



THEMED SUMMARY OF FEEDBACK REGARDING DRAFT UPDATES TO ACHP'S POLICY STATEMENT ON BURIAL SITES, HUMAN REMAINS, AND FUNERARY ITEMS

In 2022 the ACHP conducted eight listening sessions with Indian Tribes, Native Hawaiian organizations (NHO), federal agency personnel, ACHP members, and subject matter experts in African American burial grounds to gain feedback regarding proposed updates to ACHP's [Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects](#). In 2023, the ACHP facilitated nationwide government-to-government consultation with Indian Tribes and consultation with Native Hawaiian organizations and met individually with Tribal governments on request.

Consistent with those listening sessions and consultation events, the draft policy statement was updated to reflect comments and recommendations. A summary of those comments and the ACHP's response are provided below. Overall, the comments and discussion that resulted from listening sessions and the consultation event improved the overall tone, scope, and intent of this policy statement. Respondents supported the updates with many noting the importance of updating this policy statement to meet the challenges currently being faced in the field of historic preservation regarding the preservation and protection of burial sites, human remains, and funerary objects.

Scope and application of the policy statement. Several respondents asked that this policy statement continue to be applied externally beyond ACHP staff consistent with the 2007 version of this policy statement. Multiple comments asked for more decisive and direct language regarding expectations for federal agencies. One respondent noted that ACHP's trust responsibility includes making sure agencies aren't just implementing the regulations, but complying with them. Overall, participants supported the focus of the policy statement on burial sites, human remains, and funerary objects.

ACHP response – The ACHP agrees that all federal agencies, and other institutions and organizations that may encounter or work with burial sites, human remains, or funerary objects, should seek to implement the principles identified in this policy statement to the maximum extent practicable and has drafted the statement in a manner that supports that position. The ACHP has also worked to include decisive language to clearly indicate intent and expectations but is also aware that each federal agency operates under a unique mission and with unique authorities. As such, some language may not be as definitive as respondents would like to see, but the ACHP is confident in the policy's ability to inform decision-making in a multitude of scenarios.

Addressing Indian Tribes, Native Hawaiians, Indigenous Peoples, and African American communities. Overall, respondents supported elevating the concerns and needs of Indian Tribes, Native Hawaiians, Indigenous Peoples, and African American communities so long as it does not limit the consideration of other groups. Multiple respondents requested that Indigenous Peoples be more broadly included and requested specific comments about non-federally recognized Tribes and Indigenous communities in U.S. territories. Tribal and Native Hawaiian respondents identified historical and generational trauma as a key concern and requested that the ACHP create awareness of that issue, sharing that many federal agencies, in their handling and consultation, treat burial sites, human remains, and funerary objects with disregard which can cause significant grief and compound existing trauma.

ACHP response – The ACHP has worked to reorient this policy to ensure that the voices and concerns of Indian Tribes, Native Hawaiians, Indigenous Peoples, and African American communities are represented throughout. While this policy applies to all people, the ACHP has recognized that a disproportionate number of impacts have occurred to the burial sites, human remains, and funerary objects to select groups and commits to supporting equal respect and consideration in all circumstances. Additionally, in response to comments received, the ACHP explicitly includes reference to historical trauma.

Terminology/definitions. Several respondents noted the ACHP’s failure to directly include cremains, cremations, and/or above-ground funerary practices and requested that be addressed. Multiple respondents requested that the ACHP not utilize NAGPRA definitions as those are considered limiting to many Tribes and NHOs. Across presentation groups, respondents requested that the definition of burial site be broadened to include any context in the earth, underwater, or above ground where an ancestor has been, at any point, laid to rest. Respondents requested that there should be no assumed threshold for whether an ancestor’s remains are “intact” – this can only be determined in consultation with knowledgeable individuals who understand the Tribe’s specific burial practices. Other comments emphasized that the definition of “disturbance” should be refined in consultation with affected Tribes and NHOs. Respondents also noted that agencies should consult on how to understand and accept markers of likely or potential burials and burial areas versus further disturbing a property to confirm their presence archaeologically. Several Tribes also expressed concern over the use of ground penetrating radar (GPR) noting that it may conflict with cultural values and that agencies frequently over-rely on GPR and discount Indigenous Knowledge as a result. And, respondents noted that, while definitions are needed to advance this policy statement, those should not be static for all scenarios; rather, definitions for most terms should be refined by agencies, in consultation, to account for the distinct cultural background that each Indian Tribe, NHO, and Indigenous community may have that could influence their understanding and application.

ACHP response – The ACHP fully recognizes that federal agencies should tailor any definition of burial site, human remains, funerary objects, or other important terms, in consultation with associated Tribes, NHOs, groups, or individuals. The ACHP has updated the policy statement to reflect this position. The ACHP has clarified the definition of human remains should include “cremains, hair, and fluid, among other components” consistent with comments received during the consultation event. Requested changes to the terms “intact” and “disturbance” were also actioned. Additionally, in recognition of concerns expressed by Indian Tribes and NHOs, the ACHP will limit the number of times it cites NAGPRA as a source for its definitions to ensure a broader application of definitions can be achieved.

Authority and policy implementation sections. There was broad support for the inclusion of a section on implementation that pursued training, development of informational resources and protocols, and integration of the policy statement into Section 106 agreement documents. Respondents requested commitments from the ACHP to provide training to ACHP staff and state and federal personnel on the policy’s implementation. One respondent requested that the ACHP commit to supporting agency-specific efforts to implement the plan at partner agencies. Other respondents asked that the ACHP either develop additional guidance on, or create more awareness of, compensation and management of sensitive information in the Section 106 process.

ACHP response – The ACHP has committed to providing training to its staff and to updating its existing training resources to provide maximum opportunities for this policy to inform federal decision making. The ACHP is also fully committed to advising other federal agencies, state, Tribal, and local governments, and other parties as they develop internal protocols to implement this policy at their own organization. Additionally, as identified in the implementation section, the

ACHP commits to an ongoing effort to develop guidance, information papers, and other messaging to advance the principles listed in this policy.

Compensation. Multiple respondents noted that federal agencies burden Tribes and NHOs with the expenditure of money, resources, and time, and to resolve impacts to burial sites, human remains, and funerary objects resulting from federally licensed, approved, funded, or permitted undertakings – agencies need to plan and budget accordingly to compensate Tribes and Native Hawaiians, to allow for consultations to occur when culturally appropriate, and to provide deference to Tribal and NHO preferences. Respondents also expressed concerns that federal agencies failed to support reburial efforts by not financially supporting the reburial process or allowing reburial on federal lands.

ACHP response – While not initially addressed in this policy statement, the ACHP has developed a principle regarding reimbursement or compensation. The ACHP is also committed to providing further instruction regarding reimbursement or compensation through the implementation of this policy statement.

Coordination with other federal laws and processes. Respondents fully supported this policy aligning with the Department of Interior’s Federal Indian Boarding School Initiative and other efforts to inform historical actions that impacted Indian Tribes and Native Hawaiians. Multiple Tribes provided examples of Tribal protocols that action many of the principles discussed in this policy and noted their success in having established Tribal policy/guidelines to provide to agency personnel. Other respondents emphasized that this policy will be helpful in considering cross-agency guidance regarding reburial efforts on federal land and urged the ACHP to reinforce that agencies should provide deference to the Indigenous Knowledge of Tribes and Native Hawaiians in all aspects and associated processes. Some respondents supported the discussion regarding NAGPRA but noted that NAGPRA is not the focus of the document. A few respondents requested that the implementation of this policy include information about the intersections of NAGPRA and Section 106 including NAGPRA Plans of Action and Section 106 agreement documents.

ACHP response – The ACHP is committed to developing additional resources following adoption of the policy statement. In order to advance greater awareness of this policy statement, the ACHP is committed to meeting with federal, state, Tribal, and local governments and entities to inform them of its application and to assist them with integrating the policy statement specific to their unique mission and authorities. Where possible, the ACHP shall also develop additional information or guidance documents that inform how this policy statement intersects with other federal initiatives including the Department of Interior’s Federal Indian Boarding School Initiative, NAGPRA, the Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites, and the Traditional Cultural Places Bulletin, among other initiatives, as appropriate.

Sacred Sites. Most respondents supported the ACHP doing more to draw attention to the prominence of burial sites, human remains, and funerary objects and supported the integration of language on sacred sites into the policy statement. Some verbal comments expressed concern regarding the role of ACHP to advise on sacred sites while others didn’t want to see sacred sites further linked with the Section 106 process. Conversely, other respondents noted the ACHP’s authority to advise on historic preservation broadly and requested additional clarity regarding the intersection of Executive Order 13007 and the Section 106 process. Several Tribal and Native Hawaiian leaders and designated representatives clarified that burial sites *are* sacred sites and that ensuring access to locations for sacred uses consistent with burial practices is paramount.

ACHP response – The ACHP has broad authority to speak on historic preservation matters,

including sacred sites. The ACHP supported respondents who identified burial sites as sacred sites and placed language to that effect in the policy statement. The importance of access has also been included in the policy principles along with references that recognize that cultural practice is linked to place.

Indigenous Knowledge. Respondents overwhelmingly supported the inclusion of Indigenous Knowledge, and the knowledge of descendant and affiliated communities, as a common theme. Requests were made to further integrate deference to Indigenous Knowledge and the expertise of Indian Tribes, Native Hawaiians, Indigenous Peoples, and African American communities into the policy statement. Respondents agreed that Indigenous Knowledge is self-supporting, stating that this nuance is important, but noted challenges in aligning Indigenous Knowledge with existing guidance regarding Traditional Cultural Places and Professional Qualifications. Respondents also requested that ACHP clarify that Indigenous Knowledge can only be provided and interpreted by the associated Indian Tribe or Native Hawaiian organization.

ACHP response – The ACHP responded to comments by retaining all references to Indigenous Knowledge and deference to the expertise and cultural practices of knowledgeable individuals. The ACHP also agreed with all respondents regarding their position and understanding of Indigenous Knowledge and worked to integrate as many of the comments as possible. The ACHP is committed to further advancing Indigenous Knowledge through a separate policy statement to further address comments made by participants that will also support the interpretation of Indigenous Knowledge in this policy statement.

Sensitive information. Tribal and Native Hawaiian respondents expressed concern regarding how federal agencies acquire and manage sensitive information including Indigenous Knowledge and information related to burial sites, human remains, and funerary objects. There are also concerns regarding the fact that federal agencies, in seeking to acquire information, can inadvertently conflict with cultural protocols regarding when, how, or why that type of information is shared. Other respondents noted that a disconnect exists between federal agencies and contractors and noted that federal agencies should train their contractors on the importance of maintaining and protecting cultural information. Overall, respondents seen a need for the ACHP to provide further information relating to the acquisition and management of sensitive Tribal and Native Hawaiian information by the federal government.

ACHP response – ACHP intends to retain the principle specifically addressing sensitive information and confidentiality. Further, the ACHP intends to prioritize development of resources meant to educate and inform federal agencies, Indian Tribes, Native Hawaiians, and other parties regarding the role of sensitive information in federal decision making.

Access and Repatriation. Respondents supported ACHP’s language regarding access to and/or repatriation of burial sites, human remains, and funerary objects. Tribal and Native Hawaiian leaders and designated representatives also supported the ACHP’s effort to integrate language from the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP) as a means of implementing the UN DRIP into U.S. policy.

ACHP response – The ACHP is actively seeking opportunities to integrate UN DRIP into its policy and guidance documents including this policy statement on burial sites, human remains, and funerary objects. The ACHP encourages federal agencies, State Historic Preservation Officers, the historic preservation community, and the public to become familiar with the United Nations Declaration on the Rights of Indigenous Peoples. It is important because it expresses both the aspirations of indigenous peoples around the world and those of Indian Tribes and NHOs in the United States in seeking to improve their relations with indigenous

peoples. The ACHP will continue to advance consideration of the UN DRIP through coordination with the White House Council on Native American Affairs's International Indigenous Issues committee and United Nations subcommittee, where feasible.

Consultation. Consistent with most ACHP actions, respondents confirmed that consultation was of paramount importance. This included providing deference in the decision-making process, ensuring consultation occurred before any treatment or actions were taken, and that the consultation process was understood to be comprehensive with a goal of reaching consensus. Tribal and Native Hawaiian leaders and designated representatives requested that the ACHP use clear and concise language to ensure that comprehensive consultation with affected parties occurred before any decision or actions were taken regarding the identification, documentation, determination of National Register eligibility, or treatment of burial sites, human remains, or funerary objects.

ACHP response – The ACHP actioned these requests by clarifying that consultation in the Section 106 process reflects a consensus based approach. Further, the updated policy statement includes clear language providing deference to Indigenous Knowledge and the expertise of associated Indian Tribes, NHOs, or other people. The ACHP also worked to utilize clear and decisive language where possible and to reaffirm the fact that any decision regarding the identification, documentation, determination of National Register eligibility, or treatment of burial sites, human remains, or funerary objects should not occur until consultation with affected parties has commenced.

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