 57-36).

Washington: Unclaimed remains are buried by the state, but may be studied prior to burial unless the decease requested otherwise. WASH. REV. CODE §§ 68.50.220, .060, .070 (2005). No body may be disposed of in any place except a cemetery. § 68.50.130.

West Virginia: All aspects of burial, interment and relocation of abandoned cemeteries are governed by W.VA. CODE ANN. §§ 16-5-21 to -23, 61-8-14, 37-13-1 (2005).

The above laws illustrate that the principle that all persons are entitled to a decent burial is widely held and provide ample support for an ACHP policy that effectuates that social norm for Native American dead. We request that this principle be included as a Working Principle for revising ACHP policy. Since this principle embodies widespread norms deeply held by the public at large and by the Native American community, it would be intolerable for ACHP to sanction any policy that eschews this principle and fails to accord a decent burial for Native American dead.

3. *The ACHP Will Consult With Indian Tribes and Native American Leaders In Developing Any Policy That Affects the Classification, Treatment and Disposition of Native American Dead.* This principle should be added to the Working Principles for several reasons. First, we strongly object to any policy affecting the classification,

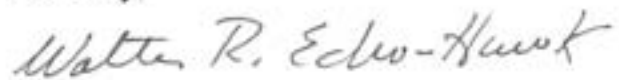
treatment and disposition of Native American dead that is written exclusively by and for non-Indian archaeologists. Plainly, archaeologists may have a conflict of interest if their goal is to retain and study Native American dead and prevent reinterment for professional and personal financial gain. This conflict of interest precludes them from embracing the social norms expressed by the above laws, which are in effect in all jurisdictions, and from respecting mainstream Native American norms and values that are opposed to their own professional and personal financial goals. Second, the Federal Government, including the ACHP, has a trust responsibility to Indian tribes and Native Americans to act in good faith as a fiduciary in their best interests. The federal trust obligation is implemented at minimum through meaningful consultation in any significant matter that affects Native American interests. Consequently, we request that ACHP work directly in consultation with Native American representatives in developing any policy respecting Native American dead. We must insist in our own voice to speak for ourselves through our leaders, and not be represented by archaeologists on the Archaeology Task Force in this important matter.

C. Comments on the proposed Working Principles. Before we address the Working Principles, we offer two preliminary observations. First, we are confused about the statement in the Notice that the proposed policy "would not be bound by geography, ethnicity or nationality; it would apply to the treatment of all human remains encountered in Section 106 review." Federal Register at 52067. One policy for all races and cultures may not necessarily be workable when groups like Native Americans have specific and widespread beliefs and practices about the classification, treatment and disposition of Native dead which should be taken into account and addressed. Those indigenous beliefs and practices may not necessarily be shared by other groups with different cultural outlooks pertaining to their dead. Any policy that affects Native American dead should take into account the matters discussed in this letter and be developed in consultation with Indian tribes and Native American leaders under the federal Indian trust responsibility. Second, we are concerned about any "balancing" of interests in this sensitive area when Native American dead are concerned unless Native Americans are involved on a decision-making level during the "balancing." In the past, such "balancing" was done exclusively by non-Indian archaeologists and authorities. This resulted in the violation of Native American human rights in every tribal and Native American community in the United States and led to the passage of remedial laws such as NAGPRA and the new state laws to rectify abuses.

Many of the Working Principles are very positive. We recommend that Principle I include reference to the human and statutory rights of next of kin, kinship communities, Indian tribes and Native Americans which enjoy precedence over interests in scientific study, as mentioned above in this letter. The three Working Principles discussed earlier in this letter should be added to address Native American concerns.

Thank you for this opportunity to provide comments. Please do not hesitate to contact me or my clients (see note 1 *supra*) to discuss our comments in more detail or if we can provide further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Walter R. Echo-Hawk".

Walter R. Echo-Hawk
Attorney for Working Group on Culturally Unidentified Native American Human
Remains

cc: Working Group members



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ABQ-03-068

TITLE: NAGPRA and Unidentified Native American Ancestral Human Remains.

EXECUTIVE COMMITTEE

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Zach Palmahnie
Pawle Band Potawatomi Nation

SOUTHWEST

John F. Gonzales
San Ildefonso Pueblo

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NCAI HEADQUARTERS

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, Public Law 101-601, the Native American Graves Protection and Repatriation Act (NAGPRA) was passed into law in November 1990 and includes in Section 6 (25 USC 3003) a requirement that Federal agencies and Federally funded museums compile an inventory of their collections of identified and unidentified Native American human remains and associated and unassociated funerary objects that includes the geographical and cultural affiliation of the items; and

WHEREAS, the inventories and identifications were to be completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

WHEREAS, the inventories for Native American human remains and associated funerary objects, sacred objects and items of cultural patrimony were to be completed no later than five years after the date of enactment of the Act and made available to the NAGPRA Review Committee; and

WHEREAS, written summaries of the holdings and collections of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony were to be completed no later than three years after the date of enactment of the Act; and

WHEREAS, Federal agencies and museums must report the inventory of information regarding unidentifiable human remains to the Department Consulting Archeologist in the National Park Service, who in turn must provide the information to the NAGPRA Review Committee; and

WHEREAS, the NAGPRA Review Committee is responsible for compiling the inventory of culturally unidentifiable human remains in the possession or control of Federal agencies or museums and recommend specific actions regarding the disposition of these human remains; and

WHEREAS, any museum that fails to comply with the requirements of the Act may be assessed a civil penalty by the Secretary of the Interior for each violation of non compliance with the Act, including failure to complete the required inventories and summaries; and

WHEREAS, the National Park Service has not enforced the requirements for completed inventories and summaries from numerous agencies and institutions and a listing of identified and unidentified human remains is a critical element of the law; and

WHEREAS, the National Park Service of the United States Department of the Interior has not acted to finalize the Proposed Rule on the Disposition of Culturally Unidentifiable Human Remains published in the Federal Register on May 6, 2002; and

NOW THEREFORE BE IT RESOLVED, that the NCAI expects that the NAGPRA Review Committee and the National Park Service initiate enforcement of penalties for non-compliance by the Federal Agencies and museums that have failed to remit 1) inventories as required by law of Native American human remains both identified and unidentified and associated funerary objects and 2) summaries of the unassociated funerary objects, sacred objects and objects of cultural patrimony; and

BE IT FURTHER RESOLVED, that the NCAI expects the NAGPRA Review Committee and the National Park Service include in the Rules of the NAGPRA Disposition of Culturally Unidentifiable Human Remains, a final date and identify a process for the approval of extensions for the remittance of inventories and summaries of the holdings or collections of culturally unidentifiable remains and the associated funerary items; and

BE IT FURTHER RESOLVED, that the NCAI recommends to the NAGPRA Review Committee and the National Park Service the final date for the remission of inventories and, or summaries of unidentified human remains shall not be later than September 30, 2008 and that the approved extensions shall not be granted beyond September 30, 2010; and

BE IT FURTHER RESOLVED, that the NCAI endorses the recommendations of tribal leaders and Native participants made to the Secretary of the Interior adopted at the Symposium for the Disposition of Culturally Unidentifiable Native American Human Remains under NAGPRA on December 2, 2001 in Tempe, Arizona which asserted that the disposition of any type of human remains and funerary objects must be made by the appropriate Tribes and Native Hawaiian organizations in concert with the group's customary traditional practices, wishes and beliefs. Agreement was also reached on the following points.

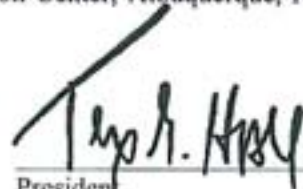
1. Native American human remains termed "culturally unidentifiable" are culturally affiliated to contemporary Native Peoples, including federally recognized Tribes, non-federally recognized Tribes, Native Alaska Peoples and Native Hawaiian People.

2. All Native American human remains and associated funerary objects, including those deemed "culturally unidentifiable" shall be under the ownership and control of contemporary Native Peoples.
3. All "culturally unidentifiable" Native American human remains shall be speedily repatriated to Native Peoples in accordance with procedures to be determined by contemporary Native American groups.
4. All scientific study of culturally unidentifiable" Native American human remains shall immediately cease.
5. The Federal Government shall be responsible for funding the costs of this repatriation.

NOW BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

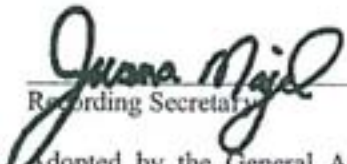
CERTIFICATION

The foregoing resolution was adopted at the 60th Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, Albuquerque, New Mexico, on November 21, 2003 with a quorum present.



President

ATTEST:



Recording Secretary

Adopted by the General Assembly during 60th Annual Session of the National Congress of American Indians, held in Albuquerque, New Mexico, from November 17-21, 2003.

From: D Bambi Kraus [mailto:bambi@itc.org]
Sent: Fri 12/2/2005 3:08 PM
To: Archeol AP. Project
Subject: Arch. Task Force statement

Per: Federal Register notice of Sept. 1, 2005, and extension of deadline for comments through Dec. 2, 2005, on the ACHP's notice on revisions to its "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

* Many NATHPO member tribes have, and will be, submitting their individual comments to the ACHP.

* NATHPO participates as a member of the ACHP Archaeology Task Force that will be receiving and deliberating on all comments.

One item that I have been asked to state for the record is that NATHPO remains deeply concerned and objects to any effort to "balance" the rights of Native Americans, with interests of the scientific community, and that this issue was settled in 1990 with the passage of the Native American Graves Protection and Repatriation Act.

December 1, 2005

John M. Fowler
Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Washington, D.C. 20004

Re: Working Principles for Revising the Advisory Council for Historic Preservation's
"Policy Statement Regarding Treatment of Human Remains and Grave Goods" (Federal
Register Vol. 70, No. 169, September 1, 2005)

Dear Mr. Fowler

The Ohio Archaeological Council (OAC) wishes to offer comments on the above Working Principles developed by the Archaeology Task Force. The Ohio Archaeological Council is a private, non-profit corporation registered with the State of Ohio in 1975 as a charitable scientific and educational organization promoting the advancement of archaeology in Ohio. The Ohio Archaeological Council consists of professional archaeologists, avocational archaeologists, and interested students of Ohio archaeology.

Background Information:

Although the term "funerary objects" is defined, the term "human remains" is not. We believe the term "human remains" should be defined for use in the Working Principles.

The definition of "funerary objects" should be rewritten as follows: *"Based on archaeological and/or ethnographic evidence, "funerary objects" are objects that have been intentionally placed with human remains as part of a death rite or ceremony."*

In discussing the nature of the current debate, the statement that "most people would agree that human remains and the items buried with them should not be disturbed" is not necessarily supported by empirical data. Please either delete this clause or cite empirical evidence that "most" people support this view. It is our contention, that there is a clear divergence of viewpoints resulting in extreme positions ranging from one that views all archaeological remains as legitimate objects for scientific study and preservation, one that views human remains and funerary objects as absolutely inviolable objects, and others that find common ground between these extremes.

The definition of "funerary objects" refers to those objects being "placed intentionally...with" human remains. The first sentence characterizing the nature of the current debate, where it states, in part, that "human remains and the items buried with them..." should be revised to be consistent with the definition of "funerary objects." This would reflect the intentional placement of these objects with human remains regardless of whether the objects or the human remains were buried because human

remains and funerary objects are sometimes found where one or neither is buried (e.g., in rockshelters, caves, caverns, and sinkholes).

Because the Working Principles deal with both human remains and grave goods, which, for the sake of consistency, should always be referred to as funerary objects, all statements should refer to both of these items. There are places in the Background Information section and the Working Principles where only human remains are referred. These should be revised to include both human remains and funerary objects.

Working Principles:

The updated policy should not only “encourage Federal agencies to initiate the Section 106 process early in their planning processes,” but also encourage those entities acting on the Federal agency’s behalf, and applicants for Federal assistance, as urged in Section 106.

Principle 1: The Policy Statement Should Recognize that Human Remains must be Treated with Respect and Dignity

This Principle should be revised to include funerary objects. The phrase “respect and dignity” is not defined, and thus is problematic. It should be defined, or else the principles constituting “respect and dignity” should be clearly stated by the ACHP.

Principle 3: The Policy Statement should Emphasize that Avoidance, Followed by Preservation in Place, is the Preferred Alternative to Disturbance of Human Remains and Funerary Objects

This Principle fails to recognize that each instance of the discovery of human remains and funerary objects is unique and should be handled on a case-by-case basis. Guidance on when it is “absolutely necessary” to disturb human remains and funerary objects should be given. Further guidance on how the “long-term preservation” (please define this term) of a site (add “containing human remains and/or funerary objects”) is not ensured by “simple avoidance” should be given. It is our contention that “simple avoidance” is not always the most practical form of site preservation. Often, “simple avoidance” is used to obtain no effect determinations on sites, and then later, these sites are disturbed or destroyed by non-federal undertakings, in some instances made possible or viable by the initial improvement. In such instances, “simple avoidance” only postpones the destruction of these resources. Perhaps examples of alternatives to “simple avoidance” should be given.

Principle 4: The Policy Statement should Recognize that Federal Agencies are Responsible for Meaningful Consultation with All Interested Parties as a Means to Achieve Compliance with the Law.

Please define the terms “ultimate disposition” and “disposition.” How do the two differ?

Principle 5: The Policy Statement should Guide the Federal Agency Official in Decision Making

This Principle seems to indicate that all sites containing human remains and funerary objects are "historic properties." Please clarify. When clarifying "how the Federal agency weighs the views presented by the different parties in arriving at a final decision", this Principle should indicate how the religious beliefs of "different groups" or "different parties" (are these the same?) "concerned with the effects of the undertaking" are to be weighed so that the Federal agency does not engage in an excessive entanglement of government and religion. Such an entanglement could possibly violate the First Amendment of the U.S. Constitution.

Principle 6: The Policy Statement should Call for Federal Agencies to Develop Procedures for the Preservation and Treatment of Human Remains Discovered Inadvertently, or When there is the Potential for an Undertaking to Discover Human Remains

Please define "preservation and treatment."

Thank you for providing the OAC the opportunity to comment on the draft Working Principles. We recognize that there are many viewpoints on the disposition of human remains and funerary objects. And, in order to be effective principles, the final Working Principles should recognize this diversity. It is our hope that our comments will assist you in the final document.

Respectfully submitted

Elliot Abrams
President



October 18, 2005

Dr. Julia King, Chair, Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW., Suite 809
Washington, DC 20004

RE: Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Dr. King:

The Register of Professional Archaeologists (Register) is a listing of archaeologists (RPAs) who have voluntarily agreed to abide by an explicit code of conduct and standards of research performance. The Register represents the only archaeological organization with a formal grievance procedure that allows government agencies, private companies, tribes, and the public to hold archaeologists accountable for their professional behavior. Formed in 1998, the Register currently lists more than 2,000 RPAs, who work in all jurisdictions of the United States as well as many foreign countries.

The six principles presented by the Advisory Council on Historic Preservation (ACHP) regarding the treatment of human remains and grave goods are consistent with the Register's code of conduct and standards of research performance (The Register's code of conduct and standards of research performance are attached to this letter). We recognize that human remains are an emotional issue. The overriding concern in their treatment must be that the dignity of the deceased and his or her descendents is maintained. The Register recognizes this principle. Our code of conduct explicitly directs archaeologist to "be sensitive to, and respect the legitimate concerns" of groups whose past they are exploring.

We appreciate the ACHP position that federal agencies should have policies in place, which have been negotiated between all interested parties, to guide agency decision making and the agency's response to inadvertent discoveries. The ACHP principles, however, are silent on the constitution of these policies. In particular, how will federal agencies balance the rights of descendants with the public's interest in understanding the past? We recognize that much of the ACHP Archaeology Task Force's effort will focus on just this question.

The Register's primary concern with the ACHP policy on the treatment of human remains and grave goods is the effect the policy might have on professional archaeologists. We strongly urge the ACHP not to create a policy which in order to meet, requires archaeologists to violate the Register's code of ethics and standards of research

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performance. Currently, some state burial laws are implemented in ways that provide Native Americans the ability to dictate archaeological practice. There have been cases in which archaeologists have been asked to remove human remains without recording field information or documenting finds in reports. In some instances, Native Americans have requested archaeologists excavate burials according to professional standards, but then have requested that notes, drawings, and analysis forms be re-interred with the remains, and that the findings not be reported. To comply with either practice is a violation of the Register's standards, which require archaeologists to fully and accurately record all cultural features in the field and to disseminate those results to their peers and the public.

We encourage the ACHP to find ways to ensure that the legitimate rights of Native Americans and archaeologists are included in the new policy. We understand that the task is fraught with difficulties. The Register stands ready to assist you in any way possible to achieve this common goal.

Thank you for the opportunity to comment on this important issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles M. Niquette".

Charles M. Niquette, RPA, President
Register of Professional Archaeologists

Code of Conduct

Archaeology is a profession, and the privilege of professional practice requires professional morality and professional responsibility, as well as professional competence, on the part of each practitioner.

I. The Archaeologist's Responsibility to the Public

1.1 An archaeologist shall:

- (a) Recognize a commitment to represent archaeology and its research results to the public in a responsible manner;
- (b) Actively support conservation of the archaeological resource base;
- (c) Be sensitive to, and respect the legitimate concerns of, groups whose culture histories are the subjects of archaeological investigations;
- (d) Avoid and discourage exaggerated, misleading, or unwarranted statements about archaeological matters that might induce others to engage in unethical or illegal activity;
- (e) Support and comply with the terms of UNESCO Convention on the means of prohibiting the illicit import, export, and transfer of ownership of cultural property, as adopted by the General Conference, 14 November 1970, Paris.

1.2 An archaeologist shall not:

- (a) Engage in any illegal or unethical conduct involving archaeological matters or knowingly permit the use of his/her name in support of any illegal or unethical activity involving archaeological matters;
- (b) Give a professional opinion, make a public report, or give legal testimony involving archaeological matters without being as thoroughly informed as might reasonably be expected;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation about archaeological matters;
- (d) Undertake any research that affects the archaeological resource base for which she/he is not qualified.

II. The Archaeologist's Responsibility to Colleagues, Employees, and Students

2.1 An archaeologist shall:

- (a) Give appropriate credit for work done by others;
- (b) Stay informed and knowledgeable about developments in her/his field or fields of specialization;
- (c) Accurately, and without undue delay, prepare and properly disseminate a description of research done and its results;

- (d) Communicate and cooperate with colleagues having common professional interests;
- (e) Give due respect to colleagues' interests in, and rights to, information about sites, areas, collections, or data where there is a mutual active or potentially active research concern;
- (f) Know and comply with all federal, state, and local laws, ordinances, and regulations applicable to her/his archaeological research and activities;
- (g) Report knowledge of violations of this Code to proper authorities.
- (h) Honor and comply with the spirit and letter of the Register's Disciplinary procedures.

2.2 An archaeologist shall not:

- (a) Falsely or maliciously attempt to injure the reputation of another archaeologist;
- (b) Commit plagiarism in oral or written communication;
- (c) Undertake research that affects the archaeological resource base unless reasonably prompt, appropriate analysis and reporting can be expected;
- (d) Refuse a reasonable request from a qualified colleague for research data;
- (e) Submit a false or misleading application for accreditation by or Membership in the Register of Professional Archaeologists.

III. The Archaeologist's Responsibility to Employers and Clients

3.1 An archaeologist shall:

- (a) Respect the interests of her/his employer or client, so far as is consistent with the public welfare and this Code and Standards;
- (b) Refuse to comply with any request or demand of an employer or client which conflicts with the Code and Standards;
- (c) Recommend to employers or clients the employment of other archaeologists or other expert consultants upon encountering archaeological problems beyond her/his own competence;
- (d) Exercise reasonable care to prevent her/his employees, colleagues, associates and others whose services are utilized by her/him from revealing or using confidential information. Confidential information means information of a non-archaeological nature gained in the course of employment which the employer or client has requested be held inviolate, or the disclosure of which would be embarrassing or would be likely to be detrimental to the employer or client. Information ceases to be confidential when the employer or client so indicates or when such information becomes publicly known.

3.2 An archaeologist shall not:

- (a) Reveal confidential information, unless required by law;
- (b) Use confidential information to the disadvantage of the client or employer;

- (c) Use confidential information for the advantage of herself/himself or a third person, unless the client consents after full disclosure;
- (d) Accept compensation or anything of value for recommending the employment of another archaeologist or other person, unless such compensation or thing of value is fully disclosed to the potential employer or client;
- (e) Recommend or participate in any research which does not comply with the requirements of the Standards of Research Performance.

Standards of Research Performance

The registered archaeologist has a responsibility to attempt to design and conduct projects that will add to our understanding of past cultures and/or that will develop better theories, methods, or techniques for interpreting the archaeological record, while causing minimal attrition of the archaeological resource base. In the conduct of a research project, the following minimum standards should be followed:

I. The archaeologist has a responsibility to prepare adequately for any research project, whether or not in the field. The archaeologist must:

- 1.1 Assess the adequacy of her/his qualifications for the demands of the project, and minimize inadequacies by acquiring additional expertise, by bringing in associates with the needed qualifications, or by modifying the scope of the project;
- 1.2 Inform herself/himself of relevant previous research;
- 1.3 Develop a scientific plan of research which specifies the objectives of the project, takes into account previous relevant research, employs a suitable methodology, and provides for economical use of the resource base (whether such base consists of an excavation site or of specimens) consistent with the objectives of the project;
- 1.4 Ensure the availability of adequate and competent staff and support facilities to carry the project to completion, and of adequate curatorial facilities for specimens and records;
- 1.5 Comply with all legal requirements, including, without limitation, obtaining all necessary governmental permits and necessary permission from landowners or other persons;
- 1.6 Determine whether the project is likely to interfere with the program or projects of other scholars and, if there is such a likelihood, initiate negotiations to minimize such interference.

II. In conducting research, the archaeologist must follow her/his scientific plan of research, except to the extent that unforeseen circumstances warrant its modification.

III. Procedures for field survey or excavation must meet the following minimal standards:

- 3.1 If specimens are collected, a system for identifying and recording their proveniences must be maintained.

3.2 Uncollected entities such as environmental or cultural features, depositional strata, and the like, must be fully and accurately recorded by appropriate means, and their location recorded.

3.3 The methods employed in data collection must be fully and accurately described. Significant stratigraphic and/or associational relationships among artifacts, other specimens, and cultural and environmental features must also be fully and accurately recorded.

3.4 All records should be intelligible to other archaeologists. If terms lacking commonly held referents are used, they should be clearly defined.

3.5 Insofar as possible, the interests of other researchers should be considered. For example, upper levels of a site should be scientifically excavated and recorded whenever feasible, even if the focus of the project is on underlying levels.

IV. During accessioning, analysis, and storage of specimens and records in the laboratory, the archaeologist must take precautions to ensure that correlations between the specimens and the field records are maintained, so that provenience contextual relationships and the like are not confused or obscured.

V. Specimens and research records resulting from a project must be deposited at an institution with permanent curatorial facilities, unless otherwise required by law.

VI. The archaeologist has responsibility for appropriate dissemination of the results of her/his research to the appropriate constituencies with reasonable dispatch.

6.1 Results reviewed as significant contributions to substantive knowledge of the past or to advancements in theory, method or technique should be disseminated to colleagues and other interested persons by appropriate means such as publications, reports at professional meetings, or letters to colleagues.

6.2 Requests from qualified colleagues for information on research results directly should be honored, if consistent with the researcher's prior rights to publication and with her/his other professional responsibilities.

6.3 Failure to complete a full scholarly report within 10 years after completion of a field project shall be construed as a waiver of an archaeologist's right of primacy with respect to analysis and publication of the data. Upon expiration of such 10-year period, or at such earlier time as the archaeologist shall determine not to publish the results, such data should be made fully accessible to other archaeologists for analysis and publication.

6.4 While contractual obligations in reporting must be respected, archaeologists should not enter into a contract which prohibits the archaeologist from including

her or his own interpretations or conclusions in the contractual reports, or from a continuing right to use the data after completion of the project.

6.5 Archaeologists have an obligation to accede to reasonable requests for information from the news media.



SOCIETY FOR AMERICAN ARCHAEOLOGY

October 24, 2005

John Fowler
Executive Director
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue #809
Washington, DC 20004

RE: Archaeology Task Force's Draft Working Principles for revisiting ACHP's "Policy Regarding Treatment of Human Remains and Grave Goods."

Dear John,

On behalf of the Society for American Archaeology (SAA), I would like to thank the ACHP for this opportunity to comment on the draft Working Principles developed by the Archaeology Task Force to guide possible revision of the ACHP's 1988 Human Remains Policy. In my testimony for SAA at the May meeting of the Advisory Council, I stated that SAA strongly supports the importance of the task force's efforts and of the task force itself. Writing this letter provides an opportune moment to reiterate that support.

As you know, the SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With almost 7,000 members, the Society represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. The SAA has members in all 50 states as well as many other nations around the world.

The Federal Register request asks for comments on the Working Principles. I discuss each in turn. While some issues may be more appropriately addressed in reviewing the draft of the Policy itself, it seems worthwhile to raise them here.

Principle 1: SAA supports this statement.

Principle 2: SAA believes the bulleted points under this Principle need to be both more explicit and broader.

- The first bullet calls for clarification of the intersection between Section 106 and the Native American Graves Protection and Repatriation Act (NAGPRA). This bullet should also include at least the Archaeological Resources Protection Act (ARPA). A great many archaeological activities are governed under permits issued under the authority of ARPA.

- Because the policy is intended to give guidance in the Section 106 process, it is larger than NAGPRA. Native Americans do have a special place in this policy and in Section 106 issues pertaining to human remains. This role is framed by NAGPRA and other statutes, including ARPA, and the government-to-government relationships between the Federal government and the tribes. However, it is essential that this policy be broad and flexible enough to accommodate the interests, needs, and requirements of other descendent groups while also attending to the public interest. Thus the policy should also minimally intersect with National Register Bulletin 41 (Guidelines for Evaluating and Registering Cemeteries and Burial Places). Although this Bulletin specifically treats cemeteries, rather than human remains, it is germane.
- While SAA agrees with the second bullet point, "The policy statement needs to clarify the intersection between the requirements of Section 106, State burial laws and other applicable laws," we note that in the last analysis Federal law will have precedence where it applies.
- The treatment of burials and human remains in the 106 process is inconsistent from agency to agency and area to area within the country. SAA recommends that the relevant sections of NAGPRA be used as guides to developing a consistent process for the treatment of human remains under Section 106. This would, for example, ensure the taking of necessary steps to establish cultural affiliation.

Principle 3: SAA recommends clarification and amplification of some of the terminology in the bulleted points.

- It is not at all clear what "preservation in place" means in practice. For example, "place" could refer to individual burials (with adjacent areas available for excavation) or to whole sections of sites or to entire sites. "Preservation" is equally vague. This vagueness is likely to contribute significantly to confusion in planning and data recovery situations rather than to clarify. SAA strongly recommends the Principle simply be: "The policy statement should emphasize that avoidance is the preferred alternative to disturbance of human remains and funerary objects." Regardless of the terminology, the policy should make clear that 1) decisions to avoid or preserve in place need to be based on the demonstrated presence of burials, and 2) avoidance should not be implemented in ways that compromise the proper excavation of areas that must be excavated.
- The policy should be clear that if burials must be exposed or excavated, thorough documentation of the remains by specialists is necessary whether they are to be removed or left in place. This documentation minimally should follow the Secretary of the Interior's Standards for Archaeological Documentation or, for example, those in *Standards for Data Collection from Human Skeletal Remains*, (Buikstra, J. and D.H. Ubelaker 1994, Arkansas Archaeological Survey Research Series No. 44, Fayetteville).
- Other questions include:
 - The circumstances under which excavation/removal are appropriate?
 - Do human remains (including cemeteries) have to be found eligible to the National Register to warrant excavation? Are there circumstances in

procedures, SAA would prefer to see more specific policy direction regarding the inadvertent discovery of human remains and the guidance that should be given landowners when sites are avoided. Finally, the terms "descendent" and "descendent community" need to be clearly defined throughout for the purposes of the policy.

Thank you for this opportunity to comment on the draft Principles. We look forward to continuing to work with the Task Force.

Yours truly,



Kenneth M. Ames Ph.D. RPA
President

CC: Dr. Julia King
Dr. Tom McCulloch
Dr. Dan Roberts

Laura Dean

From: Archeol AP. Project
Sent: Friday, November 04, 2005 3:33 PM
To: Laura Dean
Subject: FW: Comments on "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

From: Alan & Kristin Tonetti [mailto:aandktonetti@earthlink.net]
Sent: Fri 11/4/2005 11:46 AM
To: Archeol AP. Project
Subject: Comments on "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Background Information section:

Although the term funerary objects is defined, the term human remains is not. The term human remains should be defined for use in the working principles.

The definition of funerary objects should be rewritten as follows: Based on archaeological and/or ethnographic evidence, objects that have been intentionally placed with human remains as part of a death rite or ceremony.

"In discussing the nature of the current debate, the statement that "most people would agree that human remains and the items buried with them should not be disturbed" is not supported by empirical data. Delete this clause or cite empirical evidence that most people feel this way.

The definition of funerary objects refers to these objects being "placed intentionally...with" human remains. The first sentence characterizing the nature of the current debate states, in part, that "human remains and the items buried with them..." This statement should be revised to be consistent with the definition of funerary objects, reflecting the intentional placement of these objects with human remains regardless of whether the objects or the human remains were buried because human remains and funerary objects are sometimes found where one or neither is buried, e.g., in rockshelters, caves, caverns, and sinkholes.

Because the working principles deal with both human remains and grave goods, which, for the sake of consistency, should always be referred to as funerary objects, all statements should refer to both of these items. There are places in the background information section and the working principles where only human remains are referred to. These should be revised to include both human remains and funerary objects.

Working Principles:

The updated policy should not only "encourage Federal agencies to initiate the Section 106 process early in their planning processes," but encourage those entities acting on the Federal agencies behalf, and applicants for Federal assistance, as Section 106 urges be done.

Principle 1: It should be revised to include funerary objects. The phrase "respect and dignity" is not defined, and thus is problematic. It should be defined, or else the principles behind what the ACHP considers "respect and dignity" should be clearly stated.

11/4/2005

Principle 2: No comment.

Principle 3: This principle fails to recognize that each instance of the recovery of human remains and funerary objects should be handled on a case-by-case basis. Guidance on when it is "absolutely necessary" to disturb human remains and funerary objects should be given. Further guidance on how the "long-term preservation" (please define this term) of a site (add "containing human remains and/or funerary objects") is not ensured by "simple avoidance" should be given. This is very important. As a Section 106 practitioner for nearly 30 years I have too often seen "simple avoidance" used to obtain no effect determinations, and later seen sites disturbed by non-federal undertakings, which begs the question "what was accomplished by simple avoidance?" Examples of alternatives to "simple avoidance" should be given.

Principle 4: Please define the terms "ultimate disposition" and "disposition." How do they differ?

Principle 5: This principle seems to indicate that all sites containing human remains and funerary objects are "historic properties." Please clarify. When clarifying "how the Federal agency weighs the views presented by the different parties in arriving at a final decision", this principle should clarify how the religious beliefs of "different groups" or "different parties" (are these the same?) "concerned with the effects of the undertaking", are to be weighed so that the Federal agency does not engage in an excessive entanglement of government and religion, which would violate the First Amendment of the U.S. Constitution.

Principle 6: Please define "preservation and treatment."

Alan C. Tonetti
14 Brevoort Road
Columbus, OH 43214

**Courtney Ann Coyle
Attorney at Law**

Held-Palmer House
1609 Soledad Avenue
La Jolla, CA USA 92037-3817

Telephone: 858-454-8687 E-mail: CourtCoyle@aol.com Facsimile:
858-454-8493

Archaeology Task Force,
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

November 2, 2005

**Re: Comments on Working Principles for Revising the ACHP Policy Statement
Regarding Treatment of Human Remains and Grave Goods**

Dear Mr. McCulloch:

This letter is timely submitted on behalf of our client, Carmen Lucas, Kwaaymii Laguna Band of Mission Indians. The following comments are based upon our review of Federal Register Notice 52066, Vol. 70, No. 169, dated September 1, 2005.

While we generally agree with the direction of the working principles, as presently stated, Ms. Lucas wanted to go on record that the following three points should be incorporated into and emphasized in the revised principles:

1. That Indians knowledgeable in the pertinent culture be invited as active participants as early as possible in any general planning process and at the beginning of any specific project or undertaking;
2. That a policy of avoidance and preservation in perpetuity always be the number one goal of any action, and for this to be mandated if at all possible. Without such provisions, there will be no certainty for the future;
3. If an ancestral remain, cremated or buried, must be moved, then this individual should be moved in its entirety so that it is kept whole and so the soul is not left to wander. This may require the implementation of certain best practices in the field.

Thank you for the opportunity to comment and please place us on mailing lists to receive future and final drafts of the principles and the policy statement.

Very truly yours,

/S/

Courtney Ann Coyle
Attorney at Law

Cc: Larry Myers, Native American Heritage Commission
Tony Perez, Division Chief, California State Parks
Interested Parties
Client file

Laura Dean

From: Archeol AP. Project
Sent: Friday, November 04, 2005 3:34 PM
To: Laura Dean
Subject: FW: Comments on Working Principals

From: Catrina Whitley [mailto:catrina_whitley@prodigy.net]
Sent: Fri 11/4/2005 2:04 PM
To: Archeol AP. Project
Subject: Comments on Working Principals

Comments on: Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

To Whom It May Concern:

Thank you for the opportunity to comment on the new Working Principles. I agree with each of the principles, but would like the new policy to ensure it does not discriminate on how it treats each burial, whether based on the age of the graves or race of the individuals in the graves, and that the deceased relatives are consulted prior to excavation or relocation. The Nations' historic graves and cemeteries are being moved for development purposes, such as lakes. All too often, individuals placed in the ground in wood coffins are being moved via backhoe, without proper documentation or archaeological methods. As for my understanding, Section 106 was developed to ensure the protection of our history. By moving graves in this manner, without proper archaeological methods, documentation and analysis, our future generations are losing a very important aspect of the archaeological context of this Nations' history. Burial provide a large amount of information about a culture and the only direct evidence about the individuals living in that culture, and I ask that our historic graves and cemeteries be part of your consideration when drafting the new policy. I ask that the new policy requires that *all* graves being disinterred due to disturbance be properly excavated using archaeological methods, documented, and (if descendants allow) scientifically studied by trained osteologists/bioarchaeologists.

Principal 6: I ask that the task force to consider only allowing individuals trained in the removal of burials and analysis of human remains to excavate/exhume burials. While this may seem to place an undue burden on CRM firms, government agencies, etc., the expertise is invaluable and may shorten the amount of time needed for analysis (through in-field analysis), assessing cultural affiliation or group identity, and amount of time needed for removal. If analysis is to occur, it can also potentially prevent any *necessary* removal of human remains and funerary objects from the site.

Finally, I would like to make a plea with the task force to please keep in mind the important and very valuable information that can be learned from the scientific study of human remains and funerary objects. While I agree that the consent of the descendants for analysis is essential, please continue to keep the opportunity for scientific study an option.

Thank you for the opportunity to participate. I hope the revisions are profitable.

Catrina Whitley
NSF Graduate Research Fellow
Southern Methodist University
Dallas, TX 75275

Laura Dean

From: Archeol AP. Project
Sent: Wednesday, October 19, 2005 7:20 AM
To: Laura Dean
Subject: FW: Comments on Working Principles

From: KDUKE1961@aol.com [mailto:KDUKE1961@aol.com]
Sent: Mon 10/17/2005 8:57 AM
To: Archeol AP. Project
Subject: Comments on Working Principles

I think this guideline for making a policy statement covers all areas. I would hope that a draft of the new policy statement be made available to the public with a chance to respond. The public needs policy statements that are not subjective but very specific in all areas. A specific policy statement (draft) will get more feed back and thus a final version will be more meaningful .

Karl Schettler
Harrison County Cemetery Restoration Team
117 W. Beaver Street
Corydon, In 47112

812-952-1933

Laura Dean

From: Archeol AP. Project
Sent: Thursday, November 03, 2005 3:46 PM
To: Laura Dean
Subject: FW: Public comment for ACHP Statement on Human Remains

From: Van Blarcom, Kip [mailto:KVanBlarcom@co.lancaster.pa.us]
Sent: Wed 11/2/2005 1:33 PM
To: Archeol AP. Project
Subject: Public comment for ACHP Statement on Human Remains

Dear Archeology Task Force (ACT) of ACHP:

I would like to submit my comments on the following document published in the Federal Register on Thursday, September 1, 2005:

Notice of Intent to Reconsider the Advisory Council's
"Policy Statement Regarding Treatment of Human Remains and Grave Goods"

I am an historic preservation planner employed by a government agency in Lancaster County, Pennsylvania. I hold a master's degree in Early American Culture from the University of Delaware, and I have over 10 years of experience in the historic preservation field.

I strongly support the ACT in revising the 1988 policy on Human Remains and Grave Goods. In recent years, I have become increasingly concerned that scholars have been prevented from undertaking important scientific and cultural research into early human settlement of North America.

While I understand the importance of Native claims to early human remains found in situ, the world is coming to realize that human beings are all interconnected, and that we all have a rightful claim to both preserve and study ancient human remains. Gravesites should indeed be disturbed only when necessary, but the value of scientific study should always be considered seriously in any debate about the disposition of human remains.

I believe it is unfair to the joint legacy of all human beings to categorically deny scientists the right to study such remains. That right should never be completely proscribed. Cultural and religious values should be balanced equally with the value of scientific study -- no more, no less. I am saying this both as a preservation professional, and as a religious person who strongly values spiritual and cultural beliefs.

I myself have spent a great deal of time in the past few years studying my own personal genealogy. On one hand, I feel a sense of ownership over gravesites and other remnants of my family's history, because I am their descendent. On the other hand, I understand that my own personal legacy has passed into the hands of history. I have no more right to control the destiny of those remains than someone who now owns the land where the remains are located, or other groups that may have inhabited the land in prior centuries. We all have a role to play in stewardship of the past.

Thank you for offering me this opportunity to provide comments on this important issue.

Sincerely,

Craig W. "Kip" Van Blarcom
85 Delp Rd
Lancaster, PA 17601

F. P. McManamon 11012 Devenish Drive Oakton, VA 22124

1 December 2005

Archaeology Task Force

Advisory Council on Historic Preservation 1100 Pennsylvania Avenue, NW Suite 809
Washington, DC 20004

Dear Task Force Members:

Thank you for the opportunity to offer comments on the draft working principles for revising the ACHP "Policy Statement Regarding Treatment of Human Remains and Grave Goods."

The draft principles focus on avoidance of human graves and their long term protection from disturbance as the preferred treatment and the importance of consultation if disturbance of graves is necessary for some larger social goal.

Only in the section "Background Information: Nature of the current debate" is the potential importance of scientific, historical, and cultural information that can be obtained from careful excavation, recording, and analysis of human graves and their contents mentioned. Even then, the statement is offered only as an example of what "some believe."

I ask that the Task Force include in its policy a clear endorsement of the need for the careful archeological excavation, recording, and analysis of human graves when they must be disturbed as part of public projects subject to Section 106 of the National Historic Preservation Act. Such a policy is consistent with existing federal law and many state laws. For example, under the Archaeological Resources Protection Act (ARPA), human graves that are considered "archaeological resources," which generally means any that are over 100 years of age and capable of being "of archaeological interest" if studied scientifically, would automatically be carefully excavated, recorded, analyzed, and reported on if they had to be removed from their location for some pressing reason, or if they were eroding out of their archeological context.

Similarly, Section 3(c) of the Native American Graves Protection and Repatriation Act (NAGPRA) requires that

The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if-

- (1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act...

The ARPA permit requirement means that any removal of a Native American grave under

NAGPRA, whether for study or because it is eroding naturally, must be done using archeological methods and techniques, including careful recording, analysis, and reporting.

It seems important that the ACHP policy reflect these requirements of Federal laws and use them in developing a more general national policy.

Thank you for the opportunity to comment. I wish you good luck in development of the Task Force products.

Sincerely,

s/s

Francis P. McManamon

Laura Dean

From: Archeol AP. Project
Sent: Wednesday, September 21, 2005 8:15 AM
To: Laura Dean
Subject: FW: treatment of human remains and grave goods

From: ArmandMinthorn [mailto:ArmandMinthorn@ctuir.com]
Sent: Tue 9/6/2005 2:51 PM
To: Archeol AP. Project
Subject: treatment of human remains and grave goods

To Whom It May Concern:

How will the tribes be consulted on this revision? And how will the tribes be a part of the revisions? And how will the tribes give final approval?

Laura Dean

From: Archeol AP. Project
Sent: Wednesday, October 19, 2005 7:19 AM
To: Laura Dean
Subject: FW: Principles for Revising ACHP 1988 Burial Policy, comments

From: Robert L. Kelly [mailto:RLKelly@uwyo.edu]
Sent: Tue 10/18/2005 6:40 PM
To: Archeol AP. Project
Subject: Principles for Revising ACHP 1988 Burial Policy, comments

ACHP Working Principles for Revising the ACHP 1988 Policy Statement on the Treatment of Human Remains

Colleagues:

Thank you for the opportunity to comment on the working principles guiding ACHP's proposal to revise its 1988 Policy Statement on the Treatment of Human Remains, as published in the Federal Register (vol. 70, No. 169, pp. 52066-52068). It is clear that the ACHP task force is giving careful and thoughtful consideration to this difficult problem. I offer the following to assist in this process.

Under the section entitled "objectives of an updated policy," the ACHP states it desire to "*offer leadership in solving how to balance the public interest in the desire to treat human remains in a respectful and sensitive manner, while recognizing the public interest in knowing its collective past.*" This section also states that, in keeping with the Section 106 consultation process "*any new policy would not direct Federal agencies to make specific decisions.*" My concern is that Principle 3 seems to contradict these worthwhile guiding ideas.

Principle 3 states that "*the policy statement should emphasize that avoidance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects.*" Thus, the principles have already stipulated what the ideal outcome should be; in addition, this principle obviates any need to "balance" the various public interests, and thus it too contradicts one of the objectives.

I would use language that would place principle 4 above principle 3, such that the "preferred" course of action would be whatever course of action arises from a process of consultation, which could be avoidance, or something else. This would permit characteristics of the encountered archaeological record and the concerns of specific descendants and local communities to be considered. The degree to which burials merit excavation depends on the degree to which they can provide data to relevant research questions. And the extent to which "preservation in place" versus excavation might be preferable depends on the thoughts and sentiments of the parties relevant to the consultation process. In sum, the principles should advocate that the consultation process define the course of action with no bias towards any "preferred alternative." A process of consultation could very well reach a conclusion that could satisfy all interested parties (such as excavation with analysis and rapid reburial). This would, of course, be the ideal "preferred alternative" given the stated objectives of the updated policy; if no conclusion can be reached through a process of consultation, then principle 3 might be called upon as the default.

However, the language in principle 3 needs to be carefully considered. What is implied by "preservation in place"? The phrase is somewhat misleading because preservation implies that something is being held for the future, but nothing preserves in place forever. In addition, any undertaking might very well draw attention to the presence of burials which could result in their destruction through unlawful excavation, i.e., looting. Thus,

10/19/2005

the principles should anticipate such an unwanted effect and recommend that if "preservation in place" is the implemented option then a plan for the burials' protection should be linked to it. Perhaps this is what is meant by "Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site's long-term preservation." But this only asks agencies to recognize the problem and not necessarily to take steps to prevent it. The last paragraph of Principle 6 returns to this issue, but the principles should advocate it as an important element of the process of consultation. That is, the parties in the consultative process should be apprised of the potential dangers of "preservation in place;" apprised of such dangers, the consulting parties might elect excavation as a means of protection.

Likewise, under Principle 6, I would emphasize the importance of consultation as a critical element of the policies and procedures that Federal agencies are encouraged to develop in advance of the inadvertent discovery of human remains and funerary objects.

I appreciate the opportunity to comment on these principles. These comments are my personal opinions and do not reflect a position of the University of Wyoming or its Department of Anthropology.

Sincerely,

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From: Dave Snyder [mailto:dsnyder@ohiohistory.org]
Sent: Mon 12/5/2005 9:31 AM
To: Archeol AP. Project
Subject: Comments on Draft Policy Regarding Treatment of Human Remains

These comments represent my personal views and don't represent the views or positions of my employer or any organization. My comments are in response to a notice published in the Federal Register 52066 Vol. 70, No. 169 Thursday, September 1, 2005, Proposed Advisory Council Changes, Advisory Council on Historic Preservation, Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods."

The circulation of working principles early in the development stage offers an opportunity for constructive criticism. There are many positive points in the draft document and I wholeheartedly endorse and support some of what I see developing in these draft principles. Hopefully my comments will be taken as constructive and perceived as a genuine effort to help bring about and develop the best possible document. Some of my criticisms are blunt. Please don't construe these frank criticisms as efforts to derail this process.

It is my observation that these sorts of policy statements provide a foundation offering critically important legitimacy to case-by-case efforts at all levels to successfully bring about positive preservation efforts. Let me emphasize that I support the idea of leaving human remains alone. I believe that this is a laudable goal and that efforts made in working towards this goal are efforts that are needed, helpful, and well spent. Although I believe that much progress has been made, it is my personal observation that there is still much work to be done to improve our efforts to respectfully treat human remains and associated funerary objects. I wholeheartedly support the many ongoing efforts and initiatives by many folks to improve our treatment of human remains, and, to the extent that a revised policy statement from the ACHP can assist in energizing these ongoing efforts I fully support this initiative by the ACHP to revise this policy.

My criticisms fall into concerns about contradictions in the document, about a lack of commitment to enforce the policy, about disconnects between the principles and reality, and about the need for a clearer process to consider scientific research as a positive and often necessary tool in dealing with human remains and associated funerary objects.

Federal preservation law, in particular the National Historic Preservation Act and its implementing regulations at 36 CFR 800, generally doesn't dictate an outcome but rather establishes a consultative process. The draft policy does appear to dictate an outcome. Are the principles that unequivocally state that avoidance, preservation in place, and immediate reburial to take precedence over statute law and promulgated and published regulations? Principles 1 and 2 seem at odds with and contradict Principles 3 and 4. It isn't clear to me if this is to be Policy or a statement of principles or a guide to help interested federal agencies better form and articulate

individual and independent policies. Will Principles 4 and 5 result in each federal agency developing its own policies, and if so, then what is the policy for the treatment of human remains and associated funerary objects?

Is this Policy? That is, does this represent policy for all people in the United States? Or, does this represent policy for the staff of the ACHP and anyone else who agrees to sign on (at least until they decide to opt out)? My observation in dealing with some 70-odd federal agencies (agencies/applicants/programs) is that we see interest in furthering preservation interests running the gamut from enthusiastic cooperation to out-and-out defiance. If the ACHP isn't willing to enforce this policy and if this policy is really only for federal agencies with very large landholdings who enthusiastically support these ideas, then I think that the policy should be honest enough to so state. Otherwise, it makes a mockery of the policy and the participants when we have situations such as a developer destroying a large prehistoric cemetery while the federal agency sits by and waits until the destruction is complete to grant a permit and the ACHP does absolutely nothing. My observation is that this really isn't policy but rather a list of suggestions for federal agency folks to follow provided that it isn't inconvenient for them to follow them.

It is a joy to work with federal agencies, and state and local agencies and professional organizations and Tribes and others, who enthusiastically embrace the principles described in the draft policy. Are there plans to reinforce this support? Will there be prominent recognition and grants and monetary awards to folks that go the extra kilometer in preserving human remains and associated funerary objects? How does the ACHP propose to win support for this policy?

How does the ACHP propose to enforce this policy? Will there be sanctions? We are all painfully aware that it is easy to support policies when they don't apply but it is very, very difficult to deal respectfully with human remains and other sensitive issues when the project is important and has a great deal of political support. Over and over the draft refers to encouragement. What does this mean?

The revised and updated policy will address treatment of human remains and associated funerary objects in the context of compliance with Section 106. Section 106 directs federal agencies to take into account the effects of undertakings on historic properties. Are you making the presumption that all contexts thought to contain human remains and / or associated funerary objects meet eligibility criteria for the National Register? If not, then how is the federal agency supposed to make an informed determination of eligibility without first gathering a good deal of verifiable information on the historic property? And how is the federal agency to gather this information and at the same time follow the principles calling for immediate reburial, restraint on analysis, and maximum efforts to avoid? And, if not all cemeteries are considered eligible and not all areas thought to contain human remains are considered eligible, then we face the conundrum that those cemeteries and areas thought to contain human remains that aren't considered eligible don't require preservation under statute law and regulations but do require preservation under this policy.

I am skeptical that a policy on the treatment of human remains can cause agencies to comply with existing regulations. I find it hard to believe that this one policy can work in concert with other Federal, State, tribal, and local laws. This seems beyond the concept of policy and makes it very difficult to formulate constructive comments.

Principle 2 asserts that there is an intersection with Section 106 with other laws focused on the treatment of human remains. Section 106 deals with a great many types of properties, it isn't only about archaeology. It is difficult to understand where this principle is going and how to provide useful and constructive comments.

What are the legal authorities establishing a duty to care for human remains and associated funerary objects when there is an applicant requiring a federal agency permit and the work and funding is private and the project will be located on private land?

There seems to be a disconnect between the draft policy and reality, especially in Principles 3 and 4. The draft policy seems to assume that all human remains are contained in discrete cemeteries where the remains are unchanged by natural and cultural transformations. And, these cemeteries can be easily and readily delineated. And, these easily identified cemeteries are on federal land, and that one merely needs to move the project away from them. And, the project isn't on a pressing timetable so that there is plenty of time for planning and consultation. It isn't clear how the draft policy could be used in real world situations such as human remains that have eroded from a bank, or human remains identified in the laboratory while processing soil samples recovered from a pit feature, or human remains recovered from under a city street during a sewer project in an area where there was a cemetery that was removed to a distant location more than 100 years ago.

Principle 5 states that the policy should guide the Federal agency official in decision making. Is this a policy or is this guidance? Are agency officials afforded the flexibility to interpret the policy as they see fit?

There are several places where the draft policy underscores the need for the consultation process. I strongly agree and support the concept of process. But, remember, with a consultation process you may arrive at outcomes that you don't like. The draft principles seem to waffle between encouragement and stressing a preferred alternative. You can't have it both ways. If you are going to encourage agencies to develop procedures (I assume that encouragement means no money and no sanctions), are you going to unflinchingly stand in support of agencies that develop procedures that are different that what you would like? What this draft seems to say repeatedly is that we are free to choose whatever procedures we would like as long as we choose the one correct procedure. (I think it is attributed to Henry Ford - you can have your car any color that you would like as long as it is black.)

My greatest concern with the draft policy is in its insidious reduction of archaeological science to just another value system. Science isn't just another alternative way of looking at the world. Science isn't a case of going along with popular sentiments, and I would argue that an important policy statement concerning sensitive issues such as disposition of human remains and associated funerary objects shouldn't pander to popular sentiments and political correctness. This doesn't get good policy and it certainly doesn't support good science. There are good and important reasons for conducting scientifically oriented archaeological research. These reasons are important regardless of values that we may hold. There are times when archaeologists must be allowed to conduct scientific research. There needs to be principles within the policy that allow the Federal agency official to make this decision based on a solid foundation regardless of the popularity of the decision. I realize that not everyone agrees with my statement that science isn't just another value system, but, as presented, the draft policy excludes and trivializes scientific research as a fundamental basis for archaeology.

After wrestling with the draft document and my response for many weeks, I am still somewhat puzzled as to why a revised policy statement is needed. It is my experience and observation that an overwhelming number of archaeologists, agency staff, and people representing Tribes, Native American concerns groups, and other folks dealing with issues of the care and treatment of human remains and associated funerary objects are very much concerned with and committed to the respectful treatment of human remains. Does the ACHP find that there are very many people who are not concerned with the respectful treatment of human remains? Or, is it the very narrow intent of the ACHP to dictate the one correct way to show respect for human remains?

I think that a restatement the policy on human remains is valuable and can serve to support and deepen efforts to improve our treatment of human remains. However, I wonder if there is more to be gained from a sustained educational effort than from the development of a revised policy statement. I don't believe that a policy statement by itself will bridge gaps between different groups involved with these issues. I am concerned that the direction this current draft policy statement is heading will increase animosities and polarize positions. I would like for the ACHP to make a long term commitment to broadening the dialogue with many discussions (not just one and done) and with the long term goal of building understanding. It is my opinion that there is much for all of us to learn in our ongoing efforts to improve in the treatment of human remains. I believe that a sustained educational effort is needed to ensure that we continue to make progress.

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Laura Dean

From: Archeol AP. Project
Sent: Monday, September 26, 2005 2:47 PM
To: Laura Dean
Subject: FW: Comments on revision of the Human Remains policy statement

From: TFKing106@aol.com [mailto:TFKing106@aol.com]
Sent: Fri 9/23/2005 7:24 PM
To: Archeol AP. Project
Subject: Comments on revision of the Human Remains policy statement

Please take a look at my essay, "What's Really Wrong With NAGPRA," in *Thinking About Cultural Resource Management* (AltaMira Press 2002, pp 103-111) for some thoughts on the human remains policy statement. In a nutshell, I think we'd have a wiser legal standard if Congress had adopted it in lieu of NAGPRA. But it didn't, so the policy statement is obviously way overdue for revision. All I have to suggest is that you try to retain the philosophy of respectful balance that the original statement was based upon, at least for human remains that are NOT of Native American origin and therefore are not subject to NAGPRA.

I suppose you'll also have to wrestle with the Kennewick Man problem – how to deal with human remains that are real old, and hence in the eyes of some are not necessarily Native American ancestors. I hope that to the extent feasible you can encourage agencies to treat them as Native American until and unless proven to be somebody else, and hence to dispose of them in accordance with NAGPRA.

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What's Really Wrong with NAGPRA



A great deal of vitriol has been spilled over NAGPRA—the Native American Graves Protection and Repatriation Act. Some archeologists and physical anthropologists (but by no means all, as some elements of the popular press would have us believe) hate NAGPRA and, more importantly, everything it stands for. They regard it as government sponsorship of religion, on a par with governmental bans on the teaching of evolution. They argue that the human remains and cultural items to which NAGPRA applies should be preserved and studied to enrich all humankind, rather than given to particular Indian tribes—who may do with them as they please and may not have “legitimate” rights to the things anyhow. Tribes tend to support NAGPRA as a very partial redress of grievances visited upon them by whites, as a token of respect to the ancestors, as a way of putting sacred objects and ancestral remains back where they belong, and as a way of healing old wounds. Increasingly, though, tribes and their members are becoming concerned about the conflicts—including intertribal conflicts—that NAGPRA engenders and about its mind-numbingly legalistic character.

I'm an archeologist, and I don't like NAGPRA much, but not for the reasons that most displeased archeologists cite. I think NAGPRA does damage to the cultural and spiritual integrity, and the sovereignty, of tribes.

NAGPRA was designed to address a very real set of problems—that the ancestors of Indian tribes aren't given the same respect as everybody else's ancestors; that the remains of such ancestors, and their treasured cultural items, have in many cases been taken from tribes without authority to do so; that ancestral remains and cultural items have lain for decades in museums and storerooms, sometimes even been discarded, without the permission or even the knowledge of descendants. In testimony before Congress in the late 1980s, tribal representatives spoke eloquently of the cultural wrongs done them by the majority society—sometimes quite ghastly wrongs. They impressed the members of Congress enough to gain enactment of NAGPRA—a piece of legislation worked out through negotiation among tribes, Native Hawaiian groups, archeologists, physical anthropologists, and museum officials. Or rather, worked out by their lawyers, and therein, I think, lies NAGPRA's real problem. NAGPRA is a classic example of why the design of laws should never be left entirely to lawyers.

NAGPRA is grounded in property law. It declares ancestral remains and "Native American cultural items"—funerary objects, sacred objects, and "objects of cultural patrimony"—to be the property of lineal descendants and culturally affiliated tribes and Native Hawaiian groups. It then directs federal agencies and federally assisted museums to repatriate such remains and items to the tribes and groups that own them. The procedures for repatriation are quite complicated, largely because of the need to determine just who really is a lineal descendant or culturally affiliated group.

The "scientific" objections to NAGPRA spring from the perception that "archeological resources" and the information they contain belong to all humanity. In other words, these objections too are grounded in property law—in who owns what.

But how does the notion of ancestral remains and cultural items as property relate to tribal values and beliefs?

Let's back up a moment and ask ourselves why tribes want repatriation of ancestral remains and cultural items. In point of fact I'm not sure they always do, particularly where ancestral remains are concerned. Typically in my experience, repatriation itself isn't the goal; it's a means to an end. The desired end is to get the remains back into the ground, where they can return to the soil as the ancestors they represent continue their

journey to the spirit world. This “back to the earth” philosophy is not universal, and there are lots of variations on the theme. I don’t think there’s any tribe, however, that wants its ancestors back in order to possess them.

Generally speaking, the same rationale motivates the desire to “get back” funerary items—it’s not that the tribes want them for themselves; they want them to accompany the ancestors into—and in many beliefs beyond—the grave. With sacred items and objects of cultural patrimony it’s a little different—sacred objects by definition are needed for the conduct of ceremonies, and objects of cultural patrimony—well, the definition of such objects is so strange and circumloquacious that it might mean almost anything. But the central things that NAGPRA is about—ancestral remains and grave goods—are usually not wanted back to possess as property but to return to the ground where their spiritual qualities can be properly respected and the reasons for which they were buried in the first place can be realized. Thus there’s at best an uncertain fit between the rationale for repatriation and the tools—identification and return to qualified “owners”—that NAGPRA provides to implement that rationale. I believe that this conflict undercuts and erodes the whole purpose of NAGPRA.

In the mid-1980s I was at the Advisory Council on Historic Preservation, and one of my jobs was to work with the Indian tribes and intertribal groups that were getting more and more involved in Section 106 review. One of the organizations I dealt with a good deal was American Indians Against Desecration (AIAD), a branch of the American Indian Movement (AIM). AIAD essentially consisted of Jan Hammil and a group of advising elders from various tribes. Jan, herself of Comanche extraction, made her living as a judge on the night court in Indianapolis, giving her the daylight hours free to work for AIAD. I have no idea when she slept; she may not have needed to. Jan was one of the most dynamic people I’ve ever met, and she never shrank from confrontation. Her—and AIAD’s—mission was to get the remains of the ancestors back into the ground, and she did everything she could to carry out that mission. One of those things being to jawbone the Advisory Council—i.e., me—about what we should be doing to support reburial. Not repatriation, note; reburial.

One day I was talking with Jan, and offered up the (then) usual “moderate” archeological line:

“If it’s somebody’s grandmother, of course she should be given back to the descendants for reburial, but if it’s somebody ancient . . .”

“Look, dummy,” Jan said kindly (or words to that effect), “this has nothing to do with ownership, or exactly who’s descended from whom. I don’t own my grandmother’s bones. Nobody can own another person; the Civil War established that.”

“Yeah, but . . .”

“It’s about respect,” she said. “Respect for ancestors—everybody’s ancestors. I respect your ancestors, my ancestors, even (the Interior Departmental Consulting Archeologist’s) ancestors, and the way to respect them is by taking care of them, trying to make sure that they can continue their journey to the spirit world.”

It was an epiphany for me. It so simplified things. If it’s all about respect, not ownership, then we don’t need to worry about the complicated business of deciding who’s descended from which skeleton in the ground. We don’t have to argue about whether a 10,000-year-old dead guy has any living relatives, or whether he represents an ancestor of the group that occupied the land in 1870 or some other group. And we don’t necessarily have to put everything back in the ground. We don’t see an autopsy as disrespectful, nor the forensic analysis of possible crime victims. In the same way, there might be ways to analyze ancient human remains respectfully; perhaps even keep some of them out of the ground in perpetuity. In any event, if consultation between archeologists, agencies, and tribes focused on how to treat ancestors respectfully, rather than on ownership, we’d at least be consulting about something on which an agreement *might* be reached.

We tried to use this notion of respect as the groundwork for treating human remains and associated artifacts; the Advisory Council even established a policy statement based on such principles¹ to guide consulting parties in Section 106 review. The core of the statement went like this:

- Human remains and grave goods should not be disinterred unless required in advance of some kind of disturbance, such as construction.

- Disinterment when necessary should be done carefully, respectfully, and completely, in accordance with proper archeological methods.
- In general, human remains and grave goods should be reburied, in consultation with the descendants of the dead.
- Prior to reburial, scientific studies should be performed as necessary to address justified research topics.
- Scientific studies and reburial should occur according to a definite, agreed-upon schedule.
- Where scientific study is offensive to the descendants of the dead, and the need for such study does not outweigh the need to respect the concerns of such descendants, reburial should occur without prior study. Conversely, where the scientific research value of human remains and grave goods outweighs any objections that descendants may have to their study, they should not be reburied, but should be retained in perpetuity for study.

OK, so like NAGPRA, the policy statement referred a good deal to “descendants,” but it demanded respect for the dead, and generally reburial, whether there were descendants or not. And since we weren’t talking about ownership but only participation in consultation, “descendants” could be defined broadly. In guidance issued to the Council’s staff about how to interpret the policy statement, “descendants of the dead” was defined as:

Any group, community, or organization that may be related culturally or by descent to the deceased persons represented by human remains.²

Were either the tribes or the archeologists entirely thrilled with the Council’s policy? No, but both seemed able to live with it, to try it out. Both, I think, at least saw it as balanced and respectful of both the dead and of the interests of the living. But then along came NAGPRA and threw it all into a cocked hat. Because NAGPRA took us back to the grandmother argument, and ignored respect altogether.

Of course, one thing that made the property-law basis for NAGPRA attractive to the lawyers who negotiated it was that it (theoretically) made possible hard-and-fast, clearly definable determinations. The bones or objects either did or did not actually belong to the agency or museum; they either did or did not belong to this tribe or that. All very desirable to those who insist that life and human relations be reduced to rules. But when one begins to apply the rules—even in the abstract as the drafters of the statute did during its negotiation—things begin to get very complicated. What makes sense in one situation does not in another. The result, in the case of NAGPRA, was a complicated layering of procedures for determining cultural affiliation and right of possession, with burdens of proof shifting back and forth between tribes and museums or agencies as the procedures are implemented.

Consider a couple of real-world examples:

At Chaco Canyon, the National Park Service has the unenviable task of repatriating human remains excavated over the years from the area's ancient pueblo ruins. But to whom should they be repatriated? The NPS has made what seems like a good-faith effort to figure out the answer. It concluded that while the Hopi and other puebloan groups in the area obviously have claims, so do the Navajo. After all, by the most conservative of reckonings the Navajo have been in the area for several centuries, and it would be strange indeed if there hadn't been some mingling of genes and culture. Besides which, there are Navajo clans whose traditions lay out connections with puebloan ancestors in convincing detail.

But turning ancestral puebloan remains over to the Navajo is not something that the Hopi and other contemporary pueblo groups find tolerable, so they've blasted the NPS's conclusion in no uncertain terms. The Navajo, seeing in the pueblo complaint an attack on their historical legitimacy, have fired back. The hapless Park Service is caught in the middle.

Now suppose we simply asked the Navajo and Hopi what they thought should be done with the ancestors—without quibbling about whose ancestors they are? I'm one hundred percent sure that their answers would be the same: the ancestors should go back into the ground. There might well be debate about *how* they should go back into the ground, and maybe about *where*, but such questions would not carry anything like the freight that's carried by questions of ownership. How to treat the dead re-

spectfully, I feel sure, could be established through relatively calm negotiation.

But under NAGPRA, the NPS can't get to the point of negotiating about treatment until it has established who's sufficiently related to the ancestors in question to have a seat at the table. The NPS is blocked in getting to the resolvable issue of disposal by the probably irresolvable issue of "ownership."

Or consider the famous case of Kennewick Man.³ A skeleton washes out of the bank of the Columbia River and falls into the hands of the property manager of the U.S. Army Corps of Engineers. In compliance with NAGPRA, the Corps sets out to establish ownership—i.e., cultural and genetic relationship—among the tribes of the area. But the bones turn out to be 11,000 years old, and to some physical anthropologists they don't look like those of a Native American ancestor; they look like those of a twenty-third-century starship captain. The physical anthropologists think this is pretty neat, so they want to keep the bones out of the ground. They challenge the tribes, and the Corps, to demonstrate that the dead guy is ancestral to *any* tribe. As this is written, the matter is still in court, unresolved after five years of tumult and shouting.

Now suppose the Corps didn't have to establish ownership, but only to come up with a way to treat Kennewick Man with the respect due a human being regardless of race, relationship, or Starfleet rank. It probably still wouldn't be easy—the tribes would certainly argue for prompt reburial; the physical anthropologists would certainly argue for perpetual storage and study. But at least they'd be arguing about real issues, and issues that might be amenable to resolution through thoughtful compromise. Agreement might well be reached on reburial after some amount of analysis, or on some other approach that, while not perfect from anybody's point of view, was at least acceptable to all. There wouldn't have to be winners and losers. But NAGPRA doesn't allow the Corps to do this. Under NAGPRA, somebody in the Kennewick controversy will win and somebody will lose. And the process of deciding who's the winner and who's the loser has generated great discord among people who should have common interests in protecting ancestral remains.

Could we develop a law based on respect for the dead, rather than on ownership? I think so. Such a law could simply articulate the princi-

ple of respect and lay out the basic range of treatments for the dead and their goods that flow from that principle. It could then direct agencies and museums to negotiate with tribes about how to treat ancestral remains in a manner consistent with such principles, leading to a binding and implemented agreement in each case. As with Section 106, where agreement was not reached, a representative body like the existing NAGPRA Review Committee might review the case and render a final binding decision or perhaps (as in Section 106) a nonbinding recommendation.

With sacred objects and objects of cultural patrimony, something more along the lines of NAGPRA might be necessary. Such objects are wanted by the tribes because they feel they are theirs; they are often wanted in order to put them to use; they are often perceived to have been stolen, and the obvious way to put this to rights is to give them back. Even with such objects, though, it might be useful to see how far one could get substituting respect and compromise for assertions of ownership. In some cases it's quite clear that sacred objects and objects of cultural patrimony were flatly stolen by collectors, anthropologists, or museums, or that they were sold by people who didn't have the right to sell them. But in lots of other cases the rights and wrongs are not so clear. I remember as a grad student being told by an eminent cultural anthropologist about how sometime in the 1950s he had broken into a roundhouse and taken a lot of ceremonial regalia, because he and all his colleagues believed that the tribe that owned the house was extinct. Shocking to us today, but at the time he was undoubtedly doing what he thought was right—saving pieces of the tribe's expressive culture that he believed would soon be lost forever, and that belonged, he honestly thought, to no living person or group. Why fight about whether he was (legally or morally) right or wrong? Why not promote respect and compromise? Maybe in some cases we don't need to establish ownership—or at least what amounts to fee-simple title. Maybe we could recognize joint ownership, split ownership, or negotiate cooperative management.

All this is entirely hypothetical, however; we have NAGPRA to live with now, and like it or not, arguments over ownership cannot be avoided. I only hope that over time, we can find ways to focus on NAGPRA's laud-

WHAT'S REALLY WRONG WITH NAGPRA

able intent and minimize contention over its specific provisions and its regrettable grounding in Euro-American property law.

Notes

1. ACHP 1988a.
2. ACHP 1988b.
3. Cf. Thomas 2001.



MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

November 30, 2005

Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, D.C. 20004

Dear Members of the Task Force:

Draft Working Principles for
Revising the Policy Statement Regarding Treatment of Human Remains

The Metropolitan Water District of Southern California (Metropolitan) offers the following comments on the draft "Working Principles for Revising the Advisory Council on Historic Preservation's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods' "(*Federal Register* 70(169:52066-52058))".

Metropolitan is committed to treating human remains with dignity and to consulting with appropriate Native Americans when such remains are discovered in the course of project development. We are concerned, however, about problems likely to attend the proposed substitution of Principle 3 (i.e., that "avoidance, followed by preservation in place, is the preferred alternative to the disturbance of human remains and funerary objects") for the first principle in the current (1988) "Policy Statement..." (i.e., that "Human remains and grave goods should not be disturbed unless required in advance of some kind of disturbance, such as construction"). The proposed change, if effected, would subordinate the broad public interest to a more limited preference. This, in turn, predictably would delay construction projects, necessitate redesign, and increase costs whenever human remains are found and must be preserved in the path of planned construction.

A further concern is the proposed change from "grave goods" to "funerary objects." This presumably is intended to align the terms used for compliance with the National Historic Preservation Act (NHPA) and the Native American Graves Protection and Repatriation Act (NAGPRA). However, neither statute requires this convergence. "Grave goods" is a straightforward term referring to those materials ostensibly placed with the deceased at the time of burial or cremation. "Funerary object" (a NAGPRA term) is far more ambiguous. It is often taken to mean any item belonging to a class of materials presumed to have been used in a

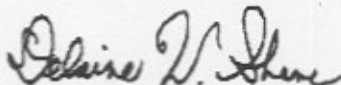
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November 30, 2005

funerary rite, regardless of the object's archaeological association with human remains. Consequently, the semantic shift is likely to increase project delays and costs because of consultation to determine whether particular items are deemed "funerary." Under the current "Policy Statement," grave goods are so defined simply and empirically on the basis of their association with human remains.

Finally, Metropolitan believes that the present "Policy Statement..." seeks to balance the interests of science with those of Native Americans. We are disappointed to see that most of the language supporting scientific investigation and the pursuit of knowledge is omitted from the proposed "Working Principles..." This raises the specter of litigation being brought against Federal agencies by scholars when opportunities for scientific study are denied. Projects might be delayed *pendent elite*, leaving entities such as Metropolitan unable to fulfill their public mission. The recent "Kennewick Man" case (Bonnichsen *et al.* v. U.S.; Civil No. 96-1481 JE, District of Oregon) is instructive in this regard.

It is Metropolitan's belief that the current principles are adequate and that they achieve a reasonable balance among the needs of science, society, and the individual communities who may be related to or affiliated with the subject human remains and artifacts. We urge the Council's Archaeological Task Force to reconsider the proposed changes in light of our comments. Thank you.

Very truly yours,



(for)

Laura J. Simonek
Manager, Environmental Planning Team

LJS:rdl
(Public Folder\EPT\Letters 2005\30-NOV-05D.doc)

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-1082
Fax (916) 657-5390
Web Site www.nahc.ca.gov



November 3, 2005

Mr. Tom McCulloch
Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

Re: Comments on Working Principles for Revising the ACHP Policy Statement Regarding Treatment of Human Remains and Grave Goods

Dear Mr. McCulloch:

Thank you for the opportunity to comment on the ACHP's Working Principles for Revising the ACHP Policy Statement Regarding Treatment of Human Remains and Grave Goods.

The Native American Heritage Commission recommends that you also include California tribes that are not federally recognized as equal partners in determining the terms for preservation, mitigation, treatment and disposition of human remains. We recommend that in doing so, the ACHP should utilize the Native American Heritage Commission as the source of contact information, as outlined in California Government Code 62542.3. These California Indians have an inherent right to be involved in discussions regarding the disposition of their ancestors' remains. There are many regions of California in which Section 106 is applied, yet there are no federally recognized tribes. Often this results in what we believe to be inadequate protection for the human resources and artifacts.

Thank you for your consideration of this recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Myers".

Larry Myers
Executive Secretary



FLORIDA DEPARTMENT OF STATE
Glenda E. Hood
Secretary of State
DIVISION OF HISTORICAL RESOURCES

October 25, 2005

Dr. Tom McCulloch
Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW., Ste. 809
Washington, D.C. 20004

RE: Comments on "Working Principles for Revising the ACHP's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods.'"

Dear Dr. McCulloch:

Thank you for the opportunity to comment on the working principles for an ACHP policy statement regarding the treatment of human remains and grave goods. We have solicited comments from the Florida Archaeological Council and received a response from one member.

In general these principles closely reflect the application of the State of Florida's statute that protects unmarked human burials. A few important notes are included here.

Principle 2 is significant. We have several cases where federal agencies conducting projects in our state refused to decide if NAGPRA or state statutes were applicable when unmarked human burials were discovered during an archaeological excavation. While some of the other principles address broad issues that may be best decided on a case by case basis it would be helpful to have very specific guidelines to refer to for making this determination.

Principle 3 emphasizes the preferred alternative of preservation of remains in place; this is important, welcomed and consistent with our state statute and practice. However, little discussion is given to the alternative—excavation when a proposed project will clearly destroy the remains unless some action is taken. The 1988 ACHP policy statement largely addresses this alternative, and while not preferred, it needs to be addressed. Excavation of remains in the face of pending construction is the most complicated and potentially contentious alternative, however, it is the case in which agencies, consultants, and developers need the most guidance.

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<input type="checkbox"/> Director's Office (850) 245-6300 • FAX: 245-6436	<input type="checkbox"/> Archaeological Research (850) 245-6444 • FAX: 245-6436	<input type="checkbox"/> Historic Preservation (850) 245-6333 • FAX: 245-6437	<input type="checkbox"/> Historical Museums (850) 245-6400 • FAX: 245-6433
<input type="checkbox"/> Southeast Regional Office (954) 467-4990 • FAX: 467-4991	<input type="checkbox"/> Northeast Regional Office (904) 825-5045 • FAX: 825-5044	<input type="checkbox"/> Central Florida Regional Office (813) 272-3843 • FAX: 272-2340	

Working Principles for Revising the ACHP's Policy Statement Regarding Treatment of Human Remains and Grave Goods

October 25, 2005

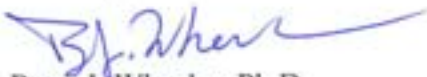
Page 2 of 2

Principle 6 needs to address the logistical constraints that often must be dealt with when human remains are found inadvertently. Cases of discovery during construction are fairly routine and easy to address, especially if only a single burial is involved. However, inadvertent discovery also involves exposure due to natural conditions like erosion. These cases are much more difficult to address, short of spending a great deal of money on shoreline stabilization, dune restoration or similar erosion control projects. Alternatively, excavation of burials may be made necessary by erosion, but who should bear the cost in these cases? In many cases common sense solutions are necessary and it should be made clear that reburial of remains in a secure or nearby area might be a better alternative than a stabilization or major excavation project.

We hope that these comments are of some use in formulating a new ACHP policy. Clearly this is a very important and sensitive issue and we look forward to the revised ACHP policy.

Please feel free to contact us with any questions or if we can be of further assistance.

Sincerely,



Ryan J. Wheeler, Ph.D.
State Archaeologist and Chief,
Bureau of Archaeological Research

Phone: 850.245.6301

FAX: 850.245.6436

E-mail: rjwheeler@dos.state.fl.us

From: Slick, Katherine, DCA [mailto:katherine.slick@state.nm.us]
Sent: Tue 11/29/2005 1:38 PM
To: Archeol AP. Project
Subject: Final comments, ACHP's Human Remains Policy

Final comments from NM SHPO. If you have any questions, please contact me.
Kak Slick

Principle 1: No comment.

Principle 2: Point 3 - add language to read "The policy statement needs to recognize that a Federal agency official under Section 106 has a duty for the care of human remains and funerary objects *except where Federal or State law may prescribe a certain outcome.*" [SHPO note - we take this Principle to imply curation or disposition of human remains and funerary objects, hence phrasing as an exception]

Principle 3: Point 2 - add language to read "In order to realistically consider avoidance and preservation in place, Federal agencies need to initiate the Section 106 process early in planning, including *Tribal consultation, non-invasive means of identifying possible grave sites, and oral histories as part of the Section 106 process.*"

Add a new point: *If a site is avoided, Federal agencies should have a procedure in place to provide the owners with guidance developed by the Secretary of the Interior under Section 112(b) of the NHPA and supplemental guidance that encourages protection of important archeological properties, including burial sites.*

Principle 4: No comment.

Principle 5: No comment.

Principle 6: Introductory statement: add language to read "The policy statement should call for Federal agencies to develop procedures, *in conformance with NAGPRA, ARPA, and other Federal law*, for the preservation and treatment of human remains discovered inadvertently, or when there is the potential for an undertaking to discover human remains, *except where Federal or State law may prescribe a certain outcome.*" [SHPO note - we take this Principle to imply curation or disposition of human remains and funerary objects, hence phrasing as an exception]

Point 4 - Revise language to read "The policy should encourage Federal agencies to develop these procedures in consultation with all interested parties consistent *with the prior Principles.*"

Reverse Point 4 and Point 5.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

www.dot.state.pa.us

November 1, 2005



Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Ave, NW., Suite 809
Washington, DC 20004

Working Principles for Revising the
1988 Human Remains Policy

Thank you very much for the opportunity to comment on the Working Principles for revising the 1988 Human Remains Policy. We agree that the policy is dated and in need of revision. We offer the following comment.

Statements under Principles 3 and 6 seem to imply that a Federal agency would have some responsibility to protect a site with human remains or funerary objects even if the site is avoided (i.e. is outside of the Area of Potential Effect) during the Section 106 process.

Principle 3 – “The policy statement should emphasize that avoidance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects. Federal agencies must recognize that simple avoidance does not necessarily ensure that site’s long-term preservation.”

Principle 6 – “If a site is avoided, Federal agencies should have a procedure in place to provide the owners with guidance developed by the Secretary of the Interior under Section 112(b) of the NHPA and supplemental guidance that encourages protection of important archaeological properties, including burial sites.”

While we agree that simply avoiding a site is no guarantee of long term preservation, we are particularly concerned when a site would be located on private property. Under Section 106, to what extent is a Federal agency responsible for preserving a site or trying to persuade a property owner to protect a site when it is located on private land?

We hope you will take this comment into consideration as you develop the new policy. If you have any questions, please contact Christine Kula at 717-783-9700.

Sincerely,

A handwritten signature in black ink that reads "Scott Christie".

R. Scott Christie, P.E.
Director, Bureau of Design
Pennsylvania Department of Transportation



STATE OF WASHINGTON

DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

1063 S. Capitol Way, Suite 106 • Olympia, Washington 98501
Mailing address: PO Box 48343 • Olympia, Washington 98504-8343
(360) 586-3065 • Fax Number (360) 586-3067 • Website: www.dahp.wa.gov

November 14, 2005

Ms. Julia King
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Washington, DC 20004

Dear Ms. King;

We are contacting you regarding the proposed ACHP revisit of the 1988 *ACHP Policy Statement regarding Treatment of Human Remains and Grave Goods*. We believe it is critical for the ACHP to undertake a robust review and reworking of the Policy Statement.

In our state the failure of the federal government and federal agencies to develop a specific, workable, understandable, and balanced approach to the treatment of human remains has resulted in a devastated landscape of emotional turmoil in tribal communities, hundreds of lost jobs, bitter divisions in local communities along religious and racial lines, multimillion dollar lawsuits, an heightened fundamentalist versus science/education divide, and a tragic and avoidable loss to all involved.

We believe it is important for the ACHP to recognize that regardless of specific cultural, religious, or scientific interests, the consulting parties need the ability to be able to document to a legal and forensic standard the number, completeness, and specific details of any human remains discovery and to accomplish that quickly.

The conflation of academic/scientific research or cultural/religious needs falsely simplifies the problem and needlessly creates an either/or problem that makes further discussion problematic. We believe the failure of federal agencies to robustly address the minimum documentation standards has created an environment where we have serious problems with even identifying how many individuals are involved in a discovery situation.

The failure of agencies to establish meaningful protocols has resulted in a patchwork of conflicting and confusing approaches that results in delay and protracted discussions that most often fail to achieve an outcome that is desired by any of the parties.

The principles as articulated in the 1988 document and the recent publication in the Federal Register do not establish the clarity needed in an emotionally and culturally complex environment where we expect the federal agency to have a clear and workable plan for addressing the treatment of human remains in a professional and sensitive manner.

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DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

Protect the Past, Shape the Future

Ms. Julia King
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Washington, DC 20004

Page 2

We believe it is important to clearly establish that federal agencies have a responsibility to establish a legally sound program for assuring that any human remains discovered during any project undertaking will be;

- Secured and protected for further damage, loss or un-permitted disturbance;
- Documented so the consulting parties will have a full understanding of the nature of the discovery and its completeness and potential alternatives for treatment;
- Given specific timelines and clear lines of authority on decisions regarding the treatment of the individual;
- Provided an opportunity to review any proposed treatment plan; and
- Address tribal governmental consultation requirement along with tribal religious and cultural needs;
- Address legal and law enforcement requirements;
- Balance the need for scientific research on significant national and community cultural, educational and interpretive interests.

We look forward to further discussions and please feel free to contact us.

Sincerely,



Allyson Brooks, Ph.D.
State Historic Preservation Officer
(360) 586-3066
email: allyson.brooks@dahp.wa.gov



Rob Whitlam, Ph.D.
State Archaeologist
(360) 586-3080
email: rob.whitlam@dahp.wa.gov



WEST VIRGINIA
DIVISION OF
CULTURE & HISTORY

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November 3, 2005

Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW
Suite 809
Washington, DC 20004

RE: Working Principles for Revising the Advisory Council's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Task Force Members,

We have reviewed the proposed changes to the "Policy Statement Regarding Treatment of Human Remains and Grave Goods." Please accept our comments as outlined below.

In general, we find the working principles to be satisfactory and are pleased that they will attempt to address such issues as the intersection between Section 106 and other state and federal laws and will provide guidance for Federal agencies in their decision making processes. It is especially critical that the intersection of Section 106 and NAGPRA be clearly defined. In West Virginia, which has no resident federally recognized tribes and where Protohistoric and early Historic tribal movements are poorly understood, it is often difficult for Federal agencies to determine which groups should be considered as consulting parties. In instances of competing interests, it is also difficult for agencies to determine which interests should be given priority. We ask that particular attention be given to developing steps that should be taken in instances when cultural affiliation cannot be determined and when descendants do not come forward.

We appreciate the opportunity to be of service. If you have any questions regarding our comments, please contact Lora A. Lamarre, Senior Archaeologist, at (304)558-0240.

Sincerely,

Susan M. Pierce
Deputy State Historic Preservation Officer

SMP/LAL



TRIBAL BUSINESS COUNCIL
(701) 627-4781
Fax (701) 627-3305

MANDAN, HIDATSA, & ARIKARA NATION
Three Affiliated Tribes • Fort Berthold Indian Reservation
404 Frontage Road • New Town, North Dakota 58763-9402

October 31, 2005

John Nau, III, Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington DC 20004

Dear Chairman Nau:

Doh-sha! I am writing today to express my serious concerns on matters related to the activities of the Advisory Council on Historic Preservation, and to request your assistance in finding resolution to these problems.

The Mandan, Hidatsa and Arikara Nation of the Ft. Berthold Indian Reservation of North Dakota has enjoyed a long and fruitful relationship with the Advisory Council on Historic Preservation, particularly since your appointment as Chairman of the Council. Indigenous Nations on the Missouri River have struggled for decades to preserve and protect our ancestors' burials and our irreplaceable sacred and cultural places. Our sacred places are needed for the continuation of our ceremonies and spiritual lifeways, as they are spiritual and cultural classrooms for our People.

As you know, Missouri River Tribes, in collaboration with Advisory Council and others, have successfully worked with the U.S. Army Corps of Engineers to complete culturally-relevant Cultural Resource Management Plans; you and other members of the Council held a public hearing on the River to obtain comments from our elders and leadership about our concerns – this hearing also helped to obtain increased funding levels from the Corps for preservation and protection of cultural resources on the River; and your Agency issued a Letter of Foreclosure on the Corps' 1993 Programmatic Agreement which was negotiated and signed without participation or consultation of Missouri River Tribes. This action prompted the creation of the 2004 Programmatic Agreement, a document that provides for culturally relevant, pre-decisional consultation and is nothing less than a paradigm shift in the way our ancestors' sacred and cultural places are managed on the River. Many feel, in fact, that were it not for the involvement of

Marjorie Nowick of your Denver office, we would not have a working Programmatic Agreement today, and certainly not one as effective. Working together with staff from your Agency and others, we helped create the Sacred Places Coalition, which addresses preservation of Native sites on a national level. We have benefited from the support and advice of both the Denver and Washington offices of your Agency, through their attendance at Missouri River Cultural Resources gatherings at the Lower Brule Sioux Tribe and at trainings conducted by staff from these offices.

Many, many irreplaceable sacred and cultural places continue to exist in our homelands because of the strong relationship between our Tribal Nations and your Agency, and we wish to express our gratitude for this relationship and our desire to continue to work together.

We are, however, extremely concerned about some recent developments at the Advisory Council that we believe could have serious detrimental effects to all Native peoples, as outlined below.

On September 1, the Advisory Council published in the Federal Register the "Working Principles for Revising the Advisory Council on Historic Preservation's Policy Statement Regarding Treatment of Human Remains and Grave Goods." On October 24, 25, and 26, one of my staff attended a meeting of the Native American Advisory Group to the Advisory Council to share our concerns about the Working Principles and to learn more about them.

We are very concerned that the Working Principles, as drafted, do not reflect the intent of the Native American Graves Protection and Repatriation Act (NAGPRA), which returns stewardship and decision-making regarding Native dead to Native peoples. We are gravely concerned that the Working Principles, as drafted, assume a scientific legal standing or interest in our ancestors' remains for those members of the scientific community who wish to study them. We believe that only Tribes have an interest in the contents of our ancient burials, legal or otherwise. Native Americans fought hard for the passage of NAGPRA and other federal and state laws so that we could protect our ancestors' burials for the sake of the deceased, and not for the sake of science.

We feel that the Working Principles, as drafted, are an attempt to restage the public debate concerning scientific study of Native dead that was resolved by the passage of NAGPRA. Although NAGPRA provides for study of Native dead if the culturally affiliated Tribe(s) gives their permission for the study, the vast majority of Native Nations do not want the remains of their ancestors excavated, collected, curated or studied. Language proposed in the Working Principles that suggests creating a balance of interests in Native human remains refutes both language in federal law and the repeated and consistent positions of the vast majority of Native peoples in America. If the language in the Working Principles is adopted as policy, Native Nations would have to fend off, again and again, attempts to subject their dead to expensive and destructive studies – and this struggle would become very intense if a particularly ancient burial is inadvertently discovered during a project. Many tribal governments with limited

financial resources would be forced to defend in court a self-evident, human right that everyone else in our country takes for granted: the right to rest in peace. Given that the Kennewick Man litigation dragged out for years and cost millions of dollars, this is not something your Agency should be encouraging, but I am afraid that is what the Working Principles would do if they were drafted into a policy.

Given that the vast majority of human remains subjected to study in this country are Native American, and given that your Agency received only 15 responses from Tribes or Native Hawaiian organizations in its solicitation for comments, I have two requests that I think will assist in resolving these serious concerns:

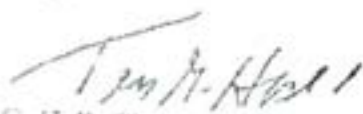
1. The Working Principles, as drafted, can apply to all other human remains, i.e., African American, Asian American, European American, that are inadvertently discovered during the course of a project. Public comment can be solicited from members of those communities.

If the Advisory Council still feels it requires a policy for Native remains (for use in those states that have no Native human remains law) a separate Native human remains policy, based upon the legislative history and language of NAGPRA, could be written and submitted to Tribes and Native Hawaiians whose aboriginal homelands are encompassed in those states for review and comment. An action such as this would return decisions about treatment of Native dead to Native Peoples and would therefore be consistent with existing federal, state and tribal laws. This action would also satisfy your Agency's trust responsibility to conduct government-to-government consultation on matters that impact Tribal governments, Tribal Peoples, tribal ancestors or tribal resources.

2. Given the low number of Native responses to your September 1 Federal Register request for public comment, as well as dangerous consequences that could result if the Working Principles are adopted into a policy as drafted, I request that you extend the public comment period for another 60 days, or until January 4, 2006. This will afford Native Peoples the time needed to educate themselves, their elders and spiritual leaders, and their tribal governments on the potential impacts of a Human Remains Policy that could allow scientists to study ancestral Native remains encountered during inadvertent discoveries.

I look forward to your response and to a collaborative working relationship with you and the Advisory Council on Historic Preservation. Our Nation will be submitting more detailed comments under separate cover. Thank you for your attention to this important matter.

Sincerely,



Tex G. Hall, Chairman
Mandan, Hidatsa and Arikara Nation

Cc: John Fowler, Director
Advisory Council on Historic Preservation
Senator Byron Dorgan
Senator Kent Conrad
Senator John McCain
Representative Earl Pomeroy
Representative Stephanie Herseth
Representative Richard Pombo
Representative Nick Rahall

AGUA CALIENTE BAND OF CAHUILLA INDIANS

TRIBAL HISTORIC PRESERVATION OFFICE



September 27, 2005

John L. Nau III
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, suite 809
Washington, DC 20004

Re: **ACHP Policy on Treatment of Human Remains**

Mr. Nau,

I have received and read the document regarding updating of the ACHP policy on human remains. At this point, the Agua Caliente Tribal Historic Preservation Office has no comments on current documentation. We would, however, appreciate being included on the mailing list for future versions of the documentation.

The Agua Caliente Band of Cahuilla Indians appreciates your interest in Tribal cultural heritage. If you have questions or require additional information I can be reached at 1 (760) 883-1368 or at e.mail jnixon@aguacaliente.net.

Cordially,

Joseph M. Nixon, Ph. D., RPA
Tribal Historic Preservation Officer
AGUA CALIENTE BAND OF CAHUILLA INDIANS

JMN

C: Tribal Council
Gary Stopp, Chief of Staff
Tom Davis, Chief Planning Officer
Agua Caliente Cultural Register

:\THPO\correspondence\2005\reviews\achp_9_27_05.doc

AK-CHIN INDIAN COMMUNITY

Community Government

42507 W. Peters & Nall Road • Maricopa, Arizona 85239 • Telephone: (520) 568-1000 • Fax: (520) 568-4566



October 31, 2005

Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue
NW, Suite 809
Washington, DC 20004

Re: Federal Register Notice September 1, 2005 issue (Volume 70, No. 169)-Advisory Council on Historic Preservation Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Archaeology Task Force,

The Ak-Chin Indian Community received a correspondence dated September 9, 2005 from the Advisory Council on Historic Preservation (ACHP) Chairman and we would like to thank the ACHP for the invitation to comment on revising of the Policy Statement Regarding Treatment of Human Remains and Grave Goods, specifically, the "Working Principles" as stated in the Federal Register Notice. The Ak-Chin Indian Community agrees that the current policy must be revised to ensure the dignified and respectful treatment of human remains and funerary objects. The Ak-Chin Indian Community understands that it is the ACHP's intention to create a new policy to replace the existing "Policy Statement Regarding Treatment of Human Remains and Grave Goods."

The Ak-Chin Indian Community recommends the following changes, which also includes a change in the order in which the principles are addressed:

Principle 1: Avoidance of burial disturbance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects. In the statement, *Federal undertakings should disturb human remains and funerary objects only if absolutely necessary*, the term "absolutely necessary" needs to be specifically defined in consultation with tribes. Monetary loss is not a justifiable reason for burial disturbance, as monetary loss can be avoided if federal agencies initiate the National Historic Preservation Act (NHPA) Section 106 process in the very early stages of the proposed project planning. Federal agencies must ensure that tribes are adequately consulted to provide input in order to realistically consider avoidance and preservation in place. Federal agencies must recognize that simple avoidance of a site does not necessarily ensure a particular site's long-term preservation.

Principle 2: Human remains must be treated with respect and dignity, as defined in consultation with the culturally affiliated tribe(s).

Principle 3: Federal agencies are responsible for meaningful consultation. Given the fact that individual tribes define "meaningful consultation" differently, thorough communication would be required with the culturally affiliated tribe(s) as a means to achieve compliance with the law. For instance, a single letter does not constitute consultation to the Ak-Chin Indian Community and in turn, is not meaningful consultation. Also, agencies must realize their federal trust responsibilities as well as their government-to-government consultation responsibilities. In many instances,

federal agencies consider tribes to be the "Public" and not sovereign nations. For instance, in accordance with the NHPA, the federal agency official with jurisdiction over the undertaking has the responsibility to make the final decisions in Section 106 review after completing the consultation process, however it must be recognized that tribes are sovereign nations, and as such should be given higher priority in the consultation process given the federal government's fiduciary obligations to the tribes. There is a tendency to give more consideration to groups from the public who write multiple letters on a given project, and no consideration to the fact that one letter from a tribal leader represents an entire nation. The policy statement should clarify how the federal agency weighs the views presented by the different parties in arriving at a final decision.

Principle 4: Federal agencies must develop procedures for the preservation and treatment of human remains discovered intentionally or inadvertently, as well as procedures for treatment of human remains and funerary objects exposed during natural disasters or encountered during emergency responses to such disasters in consultation consistent with Principle 3. If a site is avoided, federal agencies must have a procedure in place that encourages the protection of important archaeological properties, including burial sites.

Principle 5- Prior to reburial, scientific studies performed for justified research topics must be non-destructive and must be approved by the culturally affiliated tribe(s). If the scientific study is offensive to the descendants of the individual, reburial should occur without prior study. Scientific studies shall only occur according to an agreement developed in thorough consultation with the culturally affiliated tribe(s).

The Ak-Chin Indian Community looks forward to further consultation on the first draft of the revised policy statement in the near future. Please contact Nancy J. Nelson, Cultural Resources Manager, with any questions at (520) 568-1369.

Sincerely,



Terry O. Enos
Ak-Chin Indian Community
Chairman

cc: Ak-Chin Indian Community Council
Tom White, Ak-Chin Indian Community Operations Manager
Elaine F. Peters, Ak-Chin Him-Dak Eco Museum Director
Nancy J. Nelson, Ak-Chin Cultural Resources Manager
Richard Narcia, Gila River Indian Community Governor
Barnaby Lewis, Gila River Indian Community Cultural Resources Specialist
Joni Ramos, Salt River Pima-Maricopa Indian Community President
Evalyn Andrews, Salt River Pima-Maricopa Indian Community Cultural Specialist
Vivian Juan-Saunders, Tohono O'odham Nation Chairwoman
Joseph Joaquin, Tohono O'odham Nation Cultural Resources Specialist
Peter Steere, Tohono O'odham Nation Cultural Affairs Manager
John L. Nau, III, ACHP Chairman



BOIS FORTE Reservation Tribal Council

Box 16 ♦ Nett Lake, MN 55772 ♦ 218-757-3261 ♦ FAX 218-757-3312

Chairman
Kevin W. Leecy

Secretary-Treasurer
David C. Morrison, Sr.

Council Members
Ray Villebrun, Sr.
Kevin A. Strong

Executive Director
Barb Brodeen

November 7, 2005

John L. Nau, III
Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue N.W.
Suite 809
Washington, DC 20004

Re: Policy on Treatment of Human Remains

Dear Mr. Nau:

This is in response to your letter of September 9, 2005, inviting comments on the ACHP's consideration of a new policy on the treatment of human remains.

The Bois Forte Band supports the Council's consideration of a policy that recognizes the legal obligations of the United States and its agencies to Indian tribes (proposed Principle 4). In addition, the Band supports an updated policy which is consistent, and works in concert with, tribal laws.

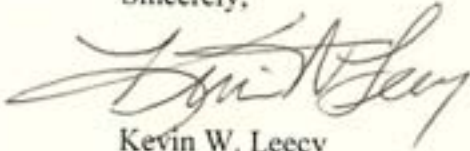
That being said, the Band also urges the Council to incorporate in the new policy specific requirements to ensure that there also be deference to tribal laws that prescribe an outcome when human remains are discovered within the territory of the tribe. For example, Principles 4 and 5 both contain language which reminds us that "Federal or State law may prescribe a certain outcome" but does not contemplate the possibility that tribal law may also prescribe a certain outcome. The Bois Forte Band is in the process of adopting laws in this area and I am confident that those laws will not subordinate the desire to treat human remains in a culturally sensitive manner to scientific study.

The policy being considered should also take special care to ensure that any required consultation with tribes be truly "meaningful." That could be accomplished by requiring agencies to identify tribes with an historic presence in the territory in question and to

document efforts to engage the tribe(s) in consultation. It would be particularly useful if federal agencies were required to create a record of consultation that includes an explanation of how tribal recommendations with respect to the treatment of the remains of tribal ancestors have been incorporated in an agency decision. Of course, if tribal recommendations have not been incorporated, then the agency's rationale or justification should be required.

The Bois Forte Band looks forward to participating in the consultation process it moves forward.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin W. Leecy".

Kevin W. Leecy
Chairman

November 3, 2005

Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Ave NW, Suite 809
Washington DC 20004

Re: Comments on the Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Task Force Members,

The issue of updating the "1988 Human Remains Policy" is a great attempt by the ACHP to assert its leadership in historic preservation in dealing with the Section 106 process. However, the Task Force composed of ACHP members that drafted this set of working principles were formed based on archeology, which we find completely biased. The ACHP Task Force is biased because it is an archeology task force and should have been comprised of SHPO's, THPO's, federal agencies, and representatives of tribal governments so that there would be a balance in dealing with the revisions in this policy.

The Caddo Nation like other Nations and tribes in the U.S. have developed their own policies on the treatment of human remains and associated funerary objects in consultation with federal agencies, organizations, private property owners, state officials and other tribes. The Caddo Nation has their own "Inadvertent Discovery Policy" in place to deal with human remains, funerary objects and unassociated funerary objects. We have used this policy for planned excavations and possible unanticipated discoveries when dealing with federal undertakings and where federal and state laws do not apply.

For example, the State of Texas does not have an unmarked burial law in place and is named by the Caddo and comes from the word "taysha" meaning friend. Looters in the state have plundered more Caddo graves than that of probably any other native group that lives or lived in the state in the past.

All Caddo graves and cemeteries are sacred sites and traditional cultural properties of the Caddo Nation. If the ACHP wishes to assert its leadership in historic preservation for the federal government and for parties affected by the Section 106 process then the ACHP should offer some sort of workshop for all federal, state, and tribal authorities to learn what rules and responsibilities ACHP work under and what should be expected of federal, state and tribal authorities in dealing with ACHP under Section 106. This could be a jumping off point for the ACHP Task Force to explain the revisions to the "1988 Human Remains Policy".

However, if the ACHP finds that it is necessary to revise the policy we offer the following comments.

A consulting workshop offered to tribes, federal, state, and local authorities as an opportunity to suggest revisions to the policy collectively.

The task force should then prepare a draft revision of the policy that would be subject to further review and comment.

The policy should also take into account that tribes consider graves and cemeteries sacred and also traditional cultural properties as part of the National Register eligibility investigations.

Finally, we find that it would be impossible to clarify the roles of different groups concerned with the effects of undertaking on historic properties as to the treatment of human remains and funerary objects. Over 500 hundred federally recognized tribes reside within the United States which all have different ways of handling their concerns when dealing with human remains and funerary objects.

However, we do agree that revisions should be made to the policy in absence of federal and state laws which could guide decision-making under Section 106 as to the treatment of human remains and funerary objects determined to be culturally affiliated to living descendants where no federal or state law protects their civil rights as next of kin.

We appreciate the opportunity to have commented on this proposal. If you have any questions please feel free to contact me at 405-656-2901 Caddo Nation Cultural Preservation Department

Sincerely,

Bobby Gonzalez
NAGPRA Coordinator
Caddo Nation

Comments on the “Working Principles for Revising the ACHP’s Policy Statement Regarding Treatment of Human Remains and Grave Goods (Funerary Objects)”

By Robert Cast, THPO, Caddo Nation of Oklahoma

Background: As the Tribal Historic Preservation Officer for the Caddo Nation of Oklahoma, I have been involved in numerous Section 106 undertakings off tribal lands in the Caddo people’s homelands of southwest Arkansas, northwest Louisiana, southeast Oklahoma, and northeast Texas. All the above-mentioned states have policy, guidance, and an unmarked burial law, to coincide with the Section 106 process except the state of Texas. In Texas, where there is around a 98% private land ownership, we have worked on numerous projects that involved federal permitting on private land and we have usually worked out agreements during the project that addressed the treatment, handling, and disposition of human remains and funerary objects encountered during these projects. On several occasions there have been landowners who have asserted what they believe to be their “finders keepers” rights, basically to own the human remains and funerary objects placed with them in the ground that just happened to be buried on their land. My question here would be: “Is the ACHP going to assert its leadership role and address this issue in any formal way? Or will the Caddo, (among other Indian tribes), along with the agencies be at the mercy of a landowner who is using federal/state funding in the Section 106 process to help him discover, identify, evaluate, then possess and amass collections. Until the issue is addressed at a higher level, the Caddo will continue to try to consult, develop, and try to work with individual landowners on the cultural and religious importance that human remains and funerary objects have for us.

Our cultural preservation office has in place an Inadvertent Discovery Policy that we have used to extend also to “planned excavations” during archeological projects. This policy addresses how the Caddo wants to see things done, not the archeologists, the federal agency, or the landowner. With that in mind, we have always tried to come to agreement with all the parties involved in the project and in the majority of cases, have done so, that is, on projects we are made aware of.

My general comments on the policy follow:

One of the most important things that the policy makers need to keep in mind when developing the policy is that the “human remains” and “funerary objects” are most likely found in the context of a “Traditional Cultural Property” to the Native Americans that may be impacted by the project. If, following 36CFR Part 800, human remains and funerary objects are going to be disturbed, this should be considered as an “adverse effect” which then is the agency officials responsibility to provide a reasonable opportunity for the Indian tribe to “participate” in the resolution of adverse effects. From tribe to tribe, this is going to be different, and each tribe may define “participation” in a very different and unique way. Part of this participation may be in the form of developing agreements as to how the human remains and funerary objects will be treated, any reburial plans, study of the remains or objects, etc. can all be part of this “participation”.

Comments on the Working Principles:

Principle 2, “The policy statement needs to recognize that a Federal agency official under Section 106 has a duty for the care of human remains and funerary objects.” Which needs to be fully addressed when the project is on private land and the landowner states that he “owns” the remains and objects.

Principle 3, “Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site’s long-term preservation.” No joke. How about a cemetery site within a state highway right-of-way that extends on to private land. Did the identification of the site create an adverse effect? Yes, because the landowner now knows where the cemetery is located and can legally dig up the cemetery on his/her land because, yes, he/she lives in Texas. I think that federal agencies, when it comes to the protection of human remains and funerary objects have enough trouble with “short term” preservation.

Principle 4, “The policy statement should recognize that Federal agencies are responsible for meaningful consultation with all interested parties as a means to achieve compliance with the law. This, I believe, should be the driving force behind that policy. Open communication and development of trust during these consultations should be the goal and the planning for the treatment, care, handling of the human remains and objects should be discussed and outlined prior to any ground disturbance. The legal Government-to-Government obligations of the Federal agency should also keep in mind the treaty rights, land cessions, and tribal policies that assert presence of the tribal nation in a geographical area, NAGPRA claims associated to the area, and the history of the tribe’s presence within the state and specific geographical area where Section 106 projects take place. The irony is that many landowners don’t recognize these treaties, land cessions, or tribal claims to human remains and funerary objects, but treat these remains and items as “treasure” that was found on their property. Whereas, if the status of the land were federal, there would be no question as to what tribe these remains and funerary objects were culturally affiliated with under NAGPRA. How will this contradiction be reconciled under the policy?”

One example that is valid in the case of the Caddo is that many of the east Texas counties were not recognized in any land cession in 1835 when the Caddo ceded to the United States Government over 900,000 acres of land in Louisiana and Arkansas. Because Texas was a “republic”, the policy has been that the Caddo had no claims to lands in east Texas, and hence no history there, even though the presence of Caddo archeological and historical sites is very well documented from 800 A.D. up to 1842 in these east Texas counties. The Great Bend of the Red River known as a “heartland” of the Kadohadacho (where the term Caddo comes from) is in the area of Bowie County, Texas. We have recently completed a TCP inventory on a Tulsa COE permitted project in this area, on private land. Because of the negotiations and consultations that took place with the landowner, we have come to agreement concerning any human remains and funerary objects that may be encountered on the project. However, we developed this relationship

with this landowner over several years because of the TCPs located on the property. Another landowner might not be so accommodating.

Principle 5, I don't know that I necessarily agree that the ACHP policy needs to "clarify the roles" of those in the process as I believe the regulations at 36 CFR Part 800 do that, but I do believe that it needs to be clear "how the Federal agency weighs the views" I think part of this has to relate to the history, traditional use of, treaties, cessions, etc. as discussed previously. A landowner simply should not be able to take human remains or funerary objects because they are found on a project. They should also not be allowed to separate the funerary objects from these remains as something of a "recompense" for the project being on their property. If cultural affiliation with an Indian tribe can be determined, based upon similar evidence as previously described, then the agency official should make a reasonable effort to see that the remains and the objects are properly treated according to the affiliated tribe's traditions. This may entail policies or agreements early in the planning process with the landowner releasing any ownership to artifacts, funerary objects, or human remains that may be encountered during the undertaking.

Principle 6, As mentioned earlier, the Caddo Nation already has an "Inadvertent Discovery Policy" in place and has now for many years. This policy has extended to archeological investigations describing the protocols related to timing and notifications of the discoveries. Landowners should be encouraged to protect "important archeological properties, including burials." TCPs should be added here as stated before sometimes the archeological property is part of a bigger and broader TCP. Burial sites to the Caddo are considered to the TCPs, not archeological resources or properties.

Thank you for the opportunity to comment on the revisions to the policy statement.

Sincerely,

Robert Cast
THPO
Caddo Nation



the
Chickasaw
Nation HEADQUARTERS

Arlington at Mississippi / Box 1548 / Ada, OK 74821-1548 / (580) 436-2603

Bill Anoatubby
Governor

Jefferson Keel
Lieutenant
Governor

October 24, 2005

Mr. John M. Fowler, Executive Director
The Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania AVE, NW, STE 809
Washington, DC 20004

Dear Mr. Fowler:

Attached are comments provided in response to the notice of intent to reconsider the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods," as published in the Federal Register, September 1, 2005 (Volume 70, Number 169).

Please include our comments in the response.

If you have any questions please call Kirk Perry at (580) 436-7263.

Sincerely,

Jefferson Keel, Lt. Governor
The Chickasaw Nation

Enclosure



God Bless America!

Attached comments:

Our comments are added below in bold following the lines quoted from the federal register notice.

Working Principles

Any ACHP revised and updated policy will:

--Address treatment of all human remains and funerary objects in the context of compliance with Section 106 of the National Historic Preservation Act (Section 106);

--Encourage Federal agencies to initiate the Section 106 process early in their planning processes;

--Address human remains and funerary objects of all people;

--Be consistent, and work in concert, with other Federal, State, tribal, and local laws;

Principle 1: The policy statement should recognize that human remains must be treated with respect and dignity.

Comment: We are in agreement with this principle as written.

Principle 2: The policy statement should clarify the intersection between Section 106 and other legal authorities.

--The policy statement needs to clarify the intersection between the requirements of Section 106 and the Native American Graves Protection and Repatriation Act (NAGPRA).

Principle 2: a.

Comment: We are in agreement with this principle as written.

--The policy statement needs to clarify the intersection between the requirements of Section 106, State burial laws and other applicable laws.

Comment: On tribal lands, policy statement needs to clarify the intersection with tribal laws.

--The policy statement needs to recognize that a Federal agency official under Section 106 has a duty for the care of human remains and funerary objects.

Comment: The state agency officials need to have a policy on the treatment of human remains, funerary and sacred objects.

Principle 3: The policy statement should emphasize that avoidance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects.

Comment: We are in agreement with this principle as written.

--Federal undertakings should disturb human remains and funerary objects only if absolutely necessary, and then only after exploring other alternatives early in project planning.

Comment: Federal undertakings should disturb human remains, sacred sites, objects of cultural patrimony and funerary objects only if absolutely necessary, and then only after consultation with the tribes and only after exploring other alternatives early in project planning.

--In order to realistically consider avoidance and preservation in place, Federal agencies need to initiate the Section 106 process early in planning.

Comment: We are in agreement with this principle as written.

--Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site's long-term preservation.

Comment: The policy should give guidance that the agency official must draft a plan or a restrictive covenant for the site's long term preservation.

Principle 4: The policy statement should recognize that Federal agencies are responsible for meaningful consultation with all interested parties as a means to achieve compliance with the law.

Comment: The policy statement should add language recognizing that Federal agencies are responsible for meaningful consultation with all Federally Recognized Tribes and interested parties as a means to achieve compliance with the law.

--In accordance with the NHPA, the Federal agency official with jurisdiction over the undertaking has the responsibility to make the final decisions in Section 106 review after completing, and being informed, by the consultation process. However, it is recognized that Federal or State law may prescribe a certain outcome.

Comment: The policy should also instruct the state agency to strongly consider the comments of the affiliated Federally Recognized Tribes who are consulting parties.

--Agency decisions regarding treatment and ultimate disposition must be based on a careful consideration of all views.

Comment: When a determination of cultural affiliation has been made with Federally Recognized Tribes, their views should be afforded the strongest consideration.

--The legal Government-to-Government obligations of Federal agencies to Indian tribes emanating from various statutes, Executive orders, treaties or court decisions should have a bearing on Federal agency decisions regarding the treatment and disposition of Native American human remains and funerary objects.

Comment: We are in agreement with this principle as written.

--Planning for the disposition of human remains should occur early in the process.

Comment: Add to the sentence: following consultation with the Federally Recognized Tribes.

Principle 5: The policy statement should guide the Federal agency official in decision making.

Comment: Add only if the Federally Recognized Tribes concur.

--The policy statement should clarify the roles of different groups concerned with the effects of the undertaking on historic properties in making decisions.

Comment: We are in agreement with this principle as written.

--The policy statement should clarify how the Federal agency weighs the views presented by the different parties in arriving at a final decision, recognizing that Federal or State law may prescribe a certain outcome.

Comment: Change the sentence to add; recognizing that Federal, Tribal, or state law may prescribe a certain outcome.

Principle 6: The policy statement should call for Federal agencies to develop procedures for the preservation and treatment of human remains discovered inadvertently, or when there is the potential for an undertaking to discover human remains.

Comment: The policy statement should also call for State officials to develop the same procedures, when the federal official assigns responsibilities to a state agency.

--The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects when they are inadvertently discovered.

Comment: These principles should apply to state agencies when assigned by federal agencies.

--The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects where they may be anticipated to be encountered as part of National Register eligibility investigations and data recovery investigations.

Comments (change to read): The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects where they may be anticipated to be encountered.

This sentence should end here. There is no reason to limit the policy only to national register eligible sites. This policy should also extend to sacred sites and objects of cultural patrimony (anytime human remains are encountered the site is a sacred site).

--The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects exposed during natural disasters or encountered during emergency responses to such disasters.

Comment: The policies that have already been written should continue to apply.

--The policy should encourage Federal agencies to develop these procedures in consultation with all interested parties consistent with Principle 4.

Comment: The policy statement should add language recognizing that Federal agencies are responsible for meaningful consultation with all Federally Recognized Tribes and interested parties as a means to achieve compliance with the law.

Comment: It is recommended the federal agencies seek to budget funds to accomplish tribal face-to-face consultations as tribes do not any funding source or federal grant sources to travel to often far away cities where consultations may be conducted.

--If a site is avoided, Federal agencies should have a procedure in place to provide the owners with guidance developed by the Secretary of the Interior under Section 112(b) of the NHPA and supplemental guidance that encourages protection of important archaeological properties, including burial sites.

Comment: We concur with the statement, but also recommend to include traditional cultural properties (TCP).

End of text of the principles.

Joseph L. Trujillo
Governor

Joseph E. Suina
Lt. Governor



Matthew S. Pecos
Treasurer

P.O. Box 70
255 Cochiti Street
Cochiti Pueblo, New Mexico 87072-0070
PH # (505) 465-2244 Fax # (505) 465-1135

John L. Nau, III
Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Ave. NW, Suite 809
Washington, DC 20004

October 12, 2005

Dear Mr. Nau,

The Pueblo de Cochiti has received your letter dated September 9, 2005 regarding the consultation by the Pueblo on the proposed revisions to the *Policy Statement Regarding the Treatment of Human Remains and Grave Goods* adopted in 1988 by the Advisory Council on Historic Preservation (ACHP). The Pueblo de Cochiti feels that the revision to this policy is very important to the proper treatment and respect of remains and associated funerary objects of our ancestors. The Pueblo requests to be consulted throughout the revision development on a government-to-government basis.

The Pueblo de Cochiti has reviewed the working principles and has the following comments:

As stated in the register background information, two broad camps with respective views exist. The Pueblo de Cochiti view is that human remains and their associated funerary objects, due to their cultural significance, and spiritual value to living communities, should be immediately and respectfully reburied or repatriated for reburial without study. With this statement in mind the Pueblo de Cochiti offers the following comments:

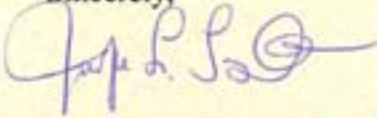
- Principle 5, sub statement 1 – Different groups concerned should be identified as culturally and or affiliated groups (as not to allow concerns of scientists and others to initiate or conduct studies on the remains or associated funerary objects, if not wanted by an affiliated tribe.)
- Principle 6, sub statement 4 – Interested Parties should be identified as culturally and or affiliated groups (as not to allow concerns of scientists and others to initiate or conduct studies on the remains or associated funerary objects, if not wanted by an affiliated tribe.)

The Pueblo de Cochiti hopes that the development of this policy will take into consideration with some priority the culturally affiliated tribes views and cultural

practices to any human remains and funerary objects discovered, which are subject to this policy.

The Pueblo de Cochiti looks forward to working with the ACHP throughout the revision process of this policy. Should you have any questions regarding this letter or the provided comments, please feel free to contact Mr. Lee R. Suina, Director, Cultural Heritage Program, at (505) 465-0617 or via e-mail at lee_suina@pueblodecochiti.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph L. Trujillo". The signature is stylized and cursive.

Joseph L. Trujillo – Governor
Pueblo de Cochiti

cc: Richard Pecos, Tribal Administrator
DNRC Cultural File
Tribal File



October 24, 2005

COEUR D'ALENE TRIBE

CHIEF J. ALLAN, CHAIRMAN
P.O. BOX 408
PLUMMER, IDAHO 83851
(208) 686-5803 • Fax (208) 686-8813
email: qspencer@cdatribe-nsn.gov

REFERENCE:

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Washington, DC 20004

Dear Sir or Madam:

On behalf of the Coeur d'Alene Tribe (Tribe), I am writing this letter to submit comments on the Advisory Council on Historic Preservation's revision of the *Policy Statement Regarding the Treatment of Human Remains and Grave Goods*. As the Tribe understands the process, the policy is intended to assist Section 106 actors in resolving how human remains and funerary objects are treated in the Section 106 review process. The Tribe agrees that the policy should be revised in light of the fact that the Native American Graves Protection and Repatriation Act along with other federal statutes have sought to redefine the process of gaining final disposition of human remains and funerary objects.

The Tribe would support discussion on the six principles identified as the Working Principles published in the Federal Register, Volume 70, Number 169, on Thursday, September 1, 2005. Specifically, the Tribe would generally support inclusion of the six principles in any discussion of how human remains and funerary objects are treated in the Section 106 review process. The clarification of the current state of the law would allow more timely and informed decision-making with regard to these most sensitive of issues. Under principle four, the Tribe would support more language that sought to clarify the federal trust responsibility with regard to individual Indians and tribes in the Section 106 process. The federal government's role as a fiduciary that must hold itself to exacting standards and the responsibility to manage the cultural resource for the benefit of rather than at the expense of individual Indian and tribal interests must be clearly defined.

The Tribe looks forward to working with you on these Working Principles as we seek to gain final disposition of human remains and funerary objects that are subject to the Section 106 process. Should you require additional information or comments, please contact our cultural resources department, Quannah Matheson, at (208) 686-0675 or e-mail at qmatheson@cdatribe-nsn.gov. Thank you for your consideration of the comments submitted above and we look forward to hearing from you soon.

Sincerely,

Chief J. Allan, Chairman
Coeur d'Alene Tribe

Cja:qms

8 5 700



**THE CONFEDERATED TRIBES
OF
THE COLVILLE RESERVATION
Colville Business Council**

November 4, 2005

Julia King, Chair
Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Ave, N.W., Suite 809
Washington, D.C. 20004

Re: "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Ms. King:

Thank you for consulting with the Colville Confederated Tribes (CCT) regarding the Advisory Council's (ACHP) plans to revise the existing "Policy Statement." Although we see certain positive aspects of the proposed Working Principles (particularly the provisions that highlight avoidance of burials), we see Principles 4, 5, and 6 as being contrary to our interests. We urge the ACHP to consider dropping these Principles from their new policy or to revise them substantially to better protect the interests of tribes.

First, implementation of the Working Principles would serve to federalize the treatment of human remains that are currently handled under state law, resulting in a loss of tribal control over our ancestors' remains. Within our traditional territories in Washington, Oregon, and Idaho, state laws currently govern the treatment of human remains found on private or non-federal public lands. In Oregon and Idaho, the state laws require that excavation of prehistoric human remains be done only with the permission of the appropriate tribe. In Washington State, excavation of prehistoric human remains requires a permit, and the State is obligated to consult with tribes prior to issuance of a permit. These provisions of state law provide the CCT with a substantial role in the treatment of our ancestors' remains.

As we understand it, NAGPRA was intended to provide tribes with a similar ability to protect our ancestors' remains on federal and tribal lands, but the practice has been entirely different. In particular, the "meaningful consultation with all interested parties" provisions of Principle 4 would obligate federal agencies involved in the Section 106 process to honor not only the applicable state laws, but also to address the wishes of groups that often have interests directly opposed to tribes.

We recognize that the ACHP may be under pressure from some groups to provide for greater opportunities to analyze prehistoric human remains. We wonder, though, why the desires for scientific analysis are given such precedence over the spiritual and emotional health of tribal communities. We cannot emphasize enough the visceral impact that the disturbance of burials has on our elders. Although our elders may not personally know each ancestor that was buried in

Colville Business Council, P.O. Box 150, Nespelem, Washington 99155
(509) 634-2212 fax (509) 634-4116 harvey.moses@colvilletribes.com

the past, they do know that they are relatives – grandmothers and grandfathers, uncles and aunts, cousins and siblings. Each time that our ancestors are disturbed, it comes with an emotional weight that is like the loss of a living relative. We might bear such a weight if it was for the good of humanity, but we have not seen that any of the recent scientific analyses of human remains in our traditional territories have produced information that is beneficial to humanity. Therefore it is clear that the desire for such invasive, destructive studies cannot outweigh the significant cultural interests of tribal governments and communities that have already been recognized by Congress.

Second, implementation of Principles 4, 5, and 6 would likely delay the reburial process, which runs directly in the face of CCT's culturally mandated practice of quick reburial. Our elders understand that burials are sometimes found inadvertently despite our best efforts to identify them before construction. At the same time, they also expect that we return them to the ground as quickly as possible. It is helpful to undertake a cursory analysis of remains to understand the sex and age of recovered individuals, as it helps us to tailor appropriate reburial ceremonies. Knowledgeable personnel can do these analyses in the field as quickly as remains are removed from the ground, allowing for a timely reburial.


These principles, though, would burden us (and the involved agencies) with a substantial and unnecessary consultation requirement. In contrast, the current system of state laws allows us to move forward quickly to rebury people from private or non-federal public lands. For example, we have worked successfully with the State of Washington on the recovery and prompt reburial of human remains from non-federal public lands. In the case of human remains that were found on Bureau of Reclamation (BOR) lands just to the south of the Colville Reservation in 2003, the BOR still has not returned the individual's remains to the CCT or any other involved tribe despite the willingness of the involved tribes to move forward jointly. We find these delays in reburying our ancestors greatly dismaying, and we fear that these Working Principles might result in similar delays that are contrary to the spirit of NAGPRA, if not the letter of the law.

With these thoughts in mind, we recommend that the ACHP refrain from revising its Policy if that guidance is going to interfere with on-going programs that have successfully dealt with prehistoric human remains. We ask that you allow us to work out the treatment of human remains on private and non-federal public lands with the individual states.

Should you have any questions about this letter, we ask that you contact Ms. Camille Pleasants, the Tribal Historic Preservation Officer (THPO), at (509) 634-2654. She is the point of contact at the CCT for issues related to treatment of our ancestors' remains.

Thank you.

Sincerely,



Harvey Moses, Jr.
Chair, Colville Business Council

cc: File (SH)
Chron.
Dr. Tom McCulloch, ACHP
Valerie Hauser, ACHP
Dr. Allyson Brooks, Washington SHPO
James Hamrick, Deputy Oregon SHPO
Ken Reid, Idaho SHPO
Deb Louie, Chair, Chair, Culture Committee, CCT
John Sirois, Cultural Preservation Administrator, CCT
Camille Pleasants, THPO, CCT
Bambi Kraus, NATHPO



Delaware Nation
NAGPRA/Cultural Preservation Office
P.O. Box 825, Anadarko, OK 73005
Phone: (405) 247-2448 Fax: (405) 247-9393

27 September 2005

ATTN: Dr. Tom McCulloch
Advisory Council on Historic Preservation
1100 Pennsylvania Ave, N.W., Suite 809
Washington, D.C. 20004

RE: Consulting Party

Dear Dr. McCulloch,

Thank you for contacting the Delaware Nation regarding the above referenced project. The Delaware Nation is committed to protecting archaeological sites that are important to tribal heritage, culture, and religion. Furthermore, the tribe is particularly concerned with archaeological sites that may contain human burial remains and associated funerary objects.

On September 19, 2005 the Delaware Nation NAGPRA Department received a correspondence from the Advisory Council on Historic Preservation. Yes the Delaware Nation, is interested in being consulting party for the referenced project. Please keep us updated as to your progress and send further information about the project as it becomes available.

We appreciate your cooperation in contacting the Delaware Nation. Should you have any questions, feel free to contact me.

Sincerely,



Tamara Francis, Director
NAGPRA/Cultural Preservation

Laura Dean

From: Archeol AP. Project
Sent: Monday, September 26, 2005 2:27 PM
To: Laura Dean; Valerie Hauser; Monique Fordham
Cc: Tom McCulloch
Subject: FW: New Policy on treatment of human remains

Val and Monique:

I am forwarding this comment to you because it is from a tribe. Javier (Bless his heart!) cleaned up the access program that he used to organize the regs comments. He sent it to me and now I have to put it someplace where we all can access it. I'll get that done today or tomorrow. I am making hard copies of all of the comments and I hope to make a list that can be sorted by org/tribe/etc., name and date. Access can do that but I want something separate to cross-check the access list. I'll keep you posted.

Laura

From: Gary Loutzenheiser [mailto:gloutzenheiser@FTMCDOWELL.ORG]
Sent: Fri 9/23/2005 5:29 PM
To: Archeol AP. Project
Cc: Raphael Bear; Karen Ray
Subject: New Policy on treatment of human remains

To: ACHP

... response to the letter of September 9, 2005, and reviewing the Working Principles document, the Fort McDowell Yavapai Nation is interested in the initiative. To state clearly, it is the desire of the Fort McDowell Yavapai Nation that human remains and items buried with them should not be disturbed and if the area is known to have such items the Section 106 process would call for alternatives to disturbing the sites. With respect to human remains and funerary objects uncovered, they should be immediately and respectfully repatriated for burial without study.

Gary Loutzenheiser
Cultural Representative
Fort McDowell Yavapai Nation



Gila River Indian Community

EXECUTIVE OFFICE OF THE GOVERNOR & LIEUTENANT GOVERNOR

November 3, 2005

Julia King, Chair and ACHP Expert Member
The Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue
NW, Suite 809
Washington, DC 20004

RE: Comments on the "Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Ms. King:

The purpose of this letter is to provide comments on the "Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods." The Gila River Indian Community (GRIC) agrees that the current policy must be revised to ensure the dignified and respectful treatment of human remains and funerary objects. It is the understanding of the GRIC that the comments would be related to the principles in order to produce an entirely new policy to replace the current "Policy Statement Regarding Treatment of Human Remains and Grave Goods." The GRIC agrees that the term "grave goods" should be replaced with the term "funerary objects." The following changes are strongly recommended;

Principle 1: Avoidance of burial disturbance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects. Federal undertakings should disturb human remains and funerary objects only if absolutely necessary. The term "absolutely necessary" needs to be concretely defined in consultation with tribes. Monetary loss is not a justifiable motivation for burial disturbance because monetary loss can be avoided if federal agencies initiate the Section 106 process at the earliest point of project inception, before pecuniary commitment takes place. Federal agencies must ensure that tribes are adequately consulted to provide input in order to realistically consider avoidance and preservation in place. Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site's long-term protection and preservation.

Principle 2: Human remains must be treated with respect and dignity as defined in consultation with the culturally affiliated tribes. Dignity and respect are concepts subjective to different cultures.

Principle 3: Federal agencies are responsible for meaningful consultation and closure as defined by culturally affiliated tribes as a means to achieve compliance with the law. A single letter does not constitute consultation, and is not a bona fide effort to meaningful consultation. Agencies must realize federal trust responsibilities predate government-to-government consultation as “the federal government has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealing with the Indians, should therefore be judged by the most exacting fiduciary standards.” The United States has a general fiduciary obligation to ensure the dignified and respectful treatment and disposition of human remains under the terms of authorizing documents (e.g., the Native American Graves Protection and Repatriation Act (NAGPRA), the requirements of Section 106 of the National Historic Preservation Act, State burial laws and other applicable statutes and executive orders) as stated in *Navajo Tribe of Indians v. United States*, 624 F.2d 981, 988 (Ct. Cl. 1980).

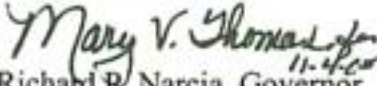
In accordance with the NHPA, the Federal agency official with jurisdiction over the undertaking has the responsibility to make the final decisions in Section 106 review after completing the consultation process, however it must be recognized that tribes are sovereign nations, and as such should be given higher priority in the consultation process given the federal government’s fiduciary obligations to the tribes. There is a tendency to give more consideration to groups who launch letter writing campaigns because there is a greater quantity of comments on a given project, and no consideration to the fact that one letter from a tribal leader represents an entire nation. The policy statement should clarify how the Federal agency weighs the views presented by the different parties in arriving at a final decision.

Principle 4: Federal agencies must develop procedures for the preservation and treatment of human remains discovered intentionally or inadvertently, as well as procedures for treatment of human remains and funerary objects exposed during natural disasters or encountered during emergency responses to such disasters in consultation consistent with Principle 3. If a site is avoided, Federal agencies must have a procedure in place to provide the land owners with guidance developed by the Secretary of the Interior under Section 112(b) of the NHPA and supplemental guidance that encourages protection of important archaeological properties, including burial sites.

Principle 5- Prior to reburial, scientific studies performed for justified research topics must be non-destructive and must be approved by the culturally affiliated tribes. If the scientific study is offensive to the descendants of the dead, reburial should occur without prior study. Scientific studies and reburial should occur according to a definite, agreed-upon schedule.

The GRIC appreciates the opportunity to voice our concerns and anticipates continued and meaningful consultation to address this critical issue. Please call the GRIC Cultural Resource Specialist Office at 1-520-562-3570 should you have any questions or require further information.

Sincerely,


Richard P. Narcia, Governor

cc: Four Southern Tribes of Arizona



Gila River Indian Community

EXECUTIVE OFFICE OF THE GOVERNOR & LIEUTENANT GOVERNOR

November 3, 2005

Julia King, chair and ACHP expert member
The Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue
NW, Suite 809
Washington, DC 20004

RE: Comments on the "Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Ms. King:

The purpose of this letter is to provide comments on the "Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods." In 1989 four federally recognized tribes, the Gila River Indian Community (GRIC), Salt River Pima-Maricopa Indian Community (SRP-MIC), Ak-Chin Indian Community (ACIN) and the Tohono O'Odham Nation (TON), developed an organization called the Four Tribes Cultural Resource Working Group which is recognized by each Community's respective Community Council Resolutions. The Four Tribes cooperate in matters on issues affecting cultural resource preservation, cultural resource management, traditional cultural property evaluations, repatriation and other issues of cultural concern that encompasses protection, preservation and revitalization of our shared histories, language, and culture. The Four Southern Tribes, through coordination and in consensus, responds to all matters regarding all of the aforementioned matters.

On Friday, October 28, 2005, the Four Southern Tribes Cultural Resource Working Group (The Four Tribes) met to discuss comments related to the principles in order to produce an entirely new policy to replace the current "Policy Statement Regarding Treatment of Human Remains and Grave Goods." The Four Tribes agree that the term "grave goods" should be replaced with the term "funerary objects." The following changes are strongly recommended:

Principle 1: Avoidance of burial disturbance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects. Federal undertakings should disturb human remains and funerary objects only if absolutely necessary. The term “absolutely necessary” needs to be concretely defined in consultation with tribes. Monetary loss is not a justifiable motivation for burial disturbance because monetary loss can be avoided if federal agencies initiate the Section 106 process at the earliest point of project inception, before pecuniary commitment takes place. Federal agencies must ensure that tribes are adequately consulted to provide input in order to realistically consider avoidance and preservation in place. Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site’s long-term protection and preservation.

Principle 2: Human remains must be treated with respect and dignity as defined in consultation with the culturally affiliated tribes. Dignity and respect are concepts subjective to different cultures.

Principle 3: Federal agencies are responsible for meaningful consultation and closure as defined by culturally affiliated tribes as a means to achieve compliance with the law. A single letter does not constitute consultation, and is not a bona fide effort to meaningful consultation. Agencies must realize federal trust responsibilities predate government-to-government consultation as “the federal government has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealing with the Indians, should therefore be judged by the most exacting fiduciary standards.” The United States has a general fiduciary obligation to ensure the dignified and respectful treatment and disposition of human remains under the terms of authorizing documents (e.g., the Native American Graves Protection and Repatriation Act (NAGPRA), the requirements of Section 106 of the National Historic Preservation Act, State burial laws and other applicable statutes and executive orders) as stated in *Navajo Tribe of Indians v. United States*, 624 F.2d 981, 988 (Ct. Cl. 1980).

In accordance with the NHPA, the Federal agency official with jurisdiction over the undertaking has the responsibility to make the final decisions in Section 106 review after completing the consultation process, however it must be recognized that tribes are sovereign nations, and as such should be given higher priority in the consultation process given the federal government’s fiduciary obligations to the tribes. There is a tendency to give more consideration to groups who launch letter writing campaigns because there is a greater quantity of comments on a given project, and no consideration to the fact that one letter from a tribal leader represents an entire nation. The policy statement should clarify how the Federal agency weighs the views presented by the different parties in arriving at a final decision.

Principle 4: Federal agencies must develop procedures for the preservation and treatment of human remains discovered intentionally or inadvertently, as well as procedures for treatment of human remains and funerary objects exposed during natural disasters or encountered during emergency responses to such disasters in consultation consistent with Principle 3. If a site is avoided, Federal agencies must have a procedure in place to provide the land owners with guidance developed by the Secretary of the Interior under Section 112(b) of the NHPA and supplemental guidance that encourages protection of important archaeological properties, including burial sites.

Principle 5- Prior to reburial, scientific studies performed for justified research topics must be non-destructive and must be approved by the culturally affiliated tribe. If the scientific study is offensive to the descendants of the dead, reburial should occur without prior study. Scientific studies and reburial should occur according to a definite, agreed-upon schedule.

The Four Southern Tribes Cultural Resource Working Group appreciates the opportunity to voice our concerns and anticipates continued and meaningful consultation to address this critical issue. Please call the GRIC Cultural Resource Specialist Office at 1-520-562-3570 should you have any questions or require further information.

Sincerely,


Richard B. Narcia, Governor 4-5-05

cc: Four Southern Tribes of Arizona



Greenville Rancheria

P.O. Box 279 • 410 Main St.

Greenville, CA 95947

Phone (530) 284-7990

Fax (530) 284-6612

ELECTRONICALLY FILED ON:

November 4, 2005

Advisory Council on Historic Preservation
1100 Pennsylvania Ave. NW, Ste. 809
Washington, D.C. 20004

Attn: Dr. Tom McCulloch

Re: Comments on Revised Policy Statement Regarding Treatment of Human Remains and Funerary Objects

Dr. McCulloch,

I would like to offer the following comments, as requested, on the Advisory Council's Proposed Revision of its Policy Statement Regarding the Treatment of Human Remains and Funerary Objects.

We believe that human remains and the items buried with them should not be disturbed. The Section 106 process should be initiated early enough to allow for alternatives to disturbance of locations known to contain human remains to be thoroughly explored, including the alternative of avoidance and preservation in place.

When it does occur that disturbance of human remains is absolutely unavoidable, we believe that those human remains and their associated funerary objects, due to their cultural significance and spiritual value to living communities, should be immediately and respectfully reburied or repatriated for reburial without study.

We strongly disagree with those who believe that the cultural significance and spiritual value to living communities of exhumed human remains is outweighed by the scientific value of the information these remains and funerary objects can provide about the past when studied by archaeologists and other specialists. This last alternative is, in our view, not appropriate, even when the human remains and funerary objects are removed from the ground at public expense. Human remains, of any ethnicity, should not be subject to scientific analysis, especially over the objection of lineal descendants.

With that in mind, we believe that your Summary of Working Principles is a step towards a more appropriate policy than that adopted by the Council in 1988, which (paraphrased) calls for "scientific studies" on human remains before repatriation, even if the lineal descendents did not agree, if the "scientific research value outweighed the

concerns of the descendants". The working principles you set forth should work to correct such an indignity:

1. That human remains be treated with respect and dignity;
2. That there should be a clarification regarding any conflicts between Section 106 (National Historic Preservation Act) and other laws (NAGPRA, State statutes, etc.)
3. That the preferred alternative is avoidance of any human remains, and allowing them to stay where they were buried;
4. That federal agencies are responsible for consulting with all interested parties (including tribes) in order to comply with Section 106;
5. That federal agency officials should have standard guidelines in making decisions under Section 106;
6. That federal agencies should develop procedures for the preservation and treatment of human remains discovered inadvertently, or when there is a possibility of such a discovery in the course of a project.

Please continue to keep the Greenville Rancheria apprised of the developments as the process of revision ^{of} your policy statement continues. Thank you for the opportunity to comment on this matter.

Sincerely,



Michael D. DeSpain
Environmental Director
Greenville Rancheria Tribal EPA

MDD:gjg



Greenville Rancheria

P.O. Box 279 • 410 Main St.

Greenville, CA 95947

Phone (530) 284-7990

Fax (530) 284-6612

October 13, 2005

Advisory Council on Historic Preservation
1100 Pennsylvania Ave. NW, Suite 809
Washington, DC 20004

Attn: John L. Nau, III, Chairman

Re: Consultation on ACHP Policy Statement Regarding the Treatment of Human Remains and Funerary Objects

Dear Mr. Nau,

I would like to thank you for your letter of September 9, 2005, inviting the Greenville Rancheria to consult with the Advisory Council on Historic Preservation regarding consideration of a new policy on the treatment of human remains. We will be reviewing the documentation that you sent to us, and begin preparing our written comments.

This policy issue is a particularly sensitive one for the Tribe, as it pertains to an ongoing concern with ancestral remains displaced or scattered by the intentional flooding of an area in our aboriginal territory known as "Big Meadows" which was home to several Native American villages and cemeteries. Subsequently, dredging was performed in the large lake that resulted (Almanor) by a power generation company, and in September of 1975, a number of Maidu burials were exposed on the North shore of the lake. Without consultation with the local Native American community, the remains and other funerary objects were taken to California State University at Chico, where they remained for seventeen long years. They were finally released to the custody of the federally recognized Greenville and Susanville Rancherias, and were re-interred with the assistance of Native American members of the Maidu Cultural and Development Group.

The Lake Almanor site is replete with such cultural resources, yet proposals are even now being considered by certain federal and state agencies which would have a negative impact on the important historical assets in this area.¹

Therefore, we would be pleased to actively participate in a review of the ACHP's policy in this regard, and will prepare our written comments on your proposed policy changes.

Sincerely,


Lorie Jaimes
Tribal Chairperson

LJ:gjg

¹ Such as the Federal Energy Regulatory Commission's Project 2105-089, considering the conditions of relicensing PG&E's hydroelectric facilities originating from Lake Almanor.

Laura Dean

From: Valerie Hauser
Sent: Tuesday, October 18, 2005 2:10 PM
To: Laura Dean; Tom McCulloch
Subject: FW: COMMENTS (10/18/05)

From: Larry Garvin [mailto:LGarvin@ho-chunk.com]
Sent: Tuesday, October 18, 2005 2:46 PM
To: Valerie Hauser
Cc: Bill Quackenbush; George W. Garvin; Jay Toth; Larry Garvin
Subject: COMMENTS (10/18/05)

October 18, 2005

Ms. Hauser:

Attached are comments submitted on behalf of the Ho-Chunk Nation by Bill Quackenbush, THPO, and George Garvin, Repatriation Researcher. Thanks.

Larry

1. Under the subheading Working Principles, the second bullet uses the term "Encourage". The sentence, as a whole, would hold more weight if the term "Requires" is substituted for it.

2. Under the same subheading in Principles 4, the fourth bullet used the term "Planning". The term Planning needs to be described, or possibly laid out in further detail. "Planning" could range from scribbled notes, all the way to an EIS type document otherwise.

As I understand it, an ACHP Task Force is revisiting its Policy Statement Regarding Treatment of Human Remains and Grave Goods" and drafting a set of Working Principles that will assist in guiding the revisions of the 1988 Human Remains Policy. In its *Objectives of an updated policy*, I notice three things being addressed:

- **Goals of this initiative** - ACHP asserting its leadership in historic preservation, Create new policy in resolving the difficult question of what to do with human remains when Federal or State laws do not already prescribe a certain outcome, Create policy that encompasses human remains and funerary objects where their outcome are not governed by current Federal or State laws, Etc.
- **Dilemma of current policy** - Balancing the desire to treat human remains in a respectful and sensitive manner with public interest/study geared towards knowing its collective past, Etc.
- **Benefits arriving from positive efforts** - The new policy will serve to provide a model for other organizations, agencies, or governments seeking to develop their own policies on this matter, Resolving of questionable treatment of human remains and funerary objects in the absence of Federal or State Law, Etc.

Additional, input from the HCN Repatriations Officer addressed the following:

- Regarding the inadvertent discovery of human remains, the protocol of analysis and study of such, causes concern and needs to be addressed

- The analysis and study of the human remains needs to be clearly laid out, and there should be no evasive, destructive type study to the human remains and associated funerary objects.
- Immediate correspondence with all tribes associated with the region where the remains were disturbed, before any analysis or study begins, and only then would the possibility to conduct nondestructive measurements, and nondestructive photography in order to accomplish the basic analysis required by law and the federal inventory process, be granted. At no time should the study process include removal of materials for future refined studies. Destructive analysis such as coating the remains with any protective substance, x-ray analysis study practices such as measuring, etc, should not take place.
- The enforcement instrument needs more severe penalties so State and Federal agencies adhere to this policy and then...
- Presently, the Advisory Council can only make recommendations to the existing laws for the National Historical Preservation Act, Section 106 and Section 110. The Advisory Council needs to have some teeth incorporated into the enforcement aspect.

Lastly, the *tentative wording* that is being used to suggest change, for example, under the principles the term "should", could be replaced with more assertive wording (such as "will" or "must") that will add to the need for such change. I wouldn't really know how to comment on this though, since this is only a draft, and the principles are only for the determination process.

Laura Dean

From: Archeol AP. Project
Sent: Wednesday, September 21, 2005 8:14 AM
To: Laura Dean
Subject: FW: Hui Malama

From: Pili [mailto:pili@edithkanakaolefoundation.org]
Sent: Wed 9/14/2005 6:03 PM
To: Archeol AP. Project
Subject: Hui Malama

Aloha,

I am writing to support the Hui Malama group that is responsible for the bones of their ancestors. The cultural practices of the Native Hawaiians require respect always be paid to ancestors. Ultimately, this is the responsibilities of the Native Hawaiians and not the Bishop Museum or anyone else.

Please let our Native Hawaiians take care of their own!

Pilialoha Johnson
P O Box 4115
Hilo, HI 96720



Iowa Tribe of Kansas and Nebraska

3345 B Thrasher Road
White Cloud, Kansas 66094
(785) 595-3258 or (785) 595-3259
Fax (785) 595-6610

November 1, 2005

Advisory Council on Historic Preservation
1100 Pennsylvania Ave. NW, Suite 809
Washington, DC 20004

RE: New ACHP policy on the treatment of human remains

It is the position of the Iowa Tribe of Kansas and Nebraska that all American Indian human remains and funerary objects be re-interred as soon as possible after disinterment, in place if possible or near if that is not possible. There should be minimal study and no destructive analysis of either remains or funerary objects. The appropriate Tribes should be consulted as soon as remains are discovered and be part of the reburial process.

As to the contention about remains "which are removed from the ground at public expense" they are nearly always disturbed for a public project which is at public expense. That should have no bearing as to the treatment of remains.

These are our ancestors, they should not be disturbed unless necessary and they should not be molested before re-interment.

We will reserve further comments for the consultation meetings.

Sincerely,

Leon Campbell, Chairman
Iowa Tribe Executive Committee

cc: Patt Murphy, NAGPRA Rep.



Victoria A. Doud
PRESIDENT

November 4, 2005

Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Washington, DC 20004

Dear Task Force Members:


The Lac du Flambeau Band of Lake Superior Chippewa Indians appreciates the opportunity to review and provide comments on the recent federal register notice of intent to reconsider the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods". Although ACHP's intent to reconsider its policy is supported, it is concerning that the purpose of the reconsideration is to balance interest between scientific analysis and repatriation and reburial.

The justification for the debate implies that since "public" money is used to unearth human remains, somehow that provides the interested public with a right to desecrate and destroy ancestral remains. ACHP's policy gives scientific opinion equal standing to that of ownership and rights of the dead and this is not the intent of NHPA and is inconsistent with NAGPRA.

The working principles need to include a section on disinterment. This is to say that past guidance implied the only appropriate method of removal of human remains is using, "proper archaeological methods". Not only can these methods be extremely invasive, they can conflict with tribal traditional practices. Guidance should be included that enhance and respects the professional expertise of "tribal officials". This section should also address tribal consultation during decisions of disinterment, handling and curation of human remains and associated objects.

We look forward to working with ACHP during the regional consultation meetings.

Sincerely,


Victoria Doud
Tribal President

**Lac du Flambeau Band
of Lake Superior Chippewa Indians**

P.O. Box 67 - Lac du Flambeau, Wisconsin 54538 • (715) 588-4205 • FAX (715) 588-2734

Michael B. Jandreau
Chairman



Tribal Administration
187 Oyate Circle
Lower Brule, SD 57548
Phone/Fax: (605) 473-5561

October 31, 2005

John Nau, III, Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

Dear Chairman Nau:

I am writing today to express my serious concerns on matters related to the activities of the Advisory Council on Historic Preservation, and to request your assistance in finding resolution to these problems.

Our Nation has enjoyed a long and fruitful relationship with the Advisory Council on Historic Preservation, particularly since your appointment as Chairman of the Council. Indigenous Nations on the Missouri River have struggled for decades to preserve and protect our ancestors' burials and our irreplaceable sacred and cultural places. Our sacred places are needed for the continuation of our ceremonies and spiritual lifeways, as they are spiritual and cultural classrooms for our People.

As you know, Missouri River Tribes, in collaboration with Advisory Council and others, have successfully worked with the U.S. Army Corps of Engineers to complete culturally-relevant Cultural Resource Management Plans; you and other members of the Council held a public hearing on the River to obtain comments from our elders and leadership about our concerns – this hearing also helped to obtain increased funding levels from the Corps for preservation and protection of cultural resources on the River; and your Agency issued a Letter of Foreclosure on the Corps' 1993 Programmatic Agreement which was negotiated and signed without participation or consultation of Missouri River Tribes. This action prompted the creation of the 2004 Programmatic Agreement, a document that provides for culturally relevant, pre-decisional consultation and is nothing less than a paradigm shift in the way our ancestors' sacred and cultural places are managed on the River. Many feel, in fact, that were it not for the involvement of Marjorie Nowick of your Denver office, we would not have a working Programmatic Agreement today, and certainly not one as effective. Working together with staff from your Agency and others, we helped create the Sacred Places Coalition, which addresses preservation of Native sites on a

national level. We have benefited from the support and advice of both the Denver and Washington offices of your Agency, through their attendance at Missouri River Cultural Resources gatherings at the Lower Brule Sioux Tribe and at trainings conducted by staff from these offices.

Many, many irreplaceable sacred and cultural places continue to exist in our homelands because of the strong relationship between our Nations and your Agency, and we wish to express our gratitude for this relationship and our desire to continue to work together.

We are, however, extremely concerned about some recent developments at the Advisory Council that we believe could have serious detrimental effects to all Native peoples, as outlined below.

On September 1, the Advisory Council published in the Federal Register the "Working Principles for Revising the Advisory Council on Historic Preservation's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods.'" On October 24, 25, and 26, some members of my staff and I attended a meeting of the Native American Advisory Group to the Advisory Council to share our concerns about the Working Principles and to learn more about them.

We are very concerned that the Working Principles, as drafted, do not reflect the intent of the Native American Graves Protection and Repatriation Act (NAGPRA), which returns stewardship and decision-making regarding Native dead to Native peoples. We are gravely concerned that the Working Principles, as drafted, assume a scientific legal standing or interest in our ancestors' remains for those members of the scientific community who wish to study them. We believe that only Native peoples have an interest in the contents of our ancient burials, legal or otherwise. Native Americans fought hard for the passage of NAGPRA and other federal and state laws so that we could protect our ancestors' burials for the sake of the deceased, and not for the sake of science.

We feel that the Working Principles, as drafted, are an attempt to restage the public debate concerning scientific study of Native dead that was resolved by the passage of NAGPRA. Although NAGPRA provides for study of Native dead if the culturally affiliated Tribe(s) gives their permission for the study, the vast majority of Native Nations do not want the remains of their ancestors excavated, collected, curated or studied. Language proposed in the Working Principles that suggests creating a balance of interests in Native human remains refutes both language in federal law and the repeated and consistent positions of the vast majority of Native peoples in America. If the language in the Working Principles is adopted as policy, Native Nations would have to fend off, again and again, attempts to subject their dead to expensive and destructive studies – and this struggle would become very intense if a particularly ancient burial is inadvertently discovered during a project. Beleaguered tribal governments would be forced to use scant resources to defend in court a self-evident, human right that everyone else in our country takes for granted: the right to rest in peace. Given that the Kennewick Man litigation dragged out for years and cost millions of dollars, this is not

something your Agency should be encouraging, but I am afraid that is what the Working Principles would do if they were drafted into a policy.

Given that the vast majority of human remains subjected to study in this country are Native American, and given that your Agency received only 15 responses from Tribes or Native Hawaiian organizations in its solicitation for comments, I have two requests that I think will assist in resolving these serious concerns:

1. The Working Principles, as drafted, can apply to all other human remains, i.e., African American, Asian American, European American, that are inadvertently discovered during the course of a project. Public comment can be solicited from members of those communities.

If the Advisory Council still feels it requires a policy for Native remains (for use in those states that have no Native human remains law) a separate Native human remains policy, based upon the legislative history and language of NAGPRA, could be written and submitted to Tribes and Native Hawaiians whose aboriginal homelands are encompassed in those states for review and comment. An action such as this would return decisions about treatment of Native dead to Native Peoples and would therefore be consistent with existing federal, state and tribal laws. This action would also satisfy your Agency's trust responsibility to conduct government-to-government consultation on matters that impact Tribal Peoples, tribal ancestors or tribal resources.

2. Given the low number of Native responses to your September 1 Federal Register request for public comment, as well as dangerous consequences that could result if the Working Principles are adopted into a policy as drafted, I request that you extend the public comment period for another 60 days, or until January 4, 2006. This will afford Native peoples the time needed to educate themselves, their elders and spiritual leaders, and their tribal governments on the potential impacts of a Human Remains Policy that could allow scientists to study ancestral Native remains encountered during inadvertent discoveries.

I look forward to your response and to a collaborative working relationship with you and the Advisory Council on Historic Preservation. Our Nation will be submitting more detailed comments under separate cover. Thank you for your attention to this important matter.

Sincerely,



Michael B. Jandreau

Chairman

Lower Brule Sioux Tribe

Cc: John Fowler, Director
Advisory Council on Historic Preservation

Senator John Thune
Senator Tim Johnson
Senator John McCain
Representative Stephanie Herseth



MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

404 Frontage Road • New Town, North Dakota 58763-9402

TRIBAL BUSINESS COUNCIL
(701) 627-4781
Fax (701) 627-3105

FAX FORM

TO *Chairmen John Nau and John Fowler, Exec. Dirces*
Advisory Council on Historic Preservation

FROM *Tex G. Hall, Chairman*
Mandan, Hidatsa and Arikara Nation

November 1, 2005

RE: *Draft Working Principles of the Archeology Task Force of the Advisory*
Council on Historic Preservation



MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation
404 Frontage Road • New Town, North Dakota 58763-9402

TRIBAL BUSINESS COUNCIL
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October 31, 2005

John Nau, III, Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington DC 20004

Dear Chairman Nau:

Doh-sha! I am writing today to express my serious concerns on matters related to the activities of the Advisory Council on Historic Preservation, and to request your assistance in finding resolution to these problems.

The Mandan, Hidatsa and Arikara Nation of the Ft. Berthold Indian Reservation of North Dakota has enjoyed a long and fruitful relationship with the Advisory Council on Historic Preservation, particularly since your appointment as Chairman of the Council. Indigenous Nations on the Missouri River have struggled for decades to preserve and protect our ancestors' burials and our irreplaceable sacred and cultural places. Our sacred places are needed for the continuation of our ceremonies and spiritual lifeways, as they are spiritual and cultural classrooms for our People.

As you know, Missouri River Tribes, in collaboration with Advisory Council and others, have successfully worked with the U.S. Army Corps of Engineers to complete culturally-relevant Cultural Resource Management Plans; you and other members of the Council held a public hearing on the River to obtain comments from our elders and leadership about our concerns – this hearing also helped to obtain increased funding levels from the Corps for preservation and protection of cultural resources on the River; and your Agency issued a Letter of Foreclosure on the Corps' 1993 Programmatic Agreement which was negotiated and signed without participation or consultation of Missouri River Tribes. This action prompted the creation of the 2004 Programmatic Agreement, a document that provides for culturally relevant, pre-decisional consultation and is nothing less than a paradigm shift in the way our ancestors' sacred and cultural places are managed on the River. Many feel, in fact, that were it not for the involvement of

Marjorie Nowick of your Denver office, we would not have a working Programmatic Agreement today, and certainly not one as effective. Working together with staff from your Agency and others, we helped create the Sacred Places Coalition, which addresses preservation of Native sites on a national level. We have benefited from the support and advice of both the Denver and Washington offices of your Agency, through their attendance at Missouri River Cultural Resources gatherings at the Lower Brule Sioux Tribe and at trainings conducted by staff from these offices.

Many, many irreplaceable sacred and cultural places continue to exist in our homelands because of the strong relationship between our Tribal Nations and your Agency, and we wish to express our gratitude for this relationship and our desire to continue to work together.

We are, however, extremely concerned about some recent developments at the Advisory Council that we believe could have serious detrimental effects to all Native peoples, as outlined below.

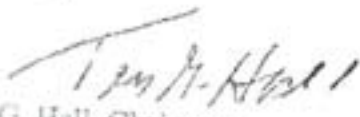
On September 1, the Advisory Council published in the Federal Register the "Working Principles for Revising the Advisory Council on Historic Preservation's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods.'" On October 24, 25, and 26, one of my staff attended a meeting of the Native American Advisory Group to the Advisory Council to share our concerns about the Working Principles and to learn more about them.

We are very concerned that the Working Principles, as drafted, do not reflect the intent of the Native American Graves Protection and Repatriation Act (NAGPRA), which returns stewardship and decision-making regarding Native dead to Native peoples. We are gravely concerned that the Working Principles, as drafted, assume a scientific legal standing or interest in our ancestors' remains for those members of the scientific community who wish to study them. We believe that only Tribes have an interest in the contents of our ancient burials, legal or otherwise. Native Americans fought hard for the passage of NAGPRA and other federal and state laws so that we could protect our ancestors' burials for the sake of the deceased, and not for the sake of science.

We feel that the Working Principles, as drafted, are an attempt to restage the public debate concerning scientific study of Native dead that was resolved by the passage of NAGPRA. Although NAGPRA provides for study of Native dead if the culturally affiliated Tribe(s) gives their permission for the study, the vast majority of Native Nations do not want the remains of their ancestors excavated, collected, curated or studied. Language proposed in the Working Principles that suggests creating a balance of interests in Native human remains refutes both language in federal law and the repeated and consistent positions of the vast majority of Native peoples in America. If the language in the Working Principles is adopted as policy, Native Nations would have to fend off, again and again, attempts to subject their dead to expensive and destructive studies – and this struggle would become very intense if a particularly ancient burial is inadvertently discovered during a project. Many tribal governments with limited

I look forward to your response and to a collaborative working relationship with you and the Advisory Council on Historic Preservation. Our Nation will be submitting more detailed comments under separate cover. Thank you for your attention to this important matter.

Sincerely,



Tex G. Hall, Chairman
Mandan, Hidatsa and Arikara Nation

- Cc: John Fowler, Director
- Advisory Council on Historic Preservation
- Senator Byron Dorgan
- Senator Kent Conrad
- Senator John McCain
- Representative Earl Pomeroy
- Representative Stephanie Herseth
- Representative Richard Pombo
- Representative Nick Rahall

OLA OKA HONUA INCORPORATION

Alice U. Greenwood - President

87-1107 A Hakimo Road

Wai'anae,

Hawaii

96792-3523

(808) 668-8751

October 31, 2005

John L. Nau, III - Chairman

Advisory Council on Historic Preservation

1100 Pennsylvania Ave NW Suite 809

Washington, DC 20004

RE: First draft of ACHP Working Principles.

Aloha e; Dr. Tom McCulloch,

Mahalo. (Thank you) for including me as part of an important processes in ACHP Working Principles documents. I have inserted some of my ideas in this processes.

Principle 1. The policy statement should recognize that human remains must be treated with respect and dignity.

The policy statement: Encourage the public, private, organizations and individuals utilizations of all usable elements, to expand and acceleration of historic preservation of human remains, funerary objects, sacred objects or objects of cultural patrimony with respect and dignity in a culturally appropriate manner.

Principle 2. The policy statement should clarify the intersection between Section 106 has a duty for the care of human remains and funerary objects.

The policy statement: Must clarify the intersection between Section 106, NAGPRA, State Burial Laws and Culturally appropriate applicable Laws and Traditions.

Principle 3. The policy statement should emphasize the avoidance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects.

The policy statement: Establishing the prestige of human remains, funerary objects, sacred objects or objects of cultural patrimony its vital legacy of cultural, educational and religious benefits will be maintained and enriched.

Principle 4. The policy statement should recognize that the Federal agencies are responsible for meaningful consultation with all interested parties as a means to achieve compliance with the law.

The policy statement: Establish, preserve and educate our modern society and our prehistoric and historic resources in productive harmony and fulfill the social, economic requirements of present and future generations, within the context of the Laws.

Principle 5. The policy statement should guide the Federal agency official in decision making.

The policy statement: Stimulate Diversity of our Native Americans and its unique Multi-Cultural counterparts dedicated to helping preserve, conserve and protect with integrity and pride.

Principle 6. The policy statement should call for Federal agencies to develop procedures for the preservation and treatment of human remains discovered inadvertently, or when there is the potential for an undertaking to discover human remains.

The policy statement: Foster pride in our irreplaceable heritage of our Native Community its vital legacy of cultural, educational, aesthetic, inspirational, and economic and energy benefits to be maintained for our present and future generations.

"Na hali" a Aloha and E ho'omau I Ka (Cherished memories and continue in excellence).

Sincerely,

 10/31/05

Alice U. Greenwood

Laura Dean

From: Archeol AP. Project
Sent: Friday, September 23, 2005 6:36 AM
To: Valerie Hauser; Monique Fordham
Cc: Tom McCulloch; Laura Dean
Subject: FW: Cannon Hill Cemetery Consultation

Val/Monique:

We received this email on the archeology@achp.gov address, but it is not about the task force materials. Do you want to respond to this e-mail?

Laura

From: nancy green [mailto:nancy_green45@yahoo.com]
Sent: Wed 9/21/2005 1:19 PM
To: Judy_Bittner@dnr.state.ak.us; Jo_Antonson@dnr.state.ak.us; Dave_McMahan@dnr.state.ak.us; John_breiby@dnr.state.ak.us; oha@alaska.net; donna_speer@dnr.state.ak.us
Cc: loren_leman@gov.state.ak.us; Archeol AP. Project
Subject: Cannon Hill Cemetery Consultation

Hello all,

We (Friends of Old Knik and Knik Chiefs Foundation) are requesting that a consultation be started on Cannon Hill Cemetery. Federal funding will be used on this project through Brenda Currier's Building Loan. This requires that NAGPRA laws be followed. Your designation of ANC 438 is referenced as a native grave and the Chief says there are 3 more natives buried in the Cemetery. Please begin this Consultation as soon as possible as construction is imminent.

Thanks

Nancy Sult

Chief Paul Theodore

Friends of old Knik

Knik Chiefs foundation

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<http://mail.yahoo.com>

The Pawnee Nation of Oklahoma
881 Little Dee Drive
Pawnee, Oklahoma 74058
(918) 762-3624 Ext. 107

Tribal Historic Preservation Office

October 6, 2005

Advisory Council on Historic Preservation
Mr. John L. Nau, III, Chairman
1100 Pennsylvania Avenue NW, Suite 809
Washington, DC 20004

Dear Mr. Nau:

In regards to your letter, dated September 9, 2005. The Pawnee Nation has always been at the forefront of these repatriation matters along with the protection provided by the Section 106 of the National Historic Preservation Act.

We have read and studied the working principles as listed in your letter, and in the Federal Register.

I have been the Repatriation Coordinator since 1998 and speaking for the Pawnee Nation, there have been times when we have felt that our hands are tied.

Some of the correspondence we are asked to answer seem to pertain too much to recreation. States building boat ramps, widening rivers, or creek banks, dredging, for the purpose of recreational boating fishing, Building hiking trails, etc. We as Native American are very aware of the ecology and natural resources of our country. When we get a request for approval of construction of a facility to improve the drinking water, and water used for agriculture we are glad to approve those projects, so long as they don't bother historic sites or sites that are sacred to us.

We also strongly feel, that if Human Remains are retained for study; they should never be held in perpetuity. A time limit for professional study should be part into all the laws. The Pawnee Nation is anxious to help in any capacity during this process.

Sincerely,



Francis Morris, Coordinator
Repatriation and THPO

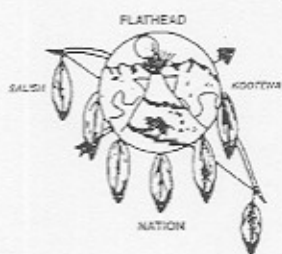
Laura Dean

From: Archeol AP. Project
Sent: Wednesday, September 21, 2005 8:14 AM
To: Laura Dean
Subject: FW:

From: rtmatsushita@juno.com [mailto:rtmatsushita@juno.com]
Sent: Mon 9/19/2005 5:38 PM
To: Archeol AP. Project
Subject:

I have just returned from Kaho'olawe. As a member of PKO I witnessed several site where remains of the kupunas were buried. These sites need to be preserved especially where erosion is exposing the iwi. All burial items should be returned to the aina as they were intended and allowed to have nature take its natural course. This is better then putting them in some box in some basement.

Sincerely, Rev. Dr. Richard T. Matsushita, Mekokiko Kua for PKO



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P.O. Box 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
E-mail: csktcouncil@cskt.org



TRIBAL COUNCIL MEMBERS:

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Joseph E. Dupuis - Executive Secretary
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Leon Bourdon - Sergeant-at-Arms

December 2, 2005

John L. Nau, III Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue N.W., Suite 809
Washington DC 20004

Dear Mr. John L. Nau, III:

I am writing to inform you that Rosemary Caye is the Kootenai Native American Graves Protection and Repatriation Act (NAGPRA) Coordinator for the Confederated Salish and Kootenai Tribes. She is the authorized official for the Kootenai people to submit comments on the Advisory Council on Historic Preservation, Working Principles for The Treatment of Human Remains and Associated Funerary Objects.

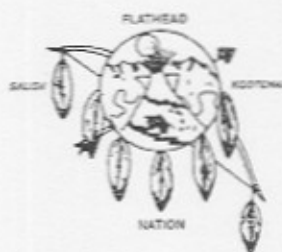
If you have any questions regarding Ms. Caye's comments you can reach her at the Kootenai Culture Committee, P. O. Box 155, Elmo, MT 59915, (406) 849-5541.

Sincerely,

CONFEDERATED SALISH AND KOOTENAI TRIBES

D. Fred Matt, Tribal Chairman
Tribal Council

Cc: Rosemary Caye, Kootenai Culture Committee
Marcia Pablo, Tribal Preservation Office



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

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Pablo, Montana 59855
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Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Leon Bourdon - Sergeant-at-Arms

December 2, 2005

John L. Nau, III Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue N.W., Suite 809
Washington DC 20004

Dear Mr. John L. Nau, III:

Kisuk Kyukikit, my name is Rosemary Caye and I am the Kootenai Native American Graves Protection and Repatriation Act (NAGPRA) Coordinator for the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, located in Montana.

I have reviewed the Policy Statement Regarding Treatment of Human Remains and Grave Goods adopted by the ACHP, on September 27, 1988, in Gallup, New Mexico; and the working principles. P.L. 101-601, Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations and regulatory authority are already in place for Federally Recognized Indian Tribes, including any Alaska Native village or corporation as defined in or established by the Alaska Native Claim settlement Act (43 U.S.C. 1601 et seq.) and Native Hawaiian Organizations to repatriate our ancestral human remains that are being disturbed through undertakings on Tribal, and Federal Land. NAGPRA also allows us to retrieve our objects from museums, federal agencies, and institutions of higher learning under the regulations. NAGPRA has jurisdiction over Working Principles 1, 3, 4, 5, and 6 and takes precedence over the ACHP Policy. Here are my comments on Principle 2 regarding the clarification of the intersection between Section 106 and other legal authorities; and my comments on the specific sections of NAGPRA that are already in place for the issues addressed in Principles 3,4,5, and 6.

Principle 2:

The intersection between the requirements of Section 106 and NAGPRA impacted by an undertaking should intersect with the NAGPRA regulations, under Section 10.3 Intentional Excavations and Section 10.4 Inadvertent discoveries.

After section 10.3 and 10.4 is completed the remaining regulations under NAGPRA is initiated and implemented: 10.5 Consultation, 10.6 Custody, 10.7 disposition, and Section 10.8 Summary, 10.9 Inventories, 10.10 Repatriation, 10.11 Disposition of culturally unidentifiable human remains (reserved), 10.12 Civil penalties, 10.13 Future Applicability, 10.14 Lineal descent and cultural affiliation, 10.15 Limitations and Remedies, 10.16 Review Committee, 10.17 Dispute resolution, Appendix A to Part 10 – Sample Summary, Appendix B to Part 10 – Sample Notice of Inventory Completion, 10.1 Purpose and Applicability 10.2 Definitions. Attached is the NPS National NAGPRA Flow Chart for Intentional Excavations and Inadvertent Discoveries, and Summaries, and Inventories, etc.

The policy statement needs to clarify the intersection between the requirements of Section 106, State burial laws and other applicable laws.

The intersection between the requirements for Section 106 and State burial laws, and other applicable laws, for undertakings need to be addressed on the State level for all of the States within the United States of America and they will need to consult with every ethnic group within the State boundaries to define the intersection for any undertakings of their ancestral human remains and associated funerary objects.

In addition the ACHP will need to consult with every Federally Recognized Indian Tribe to clarify the intersection with Section 106 for any burial laws for any undertaking pertaining to Federally Recognized Indian Tribes and any other applicable laws.

The policy statement needs to recognize that a Federal agency official under section 106 has a duty for the care of human remains and funerary objects.

The ACHP policy needs to recognize that a Federal agency and Federal official under Section 106, be required to have a moral obligation to carry out the duties to take care of the ancestral human remains and associated funerary objects for every ethnic group within the United States of America in an exceptional respectful manner and they should consult with them and adhere to their recommendation to take care of their ancestors and associated funerary objects through an undertaking.

NAGPRA regulations and the regulatory authority specifically state that all Federal Agencies and officials within the United States of America must comply with the regulations. Section 10.2 Definitions, 10.2 (a), states, "Who must comply with these regulations? (1) Federal Agency means any department, agency, or instrumentality of the United States."

They also need to adhere, consult and implement the Federally Recognized Indian Tribes, Alaskan Natives and Hawaiian organization, recommendations on how they want the Federal agency and Federal official to take care of their ancestral human remains and associated funerary objects if they are disturbed through an undertaking.

Principles 3, 4, 5 and 6:

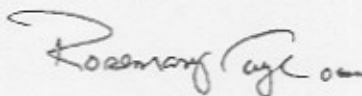
Following are the working principles 3, 4, 5, and 6 that are presently under the jurisdiction of NAGPRA regulations under the code of federal regulations, Title 43, Volume 1, Parts 1 to 999 sec. 10.1 thru 10.17.

- Principal 3 is addressed under the NAGPRA regulations, Section 10.3 and Section 10.4.
- Principal 4 is addressed under NAGPRA regulation, Section 10.5, 10.6, 10.7, 10.8, 10.9, 10.10, 10, 11, 10.12, 10.14, 10.15, 10.16, and 10.17.
- Principal 5 is addressed under NAGPRA regulation under Section 10.3, 10.4.
- Principal 6 is addressed under the NAGPRA regulation under Section 10.3, 10.4, 10.5, and Section 10.1 – 10.17 for the fifth statement in principal 6.

Please keep me updated on the outcome of the written comments and the results from your consultation meetings regarding the ACHP consideration to revise the draft policy.

You can reach me at P. O. Box 278, Pablo, MT 59855, or contact me at (406) 849-5541.

Sincerely,



Rosemary Caye
Kootenai NAGPRA Coordinator

Cc: D. Fred Matt, Chairman, CSKT Tribal Council
Tribal Preservation Officer, Marcia Pablo



Salt River Pima-Maricopa Indian Community
Cultural Resource Department
Cultural Preservation Program
10,005 East Osborn Road
Scottsdale, Arizona 85256

November 2, 2005

Julia King, Chair and ACHP expert member
The Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue
NW, Suite 809
Washington, DC 20004

RE: Comments on the "Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Ms King:

The purpose of this letter is to provide comments on the "Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods." The Salt River Pima-Maricopa Indian Community (SRP-MIC) agrees that the current policy must be revised to ensure the dignified and respectful treatment of human remains and funerary objects. It is the understanding of the (SRP-MIC) that the comments would be related to the principles in order to produce an entirely new policy to replace the current "Policy Statement Regarding Treatment of Human Remains and Grave Goods." Please note the following changes;

Principle 1: Avoidance of burial disturbance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects. Federal undertakings should disturb human remains and funerary objects only if absolutely necessary. The term "absolutely necessary" needs to be concretely defined in consultation with tribes. Monetary loss is not a justifiable motivation for burial disturbance because monetary loss can be avoided if federal agencies initiate the Section 106 process at the earliest point of project inception, before pecuniary commitment takes place. Federal agencies must ensure that tribes are adequately consulted to provide input in order to realistically consider avoidance and preservation in place. Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site's long-term preservation.

Principle 2: Human remains must be treated with respect and dignity as defined in consultation with the culturally affiliated groups. Dignity and respect are concepts subjective to different cultures.

Principle 3: Federal agencies are responsible for meaningful consultation and closure as defined by culturally affiliated groups as a means to achieve compliance with the law. A single letter does not constitute consultation, and is not a bona fide effort to meaningful consultation. Agencies must realize federal trust responsibilities predate government-to-government consultation as “the federal government has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealing with the Indians, should therefore be judged by the most exacting fiduciary standards.” The United States has a general fiduciary obligation to ensure the dignified and respectful treatment and disposition of human remains under the terms of authorizing documents (e.g., the Native American Graves Protection and Repatriation Act (NAGPRA), the requirements of Section 106 of the National Historic Preservation Act, State burial laws and other applicable statutes and executive orders) as stated in *Navajo Tribe of Indians v. United States*, 624 F.2d 981, 988 (Ct. Cl. 1980).

In accordance with the NHPA, the Federal agency official with jurisdiction over the undertaking has the responsibility to make the final decisions in Section 106 review after completing the consultation process, however it must be recognized that tribes are sovereign nations, and as such should be given higher priority in the consultation process given the federal government’s fiduciary obligations to the tribes. There is a tendency to give more consideration to groups who launch letter writing campaigns because there is a greater quantity of comments on a given project, and no consideration to the fact that one letter from a tribal leader represents an entire nation. The policy statement should clarify how the Federal agency weighs the views presented by the different parties in arriving at a final decision.

Principle 4: Federal agencies must develop procedures for the preservation and treatment of human remains discovered intentionally or inadvertently, as well as procedures for treatment of human remains and funerary objects exposed during natural disasters or encountered during emergency responses to such disasters in consultation consistent with Principle 3. If a site is avoided, Federal agencies must have a procedure in place to provide the owners with guidance developed by the Secretary of the Interior under Section 112(b) of the NHPA and supplemental guidance that encourages protection of important archaeological properties, including burial sites.

Principle 5- Prior to reburial, scientific studies performed for justified research topics must be non-destructive and must be approved by the culturally affiliated tribe. If the scientific study is offensive to the descendants of the dead, reburial

should occur without prior study. Scientific studies and reburial should occur according to a definite, agreed-upon schedule.

The SRP-MIC appreciates the opportunity to voice our concerns and anticipates continued and meaningful consultation to address this critical issue. Please call the Cultural Resource Program Office at 1-480-850-8950 should you have any questions or require further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'SA', with a stylized flourish extending to the right.

Shane Anton,
Acting Cultural Preservation Program Supervisor

Cc: Joni M. Ramos, President SRP-MIC
Four Southern Tribes of Arizona



**Salt River Pima-Maricopa Indian Community
Cultural Resource Department
Cultural Preservation Program
10,005 East Osborn Road
Scottsdale, Arizona 85256**

November 3, 2005

Julia King, Chair and ACHP expert member
The Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue
NW, Suite 809
Washington, DC 20004

RE: Comments on the "Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Ms. King:

The purpose of this letter is to provide comments on the "Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods." In 1989 four federally recognized tribes, the Gila River Indian Community (GRIC), Salt River Pima-Maricopa Indian Community (SRP-MIC), Ak-Chin Indian Community (ACIN) and the Tohono O'Odham Nation (TON), developed an organization called the Four Tribes Cultural Resource Working Group which is recognized by each Community's respective Community Council Resolutions. The Four Tribes cooperate in matters on issues affecting cultural resource preservation, cultural resource management, traditional cultural property evaluations, repatriation and other issues of cultural concern that encompasses protection, preservation and revitalization of our shared histories, language, and culture. The Four Southern Tribes, through coordination and in consensus, responds to all matters regarding all of the aforementioned matters.

On Friday, October 28, 2005, the Four Southern Tribes met to discuss comments related to the principles in order to produce an entirely new policy to replace the current "Policy Statement Regarding Treatment of Human Remains and Grave Goods." Please note the following changes;

Principle 1: Avoidance of burial disturbance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary

objects. Federal undertakings should disturb human remains and funerary objects only if absolutely necessary. The term “absolutely necessary” needs to be concretely defined in consultation with tribes. Monetary loss is not a justifiable motivation for burial disturbance because monetary loss can be avoided if federal agencies initiate the Section 106 process at the earliest point of project inception, before pecuniary commitment takes place. Federal agencies must ensure that tribes are adequately consulted to provide input in order to realistically consider avoidance and preservation in place. Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site’s long-term preservation.

Principle 2: Human remains must be treated with respect and dignity as defined in consultation with the culturally affiliated groups. Dignity and respect are concepts subjective to different cultures.

Principle 3: Federal agencies are responsible for meaningful consultation and closure as defined by culturally affiliated groups as a means to achieve compliance with the law. A single letter does not constitute consultation, and is not a bona fide effort to meaningful consultation. Agencies must realize federal trust responsibilities predate government-to-government consultation as “the federal government has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealing with the Indians, should therefore be judged by the most exacting fiduciary standards.” The United States has a general fiduciary obligation to ensure the dignified and respectful treatment and disposition of human remains under the terms of authorizing documents (e.g., the Native American Graves Protection and Repatriation Act (NAGPRA), the requirements of Section 106 of the National Historic Preservation Act, State burial laws and other applicable statutes and executive orders) as stated in *Navajo Tribe of Indians v. United States*, 624 F.2d 981, 988 (Ct. Cl. 1980).

In accordance with the NHPA, the Federal agency official with jurisdiction over the undertaking has the responsibility to make the final decisions in Section 106 review after completing the consultation process, however it must be recognized that tribes are sovereign nations, and as such should be given higher priority in the consultation process given the federal government’s fiduciary obligations to the tribes. There is a tendency to give more consideration to groups who launch letter writing campaigns because there is a greater quantity of comments on a given project, and no consideration to the fact that one letter from a tribal leader represents an entire nation. The policy statement should clarify how the Federal agency weighs the views presented by the different parties in arriving at a final decision.

Principle 4: Federal agencies must develop procedures for the preservation and treatment of human remains discovered intentionally or inadvertently, as well as procedures for treatment of human remains and funerary objects exposed during

natural disasters or encountered during emergency responses to such disasters in consultation consistent with Principle 3. If a site is avoided, Federal agencies must have a developed by the Secretary of the Interior under Section 112(b) of the NHPA and supplemental guidance that encourages protection of important archaeological properties, including burial sites.

The Four Southern Tribes Cultural Resource Working Group appreciates the opportunity to voice our concerns and anticipates continued and meaningful consultation to address this critical issue. Please call the SRP-MIC Cultural Preservation Office at 1- 480- 850- 8950, should you have any questions or require further information, procedure in place to provide the owners with guidance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shane Anton', written over the word 'Sincerely,'.

Shane Anton,
Acting Cultural Preservation Program Supervisor

Cc: Joni M. Ramos, President SRP-MIC
Four Southern Tribes



Scotts Valley Band of Pomo Indians

October 7, 2005

John L. Nau III, Chairman
1100 Pennsylvania Avenue, NW
Suite 809
Washington, DC 20004

Re: Consulting with ACHP

Dear Mr. Nau,

The Tribal Chairman and Council Members agree that your organization is extremely important to all Native American's and their efforts to preserve their historical resources.

In line with those beliefs, the Tribal Chairman asks that you work with Jesse Gonzalez, the Treasurer of our Council, relative to any requirements or input you might need from our Tribe.

If for some reason Mr. Gonzalez is unavailable the Tribal Chairman, Mr. Donald Arnold, will serve as a secondary resource.

Please contact Mr. Gonzalez at the address on this letter and I will see that he gets any additional mailings from your office.

Sincerely,

Bennett L. Wright
Tribal Administrator

C. Jesse Gonzales (with enclosures)
Donald Arnold
Pauline Girvin

Review and comments of ACHP “Policy Statement Regarding Treatment of Human Remains and Funerary Objects” from Seneca Nation of Indians – Tribal Historic Preservation Office

These comments were compiled by the Seneca Nation – Tribal Historic Preservation Office staff.

Practical and Theoretical responses and comments

Part 1

Practical Comments to ACHP “Policy Statement Regarding Treatment of Human Remains and Funerary Objects”

Introduction:

While the revisit/expansion of the 1988 principals is an admirable effort, the principals in of themselves, at best, remain as mere extensions of the original (1988) general themes. One of the fundamental issues which probably provided the foremost impetus to the revisit appears to have been a recognized need to bridge the obvious gap between the 1988 principals and their actual application by the various federal agencies.

The often time failure of the Section 106 process, however, is not due to an over confining set of definitions, but is rather the result of various agencies’ practices in which the Section 106 process is given a low priority. Frequently, our own office has been notified or invited to consultation at a time far after a project’s planning has been completed, or following an archaeological survey, after a discovery has been made, or after the construction phase has been initiated. It is with this in mind, that the emphasis of the stated principals should at all times focus upon the utmost necessity for federal agencies to develop appropriate policies and procedures that are contingent upon approval by individual Native American tribes/groups.

In addition, all federal agencies should be made lawfully accountable for not only the timely development of these policies and procedures, but also for their timely and rigorous application. Barring this, the Seneca Nation recognizes that the ACHP is not a mandating organization; however, we also recognize that the authority of the ACHP can go beyond a legal mandate.

Practical Application to the Seneca Nation THPO:

This move by the ACHP has the potential to be very rewarding to Indian Nations. Currently, the NHPA does not outline any such procedures and therefore forfeits the proper course of action to the often-subjective discretion of the Federal Agency. The SNI THPO has experienced both sides of the spectrum concerning these procedures and thus has a wealth of valuable experience to offer any such discussion. From past experience and common sense alone, a preferable policy would be one that is sincerely considerate of both human respect towards its past and in this case, tribal customs and procedures. This said, a major point of consideration, or in this case, a “working principle” should be one that allows leeway for tribal variation (concerning proper procedure), but at the same time, strictly states authority. SNI THPO does not feel that any Federal Agency has any right to say how the physical remains of an Indigenous Nation will be handled and cared for.

This is where cultural sensitivity, a notion the ACHP should be very familiar with, must be taken into consideration to the fullest degree. The principles laid forth in the document at hand are indeed considerate and it is clear that the ACHP is attempting to do its job and rope in a wandering problem within the Section 106 process. However, if the ACHP truly is sincere in their outreach, they will be attentive and more importantly, sternly authoritative about the following recommendations.

1. A jurisdictional principle of ownership needs to be clearly stated. Furthermore, subsequent rights need to be detailed so as to tell the Federal Agency that we (Indian Nations) are the SOLE decision makers when it comes to such objects. There is no question as to who is making the decisions from here on. If human remains and invaluable cultural resources are being disturbed (and that’s indeed what it is), the price for such an action must only be a direct shift of control. Just as the contracting company is not out to wreak havoc on both Native and American history, Indian Nations are not out to ‘delay’ or ‘shut down’ any such work. This is the game that both of us were placed into and if indeed there is to be justice in this event, this is the only method.
 - a) Subsequent rights of Nations:
 - A no-questions-asked quarantine and halt to the entire project area.
 - Immediate and persistent notification.
 - The respectful window of time for all considerations regarding the project at hand.
 - Total control with respect to the handling, storage, further excavating of (if necessary), and transportation of any such cultural items and/or human remains.
 - The opportunity for full compensation for related expenses.

It is understood that the working principles generated by the ACHP somewhat allow for the aforementioned requests in the form of signatory agreements between parties (programmatic and memorandum of agreements), but more often than not this is insufficient. If the past is any indication of the entire Section 106 process, then Federal Agencies will not change their ways even with the adoption of such a policy. In order for a change to be effective for an Indigenous Nation (which is the entire point of this), a significant change needs to be made at the root of the problem. The addition of a principle (or several principles) including the prior considerations would vastly increase the potency of this attempt.

Getting back to the initial statement that was made, it must also be remembered that Indigenous Nations are different. Just as our toes are stepped on by such Federal policies as such (unknowingly), we must make sure that our policies do not prohibit other Nations from the opportunity to act as they feel necessary regarding these issues. The SNI THPO has a good understanding of Northeastern methodology, but it is a hard to speak considerately for all Indigenous Nations as each one has their own individual history and traditional mindset. Despite that unquestionable fact however, SNI THPO feels this jumble of thoughts and points is a good practical start.

Part 2

Theoretical Comments on ACHP “Policy Statement Regarding Treatment of Human Remains and Funerary Objects”

Introduction:

The NATHPO-News notice from ACHP is a bit too self-evidentiary concerning the reason to adopt a new policy. Reviewing it raised some interesting questions. For instance, is section 106 of the NHPA inconsistent with the current policy? Has there been progress in regard to ACHP’s understanding of the spiritual & cultural resources of Indigenous peoples to include Indigenous perspectives of ancestral remains? Has this progress in understanding been driven by the masses (general US public), who are concerned about the implications of the current policy on their ancestors and “grave goods?” Were Indigenous peoples’ viewpoints and perspectives not included in the discussion of the current policy (the 1988 policy)? If not, then why were they left out? Has the staff or committee of the ACHP drastically changed? Is the ACHP worried that it will lose relevancy as more Federal agencies work directly with Indigenous Nations’ THPO and other associated organizations? And *vice versa*, are Indigenous Nations irrelevant to the ACHP as new disciplines and fields in archeology have developed? Or is the current policy a relic of prejudicial architect(s)? In tandem with these unanswered questions arise a plethora of past, present & future troubles; an explanation of some of the above questions (even in brief) within

the notice would have assisted the comment process. The explanation of the current debate within the notice seems to produce a binary where science and spiritual respect are in opposition (read: in conflict) and is not satisfactory as to why a change in the current policy is needed (this same debate was raging when the first policy was formulated). Yet this conflict model does not necessarily have to be the case, *per se*.

Background:

There is a history of serious abuse behind this subject matter. A history that has been dominated by accredited science (at the time) such as phrenology, eugenics, physical & social Darwinism, anthropology and archeology with the associated practices thereof including looting, body snatching, negative stereotyping, assimilation, categorization, labeling, and a persistent drive to prove the ultimate superiority of all things Western (placing things perceived Indigenous as secondary or inferior concerns). It seems surprising that as time and experience has altered (even “enlightened”) some scholarly perceptions; there is still persistence in academic fields to gain or maintain “professional” credentials by demeaning and belittling viewpoints of the very people being studied (whether they are deceased or in living communities). Perhaps some Indigenous professionals should propose to study the “remains” of past scholarly professionals in order to obtain concrete evidence about an individual’s obnoxious tendency to disregard the enormous conglomeration of Indigenous peoples’ worldviews. Certainly, the descendants of these professionals would have no viable objections, or could make contradictory claims that their interests should outweigh the important search for Indigenous truth(s).

So while comments on the principals follow below, the comments provided may lack agreement with the explicit reasoning behind this change. Who knows, maybe the current policy is something that most people would agree needs to be rectified. Concomitantly, it would be far too obvious if standards were set concerning non-Indigenous “pioneer” sites that conflict with Indigenous sites. Even as this response is being written, SNI THPO knows of no instance where a “pioneers” remains are placed on display or locked in a vault for future study—if there is one such a case, then this represents an exception that proves the rule.

Regardless of the rationale, the proposed principals are a step in the right direction. The overarching working principals, while predominately driven by Federal law when concerning Indigenous peoples, are obtainable & basic.

Comments on Principles:

Principle 1.

The seriousness in which human remains are to be treated is encouraging. Hopefully, this principal will be incorporated into the ways and methods humans are treated whether deceased or alive.

Principle 2.

There requires some clarification of these policies, and this is currently occurring in many Indigenous cultural regions. Certainly this is also true in regards to the treatment of so-called “pioneer” cemeteries. Regardless, the intersection of section 106 and NAGPRA should work to ensure the best possible care outcome and any policy statement needs to strengthen this intersection pursuant to these Federal laws. As such, any clarification must work towards providing information and direction to the people on the ground floor as much as any official decision maker. In this regard, there is no mention of Indigenous nations as possessing any “legal” authority over their ancestral remains or funerary objects. Why is this not mentioned, even as a question of ethical or moral conducts over and above Federal or State or Local or even International law? It appears that the issue at hand is simply the preservation and protection of historical properties and that there is a level of responsibility that people have to recognize when occupying an unspecified official position within a Federal agency. As such, the duty of caring for an Indigenous ancestor or funerary object or other Indigenous material that is unearthed during a Federal project must include incentives for Federal officials. These incentives should provide for Indigenous Nations to apply culturally relevant care “duties” to all exposed remains, objects, or other materials.

Within this principle there is no mention of social (or cultural) laws. If this policy can ask a Federal agency to recognize a duty to care, then it can also ask the same official to recognize that part of this duty is to have at minimum a basic understanding of the cultural implications of an action being pursued. Many Federal agencies have tribal liaisons for this exact purpose, however, their importance within these agencies has been underutilized, under stressed, and in some instances the individual occupying this position is a “newbie” that has no formal understanding of the position other than possibly a general course in college on “Indians.” Thus recognition by the ACHP of this ethical or moral duty to care would assist in strengthening and stabilizing the Federal tribal liaison and build better relationships with Indigenous governance.

Principle 3.

Curiosity, intrigue, knowledge, and comprehension all take a back seat if a policy is to stay within the guidelines set within Principle 1. This is only true if Indigenous values are respected, which they should be if Principle 1 is to have any real meaning.

Principle 4.

This entire section is conspicuous in its omission of any recognition of Indigenous Nations law. As such, while this principle requests Federal officials to carefully consider every view, the principle itself does not. Also, there is a legal and moral obligation to include Indigenous Nations in the decision making process to include control of all Indigenous remains or objects by Indigenous nations being “disturbed.” This is over and above any so-called “determinations of ancestry” as any Indigenous Nation that is acting to presently protect ancestral objects does so with the contention that all such objects regardless of time constraints

are to be respected as if they are of that Indigenous Nation. Thus, the legal aspect will trigger the Federal agency involved to initiate consultation with an Indigenous Nation, and the moral aspect (in a case by case basis as each Indigenous Nation possess varying social customs) should guide the agency towards an equitable decision. Of course, this does not consider non-Indigenous sites where state laws and even local ordinances generally govern, but in light of this fact, it is quite telling that non-Indigenous law governs all non-Indigenous sites. The converse should be applied equally as well.

Principle 5.

The consideration of all views, when placed in the context of a raging debate among scientists and Indigenous peoples (e.g. Kennewick man) has not occurred in many Indigenous peoples perspective. At present, this is not because Indigenous people are not being considered, although this was a key practice in the past. It is because, in many instances, Indigenous views are not taken seriously, emphasized, or are considered invalid or suspect in the most egregious cases. In total, the history of the practice of archeology on Indigenous remains and objects has not taken into account the strong views of the peoples whose ancestors' remains and belongings are being "discovered." The problem is the mentality of many misinformed and misguided officials who practice Eurocentrism and/or have strong beliefs in myths such as "manifest destiny," "civilized versus savage" dichotomies, and that this continent was "settled" instead of invaded. These represent just a few that are out there. These are the myths propagated in the US education system and dealing with them is a daily occurrence for many educated Indigenous and non-Indigenous peoples alike. So, while altering the US education guidelines is not in your discretion, recognizing the extreme bias that exists within and throughout this process would put many Indigenous peoples at ease. Why? It will underline and stress that the leading archeological forum has fully engaged itself towards the production of an equitable solution and refuses to permit the shadow of nationalistic prejudice, ignorance, racism, or malice to perpetuate the dispossession of a people's values and customs. While it is recognized that many archeologist do not have an "agenda" and strive for the production of knowledge, this does not mean that Indigenous peoples are not damaged by those few who do have agendas to re-produce knowledge that then are used to explain and prop up the myths propagated by those who would oppress Indigenous Nations.

Very often Indigenous Nations are viewed (again in the realm of mythology) as peoples "disturbing" the natural progression of development. This is not the case. Most Indigenous Nations simply want to have control over their ancestors and the cultural objects that sustained or were relevant to their existence. Blocking a project is not the goal. Instead, let the record indicate that any disruption of a project or resistance to scientific discovery merely seeks to prevent the perpetuation of or even the production of more erroneous myths through the use of selective citation and misevaluation. Certainly, we cannot expect every Federal official or agency to comprehend that they believe in a myth about Indigenous peoples; however, we can expect the ACHP to know that Federal officials have been well educated within the confines of these myths. These myths have implications that can and often reach into the highest levels of government. It

should be a goal of the ACHP to alter these myths towards something that will assist everyone in understanding the cultural traditions and beliefs of Indigenous peoples.

Principle 6.

This principle has a unique instance that portrays a type of occurrence indicated above in the comments on Principle 5. The term, “inadvertent discovery” when taken alone seems innocent and descriptive. “Inadvertent discoveries” describe the finding of (in this case) remains or objects with no intention to do so. However, when placed into the context of how these items are found, this description falls apart. A Human is disturbing a swath of the North or South American continents, and as every educated person knows—there is a chance (in some regions higher than others) that Indigenous peoples have interred something in the area that could be disturbed. If they are misinformed in this regard, or claim that their intention is to only disturb the earth in areas where Indigenous peoples have not interred anything, then this indicates that ignorance is a guiding factor in these operations. Simply put, if the find is inadvertent, then why have contingencies for possible finds? Meaning, you cannot both plan for finding an object (claim of knowledge), and then say you did not know one was there (claim of ignorance).

When placed out of context, this is simply a debate of semantics; however, this terminology does not sit alone in this principle. For example, when Principle 6 is considering the instances where a natural disaster has occurred, any resulting find is considered exposed. Certainly, it has been exposed, but there is no intentionality of the earth to do so and it is absurd to claim as such. The exposure is then found by a person investigating the natural disaster, which resembles much more closely the image conjured up with the term “inadvertent discovery.” Go on a mental journey to a site where a man is operating a backhoe digging a big hole versus the same man on a search a rescue mission after an earthquake. Both find an object. One knew there was a possibility because of his action of digging, while the other tripped over the object during an attempt to coax a dog out of a hiding spot.

Thus the contrast is that there is an intention by a human to excavate the earth and pursuant to federal law any find within the excavation area gets attached to that intention. Thus, this represents an underlying reason for a policy guiding the treatment and disposition of human remains and objects. As such, an EXPOSED site should represent and describe instances where human disturbance produced a find. Conversely, when a natural occurrence produces a find—an inadvertent discovery is made. Concomitantly, this would also apply the same terminology to known and unknown cemeteries & settlements. This change will make this policy more consistent, which incidentally is one of the overarching working principles.

The development of procedures must mention the necessity for flexibility. This causes some complex issues to arise for Indigenous communities, as there are well over 500 separate nations in the US alone. There are some fundamental similarities throughout most Indigenous communities in regard to the disposition of human remains and funerary objects. Yet the differences in practice or custom can cause the federal official to appear insensitive or ignorant if say a Lakota custom is referenced to the Ojibwe'-Annishnabee. Thus, a way to strengthen

Principle 6 will be to include a section that recognizes organizations that have representation from a variety of Indigenous Nations and are working to provide clarity on their collective position. While the Federal official has an obligation to work with Indigenous Nations in a government to government relationship, there is a need for some validity to be applied to these non governmental organizations or task forces. This may be covered by guidance to include all parties recognized by a conglomeration of Indigenous Nation that have been formed to protect Indigenous interests within the Section 106 process. However, in instances where there is a plethora of known and the possibility of unknown Indigenous sites there is a need for recognition that the Indigenous communities or Nations within the area (or even Nations that have been historically removed through genocidal practices through public expense) have heightened and vital interests over all parties and thus have a controlling interest in the disposition of any exposed find.

This last recognition should be mandated, and it is unfortunate that it is not. It does not undermine the government to government relationship, nor diminish the role of ACHP or other non-Indigenous organization. It does take into account several key facts.

1.) The amount of archeological collections within various institutions is massive and it is understudied, underreported, misrepresented, misappropriated, misfiled and misused.

2.) The amount of Indigenous objects and remains within private collections is even greater, yet it is looked at as a hobby to be capitalized on by unregulated individuals with disposable income or time. Getting to the who, what, when, why, how, and, if, that, can, will, *ad nauseam* of these cultural objects is something that many Indigenous communities are waiting for, so why is this not being done by the so-called “pure knowledge” seeking archeologist? The challenge should not be placed at the foot of Indigenous Nations to perform “good” archeology or even approve of it when an exposed find is made.

3.) There was ample opportunity to gain vast levels of knowledge through the sharing of information during the initial years of contact; however, colonialism, nationalistic sentiment, racism, greed, malice, and ignorance took precedent. As a result, this opportunity was lost. Attempts to regain this knowledge through more of the same perpetuate the oppression of Indigenous peoples and Indigenous knowledge.

4.) Following from #3, the knowledge that is left concerning the disposition of Indigenous objects within Indigenous Nations is ignored while a search for non-Indigenous explanations on Indigenous objects and remains persists virtually unabated.

5.) The US along with almost all International Nations desires every other world Nation to respect their dead and return them to their possession in a timely manner without desecration or deprivation due to scientific study. This is universal for everyone, yet apparently Indigenous peoples on this continent are not of this world so long as capital is spent from a public fund. This is untenable. For example, if the remains of POW's from Vietnam were placed on display in Ho Chi Min city based on the qualification that the Vietnamese government (the public) paid for the remains to be exhumed. Then it was proclaimed that these remains were subject to the whim of Russian scientists who developed negative conclusions about the society in which the remains belong. This would be an ignominious outrage; the US would be appalled and rightfully

so. In contrast, no Indigenous Nation that SNI THPO is familiar with has ever exposed a non-Indigenous site for the sake of knowledge, nor have they ever placed such burdens on the descendants of any remains for the sheer pleasure of glory mongering, myth propagation, academic back riding, or claims of monetary expenditures.

There is an opportunity here to not be judged harshly by the “lens of history” and refuse the cope out of being labeled “people of your time.” Take it.

P.O. Box 219 Owyhee, Nevada 89832-0219 (775) 757-3161



Date: November 4, 2005

To: Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue
NW., Suite 809
Washington DC, 20004

Re: Proposed Advisory Council Changes:
Notices Federal Register 52066 Vol. 70 No. 169
Policy Statement Regarding Treatment of Human Remains and Grave Goods

1. The proposed policy does not contain any reference to the 1st Amendment issues that are so often violated when tribes see their ancestors' skeletons and grave goods being studied by archaeologists and others. The very sacred nature of these matters for many tribal people must be addressed in any policy statement.
2. The proposed new policy appears to continue the practice of giving tribes a consultative role but denying a decision-making role when it comes to reburial/scientific study.
3. Whenever possible, the ACHP should be recognized as subordinate to tribal governments and not in a position to dictate them as if they were federally empowered to do so.
4. Any policy developed for the handling of burials, skeletal remains, and grave goods needs to allow more room for tribal diversity and especially for research into exactly how each tribe handles their deceased ancestors.
5. In some respects we see this policy may well leave each tribe in a position where they must fend for themselves as they deal with one agency after another. It must be understood, in any policy of this type, that agencies must be proactive and go directly to the tribes in their areas in which they have jurisdiction over aboriginal tribal lands and resources and strive to reach agreement in the details of reburial/scientific study, etc.
6. Many definitions are left unclear, including such matters as what constitutes "sacred," "burial," "grave goods," etc. Ethnographic research should be required as part of any development of agreements between tribes and agencies concerning burials, skeletal remains, and grave goods. There are major differences between

concerning burials, skeletal remains, and grave goods. For example, some think that the skeletal materials and grave goods are all that matter, when the burial site itself is sacred, even after the skeletal material and grave goods are removed by archaeologists and others. Overall, the general understanding of tribal beliefs and practices concerning burials, skeletal remains, and grave goods is abysmally inadequate.

7. "The Task Force recognizes the unique legal relationship that exists between the Federal Government and Federally- recognized Indian tribes."
The new policy must stress the importance of treating the tribes as separate sovereigns, and acknowledge that tribes are of a different culture/traditions. And that tribes do have a special standing with the US Government.

8. "Any new ACHP human remains policy statement would not be bound by geography, ethnicity, or nationality."
This statement itself is in violation of Federal laws. NAGPRA clearly specifies that Native American Human Remains and associated funerary objects will be handled differently than others.

9. "Address treatment of all human remains and funerary objects in the context of compliance with Section 106 of the National Historic Preservation Act."
The new policy must reflect the stipulations of NAGPRA.

In conclusion:

Thank you for giving the Shoshone-Paiute Tribes an opportunity to comment, we believe that much more needs to be discussed before this new policy is finalized/implemented. This is an opportunity for the tribes to speak and to possibly have an opportunity to improve the protective measures they seek for their ancestors.

Sincerely,



Ted Howard
Cultural Resources Director
Shoshone-Paiute Tribes of Idaho and Nevada
PO Box 219
Owyhee NV 89832

Cc. Great Basin Intertribal NAGPRA Coalition



T RIBAL HISTORIC PRESERVATION OFFICE
S TANDING ROCK SIOUX TRIBE
 Administrative Service Center
 North Standing Rock Avenue
 Fort Yates, N.D. 58538
 Tel: (701) 854-2120
 Fax: (701) 854-2138

November 4, 2005

Archaeology Task Force
 Advisory Council on Historic Preservation
 1100 Pennsylvania Avenue NW, Suite 809
 Washington, DC 20004

RE: ACHP Policy Statement Regarding Treatment of Human Remains and Grave Goods

The Standing Rock Sioux Tribe recommends the following:

1. Section 106 guidelines need to be modified so as to fully integrate the principals developed in NAGPA.
2. There should be a policy statement that all human remains found in prehistoric archaeological contexts are presumed to be Native American unless there is compelling evidence to the contrary. The compelling evidence must be presented to, reviewed by, and approved by the Federal Agency prior to any scientific analysis.
3. The Standing Rock Sioux Tribe honors the remains of our ancestors and demands that they be given respectful treatment where ever they are found. For most of our people scientific analysis is offensive and violates these principals. "Scientific analysis" includes but is not limited to photography of remains, measurement of remains, and collection of samples from remains, and analysis of samples from human remains. There should be a policy statement that no scientific study will be conducted on human remains unless explicit consent is given by the Tribes consulted under NAGPRA.
4. Above and beyond NAGPRA, the treatment of Native American human remains is covered by the umbrella of the unique legal relationship that exists between the Federal Government and Indian tribes.
5. The scientific community needs to understand that Native American human remains are not neutral, natural phenomena available to all for research purposes. The research objectives may be interesting to the dominant society but Native American human remains are first and foremost the ancestors of contemporary Native American people. Many of these people sense/have an intimate spiritual connection with their ancestors.

Tim Meatz, Sr. ♦ Tribal Historic Preservation Officer ♦ e-mail: tmeatz@westriv.com
 Leo Red Horse, Jr. ♦ Program Assistant ♦ e-mail: lredhorse@westriv.com
 Wasté Win Young ♦ Tribal Historian ♦ e-mail: wyoung@westriv.com
 Byron Olson ♦ Tribal Archaeologist ♦ e-mail: bolson@westriv.com
 Mary Wilson ♦ Environmental Protection Specialist ♦ e-mail: mwilson@westriv.com
 George Ironshield ♦ Repatriation Coordinator ♦ e-mail: gishield@westriv.com

6. Scientific study of human remains cannot be justified by the argument that the "remains are removed from the ground at public expense." The need to remove remains is an unfortunate consequence of a federally funded/regulated project. The project justifies the respectful removal of the remains but does not justify their study.
7. When there is an inadvertent discovery of human remains in any project covered by Section 106:
 - Work must immediately stop.
 - Work cannot resume until there is a thorough investigation to determine whether any other human remains/burials are present. NAGPRA specifies a minimum 30 day time period.
 - The appropriate Tribes must be immediately notified of the discovery
 - The recovered remains must be kept in a repository approved by the appropriate Tribes
 - The discovered remains and all funerary objects are repatriated per NAGPRA
8. We agree with Principle 3 as stated in the September 1, 2005 Federal Register notice.
9. In the case of human remains in a Federally-funded project, Federal law should supercede State law. States do not have to accept Federal money, but when they do so they agree to abide by Federal conditions, including Federal laws.
10. We fully support the long-term protection of important archaeological properties, including burials. Burials should be eligible for listing on the National Register of Historic Places.

Before the ACHP finalizes the new policy statement regarding treatment of human remains and grave goods there must be extensive government-to-government consultation between the ACHP and the Tribes.

Sincerely,

STANDING ROCK SIOUX TRIBE



Byron Olson
Tribal Archaeologist



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Santa Fe, NM 87506
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(505) 455-7351 (FAX)

Dale Martinez
Governor

Louis Naranjo, Jr.
1st Lieutenant Governor

Leon T. Roybal
2nd Lieutenant Governor

Tribal Council

James Kaniatobe

Garrett Pino, Sr.

Martin W. Aguilar

Timothy J. Roybal

Vincent Kaniatobe

Nathan Sanchez

Lawrence Aguilar

Raymond Martinez

Phillip Kaniatobe

Christopher Moquino

Michael Aguilar

SI-GC05-314

October 5, 2005

John L. Nau, III
Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW
Washington, DC 20004

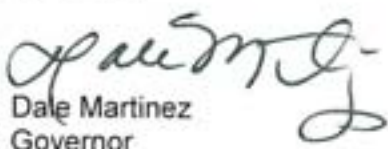
Dear Mr. Nau:

The Pueblo de San Ildefonso appreciates the opportunity to consult and comment upon the consideration of a new Advisory Council on Historic Preservation (ACHP) policy on the treatment of human remains. We are supportive of revising the current policy and support the preliminary set of principles which will guide the development of a new policy.

The Pueblo looks forward to continued consultation on this matter, however we are concerned that the one day meetings scheduled at various locations will not provide the opportunity for true Government-to-Government consultation. It is our fervent belief that true consultation must occur on a one to one basis with face to face meetings so that the Tribe's unique concerns can be addressed.

I am confident that you will provide the Pueblo with such opportunities, if we so desire. Again thank you for initiating the consultation process.

Sincerely,


Dale Martinez
Governor

cc: Neil Weber, Director, Dept. of Environmental and Cultural Preservation

Vivian Juan-Saunders
Chairwoman



Ned Norris Jr.
Vice Chairman

OFFICE OF THE CHAIRWOMAN
& VICE CHAIRMAN
TOHONO O'ODHAM NATION

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Telephone (520) 383-2028 • Fax (520)383-3379

October 27, 2005

John L. Nau, Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, N.W., Suite 809
Washington, DC 20004

**RE: Working Principles for Revision of the Policy Regarding the Treatment
of Human Remains and Grave Goods.**

Dear Chairman Nau,

This responds to your September 9, 2005 letter inviting comments on the Advisory Council on Historic Preservation (ACHP) consideration of a new ACHP policy on the treatment of human remains. We agree that with the passage of the Native American Graves Protection and Repatriation Act and amendments to the National Historic Preservation Act, the policy adopted by ACHP in 1988 should be reevaluated to assure it's compliance with these laws as well as other applicable laws.

The Tohono O'odham Nation (Nation) appreciates your courtesy in asking the Nation to submit comments to this important endeavor. This is in accordance with the government to government relationship identified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," which directs Federal agencies to consult with tribal governments regarding issues which significantly or uniquely affect their communities and with the ACHP policy regarding relationships with Indian Tribes.

The Nation's Cultural Preservation Committee, a committee of the Tohono O'odham Legislative Council, along with the Cultural Affairs Office of the Nation, reviewed the six (6) Working Principles identified as the guiding principles for the revision of the 1988 Human Remains Policy. As you may be aware, the disturbance of human remains is a very important and sensitive issue to the Nation. Because of their cultural and spiritual significance, all human remains, disturbed and undisturbed, must be treated with respect and dignity. The Nation endorses the principle that avoidance,

followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects. When disturbance is unavoidable, meaningful consultation with the Nation and others affected must begin early in the process to explore other alternatives. The remaining principles appear to encompass the issues important to the Nation. Such principles will encourage the development of a meaningful policy statement that will assist Federal agencies in understanding and carrying out their responsibilities to Indian tribes.

Thank you for your attention to this important issue. In the spirit of Executive Order 13175 and the ACHP policy regarding relationships with Indian Tribes, we urge the ACHP to revisit the 1988 policy. The Tohono O'odham Nation looks forward to meaningful participation in the consultation process. If you have any questions please do not hesitate to contact me at (520) 383-2028 or Peter Steere, Manager, Cultural Affairs Office, at (520) 383-3622.

Sincerely,

Vivian Juan Saunders
Vivian Juan-Saunders
Chairwoman

C Frances Conde, Chairwoman, Cultural Preservation Committee
Peter Steere, Manager, Cultural Affairs Office
Valerie Hauser, Native American Program Coordinator
Veronica Geronimo, Assistant Attorney General, Tohono O'odham Nation



Cultural Resources Department

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6410 - 23rd Avenue N.E.

Tulalip, WA 98271-9694

(360) 651-3300

FAX (360) 651-3312

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliott

November 1, 2005

Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW., Suite 809
Washington, DC 20004

RE: Comments to Working Principles for Revising ACHP's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Advisory Council:

The Tulalip Tribes Cultural Resources Department appreciates the opportunity to submit comments to the draft working principles for revising the policy on treatment of human remains and grave goods. The Tulalip Tribes are located in western Washington State, and much of the Tribes traditional territories have been subject to intense development pressures in the Puget Sound region. This rapid growth and development has lead to greater conflicts with tribal burial sites. The Tulalip Tribes believes it is essential for federal and state government to greatly improve its procedures for responding to these conflicts in a way that gives Tribal burial sites and Native American remains the respect and protection they deserve.

The Tulalip Tribes welcomes the revision of the existing policy for treatment of human remains, which is greatly deficient in providing a framework for treatment that honors our ancestors and respects their memory. The draft principles represent a step in the right direction. However, the principles could provide more concrete guidance in certain areas. The Tulalip Tribes Cultural Resource Department comments are aimed at giving more substance and effect to the protection of human remains and burial sites.

SPECIFIC COMMENTS:

Principle 1: *The policy statement should recognize that human remains must be treated with respect and dignity.*

We agree. This is the fundamental cornerstone of the entire policy. It deserves further expansion, as the Council has provided with the other working principles. The Council should consider additional subpoints to this principle:

- All human remains, regardless of their age, location, or ethnicity require the same level of respect and dignity.
- Human remains and burial sites are culturally and legally distinct from "archaeological resources" and must be treated in a manner commensurate with their unique legal status and the values that living peoples place on treatment of their dead.
- Competing interests, such as scientific study or development proposals, do not take precedence over the principle that human remains and burial sites must be treated with dignity and respect.

Principle 3: *The Policy statement should emphasize that avoidance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects.*

We agree, but also recommend the following:

Add to third subpoint - -

- Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site's long-term preservation, and therefore additional protection measures may be necessary.

Add additional subpoint--

- Sites where human remains are buried or interred must be treated in manner to preserve or restore their character as burial sites.

Principle 5: *The Policy statement should guide the Federal agency official in decisionmaking.*

We recommend additional clarification on this point:

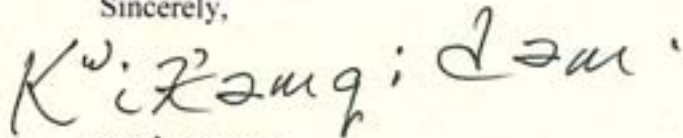
- In situations where human remains are determined to be Native American, the responsible agency will adhere to the Native American Graves Protection and Repatriation Act provisions dealing with consultation and disposition of Native American remains. In all cases involving Native American remains, the federally recognized Tribe whose aboriginal lands either encompass or are closest to the area where the remains are located shall be consulted.

Principle 6 : *The policy statement should call for federal agencies to develop procedures for the preservation and treatment of human remains discovered inadvertently, or where there is a potential for an undertaking to discover human remains.*

Recommend that the following be added:

- The policy should recognize that Federal agencies will need to budget resources and funding to implement policies for the avoidance, treatment and protection of human remains and burial sites.

Sincerely,

A handwritten signature in black ink, appearing to be 'Kw. K'amqidom' with a small flourish at the end.

k^wi k'amqidom

Hank Gobin, Cultural Resources Manager
Tulalip Tribes

Cc: Tulalip Board of Directors



Confederated Tribes
of the
Umatilla Indian Reservation
Department of Natural Resources
Cultural Resources Protection Program

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November 1, 2005

Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Ave NW, Suite 809
Washington DC 20004

Re: Comments on the Working Principles for revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Task Force Members,

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Cultural Resource Committee (CRC) appreciates the opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) Working Principles for Revising the ACHP's "Policy Statement Regarding the Treatment of Human Remains and Grave Goods." The proposition under which these Principles are promulgated is deeply flawed. The statement that this policy is intended to "balance the public interest in the desire to treat human remains in a respectful and sensitive manner, while recognizing the public interest in knowing its collective past" glosses over the fact that this "balancing" was the practice that the Native American Graves Protection and Repatriation Act (NAGPRA) was enacted to end. Expansively broadening the policy so that it addresses all human remains does not offer any additional justification for the policy. In sum, the CTUIR reiterates our December 22nd, 2004 letter to the ACHP on the policy:

On the issue of the "Policy Statement Regarding Treatment of Human Remains and Grave Goods," we recommend that it be rescinded. Due to the fact that NAGPRA is now law, the policy statement has lost its significance. Further, we feel that the statement "where the scientific research value of human remains or grave goods outweighs any objections that descendants may have to their study, they should not be reburied but should be retained in perpetuity for study" is contrary to NAGPRA and reiterates the notion that tribal descendants should only have a "voice" in their treatment. NAGPRA is human rights legislation which acknowledges that tribes have a fundamental right to control the graves of their ancestors. Any policy that calls for the perpetual curation of Indian remains just because of their status as Indian remains reinforces the perception that tribal peoples, living or dead, are merely objects of curiosity and scientific study, ignoring the contemporary presence of tribes.

The premise that this policy could apply across all jurisdictional boundaries irrespective of “geography, ethnicity or nationality” is invalid. One only need look to Section 3 of NAGPRA which states that ownership or control of Native American human remains found on federal or tribal lands shall be in the lineal descendants. In this provision there is no room for balancing scientific or religious interests. Congress has determined that the right of lineal descendants shall have precedence. Given this fact, the logic of trying to apply the ACHP policy in all instances becomes both impossible and likely illegal. Put simply, the location where remains are found determines which laws apply.

Many of the Working Principles are unrealistic. For instance, “the policy statement should clarify the intersection between Section 106 and other legal authorities.” This type of clarification is simply impossible in a policy. Policies provide “high-level overall plan[s] that embrac[e] the general goals and acceptable procedures esp. of a governmental body” Websters New Collegiate Dictionary, Merriam-Webster (1979: 882). The degree of specificity that would be necessary to define the circumstances under which the Archaeological Resources Protection Act (ARPA), NAGPRA and National Historic Preservation Act (NHPA) interact, complement and conflict with each other is not conducive to generalized goals. Indeed, there are books on the subject and volumes more could be written.

Some of the Working Principles are positive, particularly Principle 3, acknowledging avoidance and preservation in place as well as the stewardship responsibility assumed after site identification. Further, the Principles are correct that planning for the discovery of human remains should begin at the early stages of the Section 106 process. However, this policy does not define the nature of the consultation obligation of the federal agency involved nor does it define the decision making process of the agency as Principles 4 and 5 attempt to do. Additionally, we are perplexed by the last bullet of Principle 5, which addresses how the policy will define how an agency will weigh different views. Prejudging the weight of views is at best disingenuous, and at worst contrary to law.

Principle 6 indirectly identifies both the problem and solution that this policy is intended to address. Federal agencies need to promulgate regulations which integrate regulatory compliance across the federal jurisdictional spectrum. For instance, the ARPA curation regulations, 36 CFR § 79, predate NAGPRA, and have not been amended to include NAGPRA even though the regulations govern the curation of items subject to NAGPRA. Likewise, the uniform ARPA regulations have only been superficially updated to address ARPA-NAGPRA conflicts. Section 106 regulations suffer from similar issues, such as the fact that the Army Corps of Engineers Regulatory Branch follows regulations which are not acknowledged by the ACHP, 33 CFR § 325, Appendix C. The federal agencies involved must coordinate uniform regulations, much like the agencies did for ARPA. However, a policy statement encouraging reconciling the federal regulatory framework seems relatively out of place in a policy purporting to address human remains.

Of the concepts addressed in the Principles, the following are broad enough to be in the draft policy, if the ACHP believes that it is necessary:

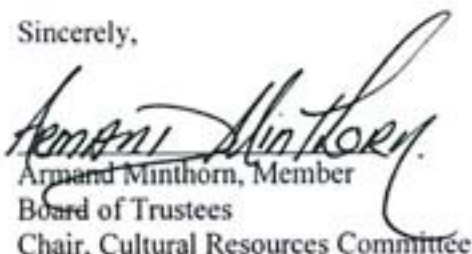
- Federal agencies should initiate discussions early in the Section 106 process regarding development of policy and operational procedures for treatment, including disposition, of human remains and funerary objects when they are inadvertently discovered.
- The policy and operational procedures should recognize that human remains must be treated with respect and dignity. Further, the policy must recognize that the Federal agency official under Section 106 has a duty to care for human remains and funerary objects
- The policy and operational procedures should emphasize that avoidance and preservation in place is the preferred alternative to disturbance of human remains and funerary objects.
- The policy and operational procedures should allow federal undertakings to disturb human remains and funerary objects only if absolutely necessary, and then only after exploring other alternatives early in project planning.
- Federal agencies must acknowledge that under Section 106 and other laws their responsibility to protect historic properties does not end after the identification phase; identification is only the beginning of their stewardship obligation.

Finally, of the original concepts in the 1988 Policy which aren't already addressed above, the following should be included:

All scientific studies should be carried out in consultation with those most likely descended from the dead, including consultation on the collection protocols, handling and, if necessary, curation. Proper reinterment following study should apply in all instances, consistent with mainstream social values and laws in all fifty states and with the cultural, social and religious values held by Indian tribes and Native Americans throughout the United States.

We appreciate the opportunity to comment on this proposal. If you have any questions or concerns, please feel free to contact me at 541-966-2020 or Teara Farrow, Program Manager, Cultural Resources Protection Program, Department of Natural Resources, at 541-276-3629.

Sincerely,



Armand Minthorn, Member
Board of Trustees
Chair, Cultural Resources Committee

Cc: Eric Quaempts, Director, DNR
Cultural Resource Committee
Teara Farrow, Program Manager, CRPP
Valerie Hauser, ACHP

Laura Dean

From: Valerie Hauser
Sent: Tuesday, November 01, 2005 1:47 PM
To: Laura Dean; Tom McCulloch
Subject: FW: Comments on the Treatment of Human Remains

Not sure if I sent this to you

From: Tom McCauley [mailto:tomm@whiteearth.com]
Sent: Tuesday, September 20, 2005 8:30 AM
To: Valerie Hauser
Subject: Comments on the Treatment of Human Remains

Good morning Valerie, My name is Tom McCauley and I am the THPO with the White Earth Band of Minnesota Chippewa. We have met and talked before but it has been a few years, I hope you are doing well. I am happy to hear that the ACHP is up-dating the 1988 Policy. The one comment I would like to stress is the importance of the lead Federal Agency to work with Tribal Governments which have in place a policy regarding Treatment of Human Remains. Typically, Tribal procedures are different in regards to the treatment, methods and ceremonies utilized for re-burial. At White Earth it is against Tribal law for a sub-contractor to take human remains off the Reservation. It is tribal policy to re-bury the remains as quickly as possible. The White Earth Tribal Cultural Resources Board makes a collective decision as to where the remains will be re-buried. A Tribally recognized spiritual leader is typically the lead official for re-burial methods. A brief ceremony is held prior to re-burial. Bottom line it is extremely important for all Agencies to recognize that Tribal interaction is essential in dealing with Human Remains issues, both on and off the Reservation. If you would like to discuss this further I can be reached at (218) 983-3285, extension 1375, or e-mail at tomm@whiteearth.com. Thank you for providing the White Earth Band the opportunity to comment on your proposed changes to the current policy.

Sincerely, Tom McCauley

From: Mark Altaha [markaltaha@wmat.nsn.us]
To: Archeol AP. Project
Cc:
Subject: FW:Arch. Task Force statement
Attachments:

-----Forwarded by Mark Altaha/53-US Dept of Interior-BIA/WMAT on 12/02/2005 04:12PM -

To: bambi@itc.org
From: Mark Altaha/53-US Dept of Interior-BIA/WMAT
Date: 12/02/2005 03:30PM
cc: apachevern@yahoo.com, rxrapache@yahoo.com, dgatewood@wmat.nsn.us
Subject: Fw: Arch. Task Force statement

I believe the proposed changes to the ACHP policy regarding the "Treatment of Human Remains and Grave Goods" is another effort to avoid dealing with NAGPRA issues, something that was finalized in 1990 by the passage of NAGPRA. Human remains should be respected and not disturbed in anyway, nor should it be studied by institutions or put on public display. These are "our" lineal descendants, not some object of interest to/for the scientific and archaeological communities. As according to Apache philosophy; "All human remains should be left alone and not disturbed for any reason". This I believe holds true for all indigenous people.

Mark T. Altaha

WMAT-THPO

-----Forwarded by Mark Altaha/53-US Dept of Interior-BIA/WMAT on 12/02/2005 03:17PM

Greetings,

On behalf of the White Mountain Apache Tribe, Where I serve as the Cultural Resources Director and NAGPRA representative I am pleased to express my support for the review and revision of the ACHP'S Human Remains Policy.

Please keep me and the White Mountain Apache Tribe fully informed, I anticipate coordinating our participating in the process with the representatives of the Yavapai/ Apache Nation, the San Carlos Apache Tribe and the Tonto Apache Tribe.

Best Wishes to all,

Ramon Riley

Ramon Riley
Cultural Resource Director
(928)338-4545
fax: (928)338-1716
P.O. Box 507
Fort Apache, AZ 85926
rxrapache@yahoo.com



ARLEN P. QUETAWKI, SR.
Governor

CARMELITA SANCHEZ
Lt. Governor

CARLETON P. ALBERT, SR.
Head Councilman

ARDEN KUCATE
Councilman

ZUNI TRIBE

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Zuni, New Mexico 87327-0339
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505-782-7202 (☎)

CHARLOTTE T. BRADLEY
Councilwoman

EDWARD W. WEMYTEWA
Councilman

JOSEPH C. PEYNETSA
Councilman

WILLIAM TSIKEWA, SR.
Councilman

November 2, 2005

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, N.W., Suite 809
Washington, DC 20004

RE: Consultation with the Advisory Council on Historic Preservation on the consideration of a new ACHP policy on the treatment of human remains.

Dear Dr. McCulloch:

Pursuant to your request dated September 9, 2005, the Zuni Heritage and Historic Preservation Office (ZHHPO) would like to provide comments regarding the proposed revisions to ACHP policy. The Pueblo of Zuni is very interested in participating in the consultation process to aid in providing tribal perspectives on these issues. We have enclosed Tribal Resolution M70-92-L164 as well as the policy statement of the Zuni Tribe regarding the protection and treatment of human remains and associated funerary objects.

The Pueblo of Zuni understands the problems associated with consultations on the discovery of remains subsequent to their excavation and removal. We advocate the initiation of early consultation with tribal organizations to ensure the proper treatment of remains is agreed upon prior to their disturbance. The Pueblo of Zuni supports the need for a generalized reburial policy concerning the disposition of remains that meets the overall needs of tribal organizations affected by NAGPRA. We also support the need for a greater effort to avoid disturbance and ensure preservation of burial sites.

On behalf of the Zuni Tribe and the Pueblo of Zuni, we thank you for providing an opportunity to comment on the proposed changes to ACHP policy. We look forward to providing further Government-to-Government consultation to the Advisory Council concerning this matter. Should you require additional information, please call 505-782-4814.

Sincerely,

Monica L. Enke
Cultural Resources Specialist, ZHHPO

for Arlen Quetawki, Sr.
Governor, Pueblo of Zuni

RESOLUTION M70-92-L164
17 November 1992

ZUNI TRIBAL COUNCIL
ZUNI, NEW MEXICO

November 17, 1992

RESOLUTION NO. M70-92-L164

WHEREAS, the Zuni Tribal Council, consisting of the Governor, Lieutenant Governor, and Six Tenientes, is declared to be the legislative authority of the Pueblo of Zuni by Article V, Section 1, of the Constitution of the Zuni Tribe; and

WHEREAS, the Zuni Tribal Council has the authority in accordance with Article VI, Section 1, d, of the Constitution to represent the Tribe, and to act in all matters that concern the welfare of the Tribe; and

WHEREAS, the Zuni Tribal Council has, on many occasions and through a number of Tribal Resolutions, declared its intent to preserve and protect the cultural and historic resources of the Zuni Tribe; and

WHEREAS, the Zuni Tribe has, over a number of years, developed a policy for the protection and treatment of culturally affiliated human remains and associated funerary objects; and

WHEREAS, the Zuni Tribal Council is aware that the Zuni Cultural Resources Advisory Team, as constituted under Zuni Tribal Council Resolution M70-91-L164, has reviewed and concurred with the policy entitled Pueblo of Zuni, New Mexico, Policy Statement Regarding the Protection and Treatment of Human Remains and Associated Funerary Objects, November 1992; and

WHEREAS, the Zuni Tribal Council has determined that, in order to ensure effective protection of culturally affiliated human remains and associated funerary objects it is necessary to have official Tribal Policy regarding such matters;

NOW, THEREFORE, BE IT RESOLVED, that the Zuni Tribal Council officially approves the document entitled Pueblo of Zuni, New Mexico, Policy Statement Regarding the Protection and Treatment of Human Remains and Associated Funerary Objects, November 1992 as the policy of the Zuni Tribe, and directs the Zuni Archaeology Program to administer and distribute this document as appropriate.

ZUNI TRIBAL COUNCIL:

Pesancio Lasiloo
Pesancio Lasiloo, Lt. Governor

Joseph Dishta
Joseph Dishta, Hd. Councilman

Val R. Panteah (Excused)
Val R. Panteah, Sr., Councilman

Edison R. Wato Sr.
Edison R. Wato Sr., Councilman

Augustine A. Panteah
Augustine A. Panteah, Councilman

Charlotte T. Bradley
Charlotte T. Bradley, Councilwoman

Owen R. Bobelu
Owen R. Bobelu, Councilman

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Zuni Tribal Council at a duly called meeting at Zuni New Mexico, at which a quorum was present and that the same was approved by a vote of 7 in favor and 0 opposed on November 17, 1991.

Robert E. Lewis
Robert E. Lewis, Governor
Pueblo of Zuni

APPROVED VETOED BY:

Robert E. Lewis 11-17-92
Robert E. Lewis, Governor. Date

PUEBLO OF ZUNI

P. O. BOX 109
ZUNI, NEW MEXICO 87327

ROBERT E. LEWIS
Governor
PESANCIO LASILOO
Lt. Governor
JOSEPH DISHTA
Hl. Councilman
RAL R. PANTEAH, SR.
Councilman

FRANCIS P. WATO, L.R.
Councilman
AUGUSTINE A. PANTEAH
Councilman
CHARLOTTE T. BRADLEY
Councilwoman
OWEN R. BOBELU
Councilman



LOS-782-4481

PUEBLO OF ZUNI, NEW MEXICO

POLICY STATEMENT REGARDING THE PROTECTION AND TREATMENT OF HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS

November 1992

In reply refer to:

1. PREAMBLE

The Zuni Tribe declares that the following statement is in no way to be construed as condoning nor endorsing any specific project or undertaking.

Any proposed project or undertaking that will entail the disturbance of human remains and associated funerary objects is a disturbance the Zuni Tribe opposes. Traditional Zuni lifeways have no provisions for the premeditated disturbance of human remains and associated funerary objects (burials). Even being asked to consider such disturbance requires the Zuni Tribe to think about burials in ways that have no place in traditional beliefs.

2. TRADITIONAL VIEW CONCERNING BURIALS

The traditional Zuni belief about life is that each person's life has four stages through which they must pass. The first stage is life as we know it here and now. Following this first stage are three others of which very little is known. It is essential for each person to pass through each of the four stages of their life cycle before it is complete. All burials to which the Zuni Tribe may have cultural affinity are at some point in their journey through the three latter stages of the life cycle.

To disturb burials while on their life cycle journey is not the traditional Zuni way. The ramifications of disturbing burials cannot be determined. How disturbance affects the life cycle journey, a journey that must be completed, is unknown, but it may well have detrimental ramifications which cannot as yet be foreseen.

3. GEOGRAPHIC AND TEMPORAL RANGE OF BURIALS CULTURALLY AFFILIATED WITH ZUNI

All burials within the the lands for which the Zuni Tribe has held aboriginal title from time immemorial and continuing through and including at least A.D. 1946 are potentially culturally affiliated with the Zuni Tribe. The Zuni Tribe claims cultural affiliation with all pre-Puebloan, prehistoric Puebloan and ancestral historic Puebloan burials within the area of Zuni aboriginal land title as determined by the United States Claims Court, whether in marked or unmarked locations. The only exceptions would be identifiable historic Athabascan, Hispanic, Anglo, or other burials not culturally affiliated with Zuni. The area of aboriginal title (see attached map) was exclusively used and occupied by the Zuni Tribe, for purposes such as habitation, life sustaining activities, and religious worship. (Opinion and Findings of Judge Judith Ann Yanello, United States Claims Court, May 27, 1987, Docket No. 161-79L, The Zuni Tribe of New Mexico v. the United States).

The Zuni Tribe also claims cultural affiliation with all pre-Puebloan, and Puebloan, and historic Zuni burials beyond the area of Zuni aboriginal title, within the entirety of the maximum geographic extent of the prehistoric Anasazi and Mogollon culture areas, and parts of the Hohokam culture area. Throughout the prehistoric period the Zuni Tribe was on its migrations from the place of emergence to find the middle place, present day Zuni, and prehistoric sites of these ancient cultures are regarded by the Tribe as ancestral Zuni.

4. PROCEDURES FOR PROTECTING BURIALS

Traditional Zuni belief is that the only appropriate procedure for protecting burials is to avoid disturbing them. The Zuni Tribe prefers that no ancestral culturally affiliated burials be disturbed.

5. EXCAVATION OF BURIALS

The Zuni Tribe understands that developments, projects and undertakings may not be able to avoid disturbance to all burials. Because avoidance of all burials may not always be possible it may be necessary for some burials to be disturbed.

The Zuni Tribe also understands that archaeological excavations of areas to be disturbed by some projects and undertakings may involve only a sample of the total number of archaeological sites located within the area of potential effect, and that even then only a portion of each site will be selected for archaeological excavation. This may leave many sites, and portions of sites, without archaeological investigation. Consequently many areas that potentially contain burials will remain unexcavated at the conclusion of archaeological sampling. To find burials that may not have been excavated during archaeological sampling, the Zuni Tribe wants to ensure that each and every site with the potential to contain burials (i.e., the areas and sites not sampled by archaeologists) be carefully and completely stripped so that these sites may be exposed in order for all burials to be identified and subjected to controlled archaeological excavation prior to disturbance.

The Zuni Tribe also recognizes that there is the potential for burials to be discovered in areas initially thought unlikely to contain burials. These discoveries must be accorded the same respect and dignity accorded all other

burials. Project activities in the area of the burial must cease immediately upon discovery of a burial to provide for controlled archaeological excavation.

If it is impossible for a burials to be avoided by project activities then each burial must be accorded as much respect and dignity as possible. Excavation of all such burials must be performed only by fully permitted professional archaeologists or physical anthropologists. In all instances burial excavations must be under conditions of a fully archaeologically controlled and approved provenience system. No preservatives or markings may be applied directly to the skeletal remains. The Tribe prefers that no pollen, flotation, or other soil samples be taken within a distance of less than one foot from the skeletal remains. Samples for pollen, flotation, or other purposes may, however, be taken from within any associated funerary objects.

6. DOCUMENTATION OF BURIALS

The Zuni Tribe is concerned with the identification and distinction of culturally affiliated burials from non-culturally affiliated burials (i.e., Athabascan, Hispanic, and Anglo burials, etc.), and the age and sex of each individual.

As stated above the Tribe believes that the most appropriate treatment for burials is to avoid them and not disturb them at all. If avoidance cannot be achieved then the Tribe will permit non-destructive analysis of the human remains and their associated funerary objects. Analysis must take place within the project area, which may include a field laboratory set up in the project area.

Detailed sketches, plan views, and profiles may be made of each in situ burial. Photographs of skeletal remains may only be made for required official scientific documentary purposes. Photography of the associated funerary objects for official scientific documentary purposes is acceptable.

For any burials covered under this policy no curation of any human remains will be permitted, nor will any associated funerary objects be permitted to be curated.

Under no circumstances at any time can any human remains and/or associated funerary objects be transported across or through any portion of the Zuni Indian Reservation (including trust lands around Zuni Salt Lake, New Mexico, and trust lands in Arizona).

7. DEFINITIONS

Burials are defined as being human remains and associated funerary objects.

Human remains are defined as the skeletal remains and other organic remains of a human being.

Associated funerary objects are defined as objects that, as part of the interment rite ceremony, are reasonably believed to have been placed with the human remains at the time of interment. These associated funerary objects include, but are not limited to, complete and broken and almost complete, ceramic vessels, projectile points, ground stone items, crystals, shaped or

unshaped minerals, animal bone artifacts, basketry, textiles, and mats, etc.

Non-destructive analysis is defined as that which keeps all human remains and associated funerary objects intact.

8. REBURIAL

The Zuni Tribe expects all culturally affiliated human remains and their associated funerary objects to be reburied. All reburied human remains and associated funerary objects must be reburied as close as possible to their original resting place but out of harm's way. Any reburial location must be protected in perpetuity.

It is preferred that the reburial area(s) are selected, identified, and secured prior to the initiation of archaeological excavation.

Human remains and associated funerary objects not culturally affiliated with Zuni must be separately reburied from any culturally affiliated burials.

Culturally affiliated burials must be reburied with the human remains being in the same position as when excavated and with the associated funerary object(s) in the same relative position(s) to the human remains as when excavated. The skull of each reburied individual must be oriented to the east. Reburial is to be conducted by fully permitted professional archaeologists.

Reburial must be at a minimum depth of six feet below modern ground surface. No vertical layering of reburials within the reburial area(s) will be permitted. Reburials shall not be in containers or wrappings of any kind.

The Zuni Tribe has no objection to reburial ceremonies that may be conducted by other tribes with demonstrable cultural affiliation to the burials.

The reburial area(s) must be accurately located by legal description. Each reburial must be accurately mapped within the reburial area(s) and minimally have the reburial's original site number, archaeological excavation provenience, and date of excavation, marked on the reburial area(s) map(s). An aluminum tag noting the original site number, archaeological excavation provenience, and date of excavation, shall be placed near, but not touching, the feet or legs of each reburial.

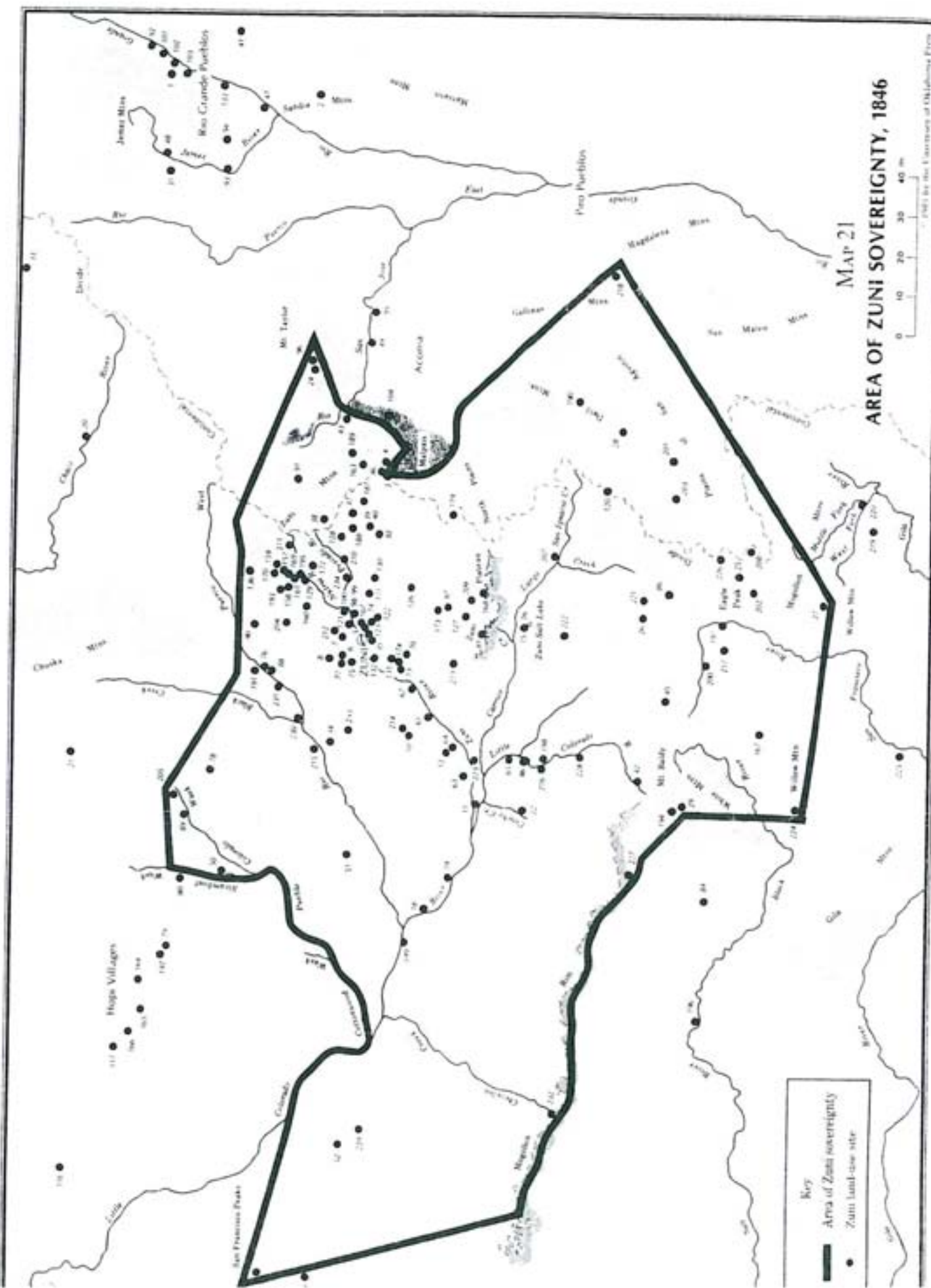
The reburial area(s) must be accurately mapped and located so that the reburial area(s) can be protected from any future disturbance. No location maps or descriptions may note the actual purpose of the protected area to further protect the reburials from future disturbance.

9. COSTS

The Zuni Tribe expects that all costs associated with the identification, excavation, documentation, and reburial of all human remains and associated funerary objects will be borne by the development, project, or undertaking sponsor.

MAP 21
 AREA OF ZUNI SOVEREIGNTY, 1846

0 10 20 30 40 mi
 1983 by the University of Oklahoma Press



Tom McCulloch

From: Bridges, Sarah - Washington, DC [Sarah.Bridges@wdc.usda.gov]
Sent: Friday, November 04, 2005 10:11 AM
To: Archeol AP, Project
Cc: Tom McCulloch; Laura Dean; jking@mdp.state.md.us; Courtenay McCormick; Meyer, Donna - Washington, DC; Swartzendruber, Joyce - Bangor, ME; Shaffer, Gary - Bangor, ME
Subject: USDA comments on Burial Policy Working Principles
Importance: High

The USDA agencies (Rural Development, Farm Services Agency, Forest Service, and Natural Resources Conservation Service) have had an opportunity to review the September 1, 2005, Federal Register Notice, and have developed no overarching comments addressed by all the agencies.

You have received one set of comments from directly from NRCS Maine (October 14, 2005) where they offered some observations on the complexity of Principle 4 and welcomed the ACHP's willingness to address treatment of unmarked and, often, abandoned human remains and funerary objects. Maine State Conservationist, Joyce A. Swartzendruber, commented that these remains, both Native American and non-Native American, present federal agencies with serious concerns regarding what constitutes and reasonable and good faith effort to consult with appropriate tribes, communities and families. Ms. Swartzendruber welcomes the ACHP's efforts to help federal agencies and other consulting and concern parties.

Yesterday we received two more sets of comments from Rural Development's Federal Preservation Officer, Donna M. Meyer. They are attached and seem, again, to fully support the ACHP's efforts to assist all consulting parties. One set offers some editorial comments on the principles themselves. The other offers some supportive observations from Alaska.

Forest Service has sent us no national comments; you may have received some directly from the field or the Federal Preservation Officer, Michael Kaczor.

Finally, NRCS has had several nationwide discussions of the working principles during our monthly teleconferences as, the response has been supportive and appreciative of the Task Force efforts. We have received no additional comments from our State Cultural Resources Specialists, State Conservationists, or our Center Directors. As you know, both as the USDA staff representative on the task force and as the NRCS FPO, I support the initiative to revisit the existing policies and believe the Working Principles, as published in the Federal Register, do represent the work of the task force. We all appreciate the ACHP efforts to provide policy that both gives federal agencies and other consulting parties sound guidance for treatment of human remains within the context of Section 106 compliance and that, clearly, does not conflict with other federal, tribal, and state authorities that must prevail for much of our work on federal (i.e. NAGPRA), tribal, private and other non-federal lands.

Thank you for giving all of us another opportunity to comment and to continue working with the Council Task Force and staff. We understand that the final decision on the form and content of Council policy must necessarily come from the full Council membership and Chairman.

If you have any questions or concerns, please let me know.

Sarah

Sarah T. Bridges
National Cultural Resources Specialist/ FPO
USDA NRCS Ecological Science Division
PO Box 2890, Room 6163-S
(1400 Independence Avenue, SW)
Washington, DC 20013-2890
sarah.bridges@wdc.usda.gov
202 720-4912

First of all I agree that human remains and any items buried with them should not be disturbed. However, when disturbance is unavoidable, human remains and their associated funerary objects should be immediately and respectfully be reburied or repatriated for reburial without study.

The fallacious argument foisted upon the public by archaeologist and various other specialists (effete academics), that the materials must be studied to address justified research projects is patently offensive. Furthermore, when the archaeologists or other specialists make the statement that, the scientific research value outweighs any objections that the descendents may have, is outrageous.

Policy comments regarding principle 3:

The last paragraph of this section states; "Federal agencies *must* recognize that simple avoidance of a site does not necessarily ensure that site's long-term preservation".

I recommend that the term *must* be deleted from the paragraph. The term *must* imply that Federal agencies lack sufficient intellect to recognize the obvious.

The paragraph is less offensive as follows; "Federal agencies recognize that simple avoidance of a site does not necessarily ensure that site's long term preservation".

I think a reference to the last paragraph of Principle 6 would be appropriate after the revised paragraph in Principle 3.

From: Merrick, Lee - Des Moines, IA
Sent: Thursday, November 03, 2005 3:01 PM
To: Meyer, Donna - Washington, DC
Subject: RE: ACHP Burial Policy Working Principles

Donna,

Per your request comment regarding the Burial Policy is attached. Hopefully, it is not too caustic.

lee

From: Campbell, Chris [mailto:ccampbel@anthc.org]
Sent: Thursday, November 03, 2005 8:48 AM
To: Krug, Timothy - Palmer, AK
Cc: Reitz, Dan; Griffith, Bill
Subject: RE: ACHP Burial Policy Working Principles

Hi Tim,

Thanks for forwarding this. I hadn't had time to look it up yet myself.

I read through it, and have to say that we are in alignment with it. I have been told by folks in the SHPO's office and archaeological contractors that we have the best policy for dealing with human remains in the State of Alaska. We make an inadvertent discovery about once every other year and each time it has worked out well. I think this is because we recognize the significance of the Tribe's role in consultation and decision making. I have also helped the SHPO streamline some consultation procedures. Formerly, the State required consultation with the local magistrate, who usually knew nothing about what to do. I learned that the State Bureau of Vital Statistics is actually the entity to notify for interment / disinterment permits and guidance. Consequently, the SHPO is now recommending that the BVS be contacted rather than the local magistrates.

Anyway, please do not fear – in this area, ANTHC is really doing a good job.

From: Krug, Timothy - Palmer, AK
Sent: Thursday, November 03, 2005 1:10 PM
To: Meyer, Donna - Washington, DC
Subject: FW: ACHP Burial Policy Working Principles

I thought you might be interested in what one our applicants has said. Chris is also a archaeologist performing environmental reviews.