



CONFEDERATED TRIBES OF GRAND RONDE
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January 18, 2007

Mr. John M. Fowler
Executive Director
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Washington, DC 20004

*via facsimile to 202/606-8647
and first-class U.S. mail*

Re: Proposed Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects

Dear Mr. Fowler:

The Confederated Tribes of the Grand Ronde Community of Oregon ("Grand Ronde") respectfully submits the following additional comments on the Advisory Council's proposed Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects (the "Proposed Policy").

▪ **Burial Sites and the National Register of Historic Places**

The second paragraph of the Preamble to the Proposed Policy states in part that "(t)o be considered under Section 106, the burial site must be or be a part of a historic property, meaning that it is listed, or eligible for listing, in the National Register of Historic Places."

We feel it is important for the Advisory Council to know that we consider all burial sites of our ancestors to be eligible for the National Register.

▪ **Principle 4 – Disturbance of Burial Sites, Human Remains and Funerary Objects**

Principle 4 states that "(b)urial sites, human remains and funerary objects should not 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."

It is important to provide federal agencies clear direction on this issue. The disturbance of burial sites, human remains, and funerary objects is something that must be avoided unless absolutely

Mr. John M. Fowler
January 18, 2007
Page 2

necessary. Therefore, we recommend that the word "should" in Principle 4 be replaced with "must."

In the discussion paper attached to the Proposed Policy, it states that a federal agency should minimize disturbance when it "determines, based on consultation with Section 106 participants, that avoidance of impact is not appropriate." The discussion paper further states that a federal agency should consider steps to preserve a burial site in place when the agency "determines, based on consultation with Section 106 participants, that avoidance of impact is not appropriate." "Not appropriate" is a vague term, and could be read as inconsistent with Principle 4. To be clear, we recommend you use the term "disturbance is absolutely necessary" rather than "avoidance of impact is not appropriate."

▪ **Principle 8 – Disposition of Human Remains and Funerary Objects**

Principle 8 states that "(i)n 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 lineal descendants, and if none, then the descendant community, which may include Indian tribes and Native Hawaiian organizations[.]"

The repatriation of our ancestors is of critical importance to Grand Ronde. Absent unusual circumstances, we believe Grand Ronde should control the care and disposition of remains found within our ceded and historical use lands. We are concerned that the term "descendant community" is left undefined and will not provide federal agencies the clear direction that is needed on this important issue.

▪ **Definition of Human Remains**

The Proposed Policy references the definition for "human remains" found in NAGPRA regulations. This definition does not include "remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair to make ropes or nets."

While certain kinds of remains are excluded from the definition of "human remains," these remains may still qualify under NAGPRA (for example, as funerary objects). Even if such remains do not qualify under NAGPRA, they are important cultural resources that should be protected.

* * *

Grand Ronde appreciates the opportunity to comment on the Proposed Policy, and values the Advisory Council's efforts in developing policies that strengthen the treatment and protection of

Mr. John M. Fowler
January 18, 2007
Page 3

American Indian human remains and associated cultural artifacts. We invite the Advisory Council to continue to seek consultation with Grand Ronde, and we would welcome any other requests for involvement in efforts to strengthen tribal cultural resource laws and policies.

Very truly yours,



Pete Wakeland
Development Director

cc: Tribal Council
David Lewis
Tribal Attorney