

Laura Dean

From: ATF
Sent: Friday, January 19, 2007 12:46 PM
To: Laura Dean
Subject: FW: ACHP POLICY STATEMENT - COMMENTS

From: jack trope [mailto:jt.aaia@verizon.net]
Sent: Thu 1/18/2007 6:08 PM
To: ATF
Subject: ACHP POLICY STATEMENT - COMMENTS

To: Dr. Tom McCullogh:

Thank you for the opportunity to comment on the redraft of the Policy Statement.

We believe that there are only limited circumstances in which this policy statement will come into play in view of NAGPRA and other applicable law. Thus, the ACHP should carefully consider whether the frequency of such instances is sufficient to justify a separate Policy Statement.

If a decision is made to issue the revised Policy Statement, we believe that the general approach of the Statement is correct. For the most part, it is based upon the principles underlying NAGPRA, with an emphasis on avoidance. This is entirely appropriate and we applaud the Task Force for recommending this approach.

We have only a few suggestions on improvements to the Statement:

1. Avoidance is defined as "ensuring that the burial site is not physically disturbed". In some cases, this may be too narrow of a definition. If the "burial site" is of spiritual or ceremonial significance, simply limiting avoidance to physical disturbance may be too narrow. We would suggest language stating that it means "at a minimum, no physical disturbance" and that "in some cases, cultural information developed through consultation may indicate that additional measures are necessary to avoid impact."
2. It should be made clear to agencies that "it is appropriate to consult with traditional religious leaders when such leaders seek to be consulted." Section 2 of the American Indian Religious Freedom Act (P.L. 95-341) requires agencies "to evaluate their policies and procedures in consultation with native traditional religious leaders to determine changes necessary to preserve Native American religious cultural rights and practices." Moreover, NAGPRA specifically requires consultation with traditional religious leaders as part of the inventory and summary processes mandated by the Act. (25 U.S.C. 3003(b)(1)(A) and 25 U.S.C. 3004 (b)(1)(B)). Although NAGPRA does not explicitly require such consultation in the context of the discovery of inadvertent remains or excavations, the inclusion of traditional religious leaders in other parts of NAGPRA is a recognition that such individuals may have particular interests in, and extensive knowledge about, human remains and funerary objects. Thus, while consultation with traditional religious leaders must not be in lieu of consultation with tribal governments, in any matter where traditional practitioners want to be consulted, it should be clear that it is appropriate for the agency to consult with them. (Sometimes agencies mistakenly believe that they should not talk with traditional religious leaders -- that they are only allowed to talk with tribal governments -- and an explicit statement that contact with traditional religious leaders is "appropriate" would address this misunderstanding.)
3. The language about confidentiality should be more extensive. It is not only the "governmental structures" of the tribes that gives rise to the need for confidentiality, but also it is because the release of such information may be contrary to certain tribal religious or cultural beliefs or because it may result in damage to such places or lead to the intrusion by unauthorized persons. Reference should be made to section 304 of the NHPA in the Policy Statement and agencies should be instructed to limit the extent to which they maintain files of sensitive information and to be sure to obtain approval for the withholding of sensitive information that is in their files where confidentiality is requested.

Thank you for considering these comments.

1/19/2007

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