

January 18, 2007

Dr. Tom McCulloch
Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, District of Columbia 20004

RE: RESPONSE TO THE ACHP's POLICY STATEMENT REGARDING
TREATMENT OF BURIALS SITES, HUMAN REMAINS, AND FUNERARY
OBJECTS.

Dear Mr. McCulloch,

On behalf of the Lummi Nation located near Bellingham, Washington, we appreciate the latest draft policy statement and the additional discussion paper concerning expansion on the policy principles. Lummi Nation internal review has solicited comment and our address of concerns from the latest version.

In our previous comments of the earlier version, the Lummi Nation described its devastating experience of burial desecration of a known burial site and the same experience of the disrespectful and of lack of dignified handling by the professional archaeologist. Taken 56 remains from our state and transported them by truck to Denver Colorado.

Principle 1 – Participants in the Section 106 process should treat all burial sites, human remains and funerary objects with dignity and respect.

Lummi Indian Nation believes the current partial advising of the agencies and extends to any professional community members with appropriate handling and respect. However, again referring to the incident cited above where 56 remains were exhumed and then transported out-of-state did not observe this regulatory and procedural process. The Lummi Nation is still recovering ancestral human remains within a landfill site.

In fact, Section 106 was the guideline to which was to protect through the listing of the site for the National Register which contained a known burial area. Thus, the issues the Lummi Nation has with the process remains to be discussed and surely advocate that the learned experiences in the matter has several areas that need to be recognized. When we are to be consulted by Federal Agencies who are charged to address preservation and protection of cultural resources and properties we will lend our concerns. Some of these concerns are as follows:

1. The Section 106 Process and ACHP Proposed Policies have many areas to consider while planning federal undertakings. Early stage involvement and face-to-face consultation with tribal government needs to clearly be established early on. Additionally, on-going consultation between the lead agency and its contracting professional staff and construction consultants. Federal agencies use the Due Diligence process. This process is the early stage to determine appropriate parties involved with the federal undertaking and the tribes should be at these working sessions so such important issues and matters are being addressed at the front end of the process and not at the latter stages.
2. We strongly believe that the Professional standards need to be established and made known prior to the bidding process that clearly establishes professional staff that actually has a tract record in the proper identification of ancestral human remains. The project to which I reference earlier had a professional archaeologist who had a Doctorate level of education in the archaeology/anthropology profession. However, professionally failed to properly identify the documented exhumed ancestors that were reported to be 26 human remains. However, when the Lummi Nation retrieved them we were able to identify 56 in total. Additionally, we have approximately 200 (+) additional remains that while being monitored by professional staff during excavations went to become landfill.
3. The orientation of federal, state, local government agencies should be required to attend training on the pertinent regulatory and procedural requirements for compliance. Again, given the example above, some of the consulting archaeologist who had field management and oversight came from another country and had not adequately take in hand the projects professional standards and the regulatory requirements.

Principle 2 – Only through consultation, which is the early and meaningful exchange of information, can a Federal Agency make an informed and defensible decision about the treatment of burial sites, human remains and funerary objects.

Again, with number 1 – 3 are meaningful exchange points that facilitate the government-to-government protocol, Lummi Nation requires face-to-face consultation in such sensitive matters. Additionally, such consultation requires that the process facilitate, on-going interaction and should guide the process when tribes are involved. Clear consultation agreements, that identify agency roles and responsibilities between them and the Lummi Nation and facilitate clear communication with any parties involved in a federal undertaking. This practice should be evident when it is not considered a federal undertaking and apply to state and local governments and any of their sub-contractors.

Principle 3 – Native Americans are descendants of original occupants of this country. Accordingly, in making decisions, Federal agencies should be informed by and utilized the special expertise of Indian Tribes and Native Hawaiian organizations in the documentation and treatment of their ancestors.

Lummi Nation has established protocol that has the traditional laws and view along with acceptable handling practices by outside entities and people. Lummi requires that our

tribal members that have the experience and can appropriately handle our ancestral remains based upon customary, ritual and religious practices or spiritual beliefs.

Principle 4 – Burial sites, human remains and funerary objects should be knowingly disturbed unless absolutely necessary, and only after the Federal Agency has consulted and fully considered avoidance of impact and whether it is feasible to preserve them in place.

The Lummi Indian Nation has always upheld its belief that any/all ancestral remains shall be treated with respect and dignity, in accordance to traditional laws and cultural values and our belief systems. To be consistent in our belief system and remain within customary laws that the ancestral human remains respectfully require that they remain undisturbed.

Therefore, as federal agencies actually make contact with the Lummi Indian Nation, this will be the position for consultation basis. We believe that the ‘consultation at the earliest stage process’ should include the LIN position within the agencies making an informed decision process.

This consultation as an on-going practice should apply to those that under the Federal Agency(s) authority, i.e., applicants (local government) and their contractors. In the process of designing appropriate measures based upon actual consultation and agreed steps, the necessary principle to exhaust all measures prior to proposals to exhume, conduct research benefiting and supporting scientific values.

In order for the federal agency to make an informed decision it will require early stage efforts to contact the Lummi Indian Nation to begin to address such significant issues as a federal undertaking. Additionally, on-going face-to-face consultation throughout the design of proposed alternatives from avoidance, minimal impact and other measures should be evident.

Lummi Indian Nation had experienced a mass grave desecration within its traditional territory in 1999 during an expansion of a wastewater treatment plant expansion. Early stage consultation and the federal agency making an informed decision concerning a known burial site, likely would have avoided the grave desecration.

Unfortunately, it became a contentious situation concerning the disturbed burials, between the local governments, the consulting professional archaeologist, and the lead state agency. Lummi had to remain consistent with its convictions throughout this event.

Including the fact that scientific values encroached and influenced the agency decision-making process without allowing on-going consultation with the Lummi Indian Nation. Again, in our case, in 1999 it became difficult to require of the scientific community to apply non-destructive analysis practices. We feel that ACHP standing policies promote this same situation in most if not all cases and can create the same barriers in the consultation process.

In the event, that ACHP is a consulting party (additional party or otherwise), that they will solely support the scientific values. Additionally, they become another scientific based preference and will likely have influence on the federal agency, on collective basis, will support any final decision and to be expected non favorable and non-supportive to the tribes cultural values.

Finally, in review of the written principle four it sounds misleading for ACHP to indicate that it supports tribal views and that the handling of ancestral remains will carry the same dignity and respect that the tribes require toward their ancestor's.

Principle 5 - When human remains or funerary objects must be disinterred, they should be removed carefully, respectfully and in a manner developed in consultation.

We had already stated our concern in principle 3 and can be applied here. The Lummi Nation has established protocol that has the traditional laws and view along with acceptable handling practices by outside entities and people. Lummi requires that our tribal members that have the experience and can appropriately handle our ancestral remains based upon customary, ritual and religious practices or spiritual beliefs.

Principle 6 – The Federal agency is ultimately responsible for making decisions regarding avoidance of impact to or treatment of burial sites, human remains and funerary objects. In reaching such decisions, the Federal agency must comply with applicable Federal, Tribal, State, or local laws.

Lummi Nation would require during face-to-face consultation meetings to institute all appropriate regulatory and procedures and its compliance. Lummi Nation has its own Cultural Resource Management System that serves as its guiding document to which provide the general discussions and appropriate action that may need to be implemented or recommends to be put into practice by the agencies.

Principle 7 – Through consultation, Federal agencies should develop plans for the treatment of burial sites, human remains and funerary objects that may be inadvertently discovered.

Lummi Nation would require during face-to-face consultation meetings to institute all appropriate regulatory and procedures and its compliance. Lummi Nation has its own Cultural Resource Management System that serves as its guiding document to which provide the general discussions and appropriate action that may need to be implemented or recommends to be put into practice by the agencies. It must be known that the concept of treatment and use by the tribe is not necessarily the same, which are applied, by agency or regulatory requirements. However, due to the nature of the principles, it enfolds some of the tribal views and can be clearly articulated to what the tribe means.

Principle 8 – In cases, where the disposition of human remains and funerary objects is not legally prescribed, Federal agencies should proceed following a hierarchy that begins with the rights of the lineal descendants, and if non, then the descendant community, which may include Indian tribes and Native Hawaiian organizations.

Lummi Nation would require during face-to-face consultation meetings to institute all appropriate regulatory and procedures and its compliance. Lummi Nation has its own Cultural Resource Management System that serves as its guiding document to which provide the general discussions and appropriate action that may need to be implemented or recommends to be put into practice by the agencies.

Again, we at the Lummi Nation, feel that our traditional cemeteries should be protected and go undisturbed, protected from the type of treatment describes or illustrated above and believe that the inclusion of our comments, concerns are integrate into the final draft document. We seek assurance that such desecration does not reoccur.

Your time and assistance on these matters is greatly appreciated. Please let the Lummi know if you require any additional comment, testimony, or support in future drafts. We can be reached at (360) 384-1489.

Sincerely,

Evelyn Jefferson, Chairperson
Lummi Indian Business Council

James Hillaire, Director
Cultural Department

Cc:

Lummi Cultural Resource Protection Commission
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