Tom King Comments 12/21/06

ACHP POLICY STATEMENT REGARDING TREATMENT OF BURIAL SITES, HUMAN REMAINS AND FUNERARY OBJECTS

Preamble: This policy offers leadership in resolving how to treat burial sites, human remains, and funerary objects in a respectful and sensitive manner while acknowledging public interest in the past. As such, this policy is designed to guide Federal agencies in making decisions about the identification and treatment of burial sites, human remains, and funerary objects encountered in the Section 106 process, in those instances where Federal or State law does not prescribe a course of action.

This policy applies to all Federal agencies with undertakings that are subject to review under Section 106 of the National Historic Preservation Act (NHPA; 16 U.S.C. § 470f), and its implementing regulations (36 CFR Part 800). To 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.[1]

The Advisory Council on Historic Preservation (ACHP) encourages Federal agencies to apply this policy throughout the Section 106 process, including during the identification of those historic properties. The policy is not bound by geography, ethnicity, nationality, or religious belief, but applies to the treatment of all burial sites, human remains, and funerary objects encountered in the Section 106 process, as the treatment and disposition of these sites, remains, and objects are a human rights concern shared by all.[2]

This policy also recognizes the unique legal relationship between the Federal government and tribal governments as set forth in the Constitution of the United States, treaties, statutes and court decisions, and acknowledges that, frequently, the remains encountered in Section 106 review are of significance to Indian tribes.

Section 106 requires agencies to seek agreement with consulting parties on measures to avoid, minimize, or mitigate adverse effects to historic properties. Accordingly, and consistent with Section 106, this policy does not recommend a specific outcome from the consultation process. Rather, it focuses on issues and perspectives that Federal agencies ought to consider when making their Section 106 decisions. In many cases, Federal agencies will be bound by other applicable Federal, Tribal, State, or local laws that do prescribe a specific outcome, such as the Native American Graves Protection and Repatriation Act (NAGPRA). The Federal agency must identify and follow applicable laws and implement any prescribed outcomes.

For undertakings on Federal and Tribal land that encounter Native American or Native Hawaiian human remains and funerary objects, NAGPRA applies. NHPA and NAGPRA are separate and distinct laws, with separate and distinct implementing regulations and categories of parties that

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Sequence number: 1
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:13:28 PM

What about burials found in the course of work leading TO a determination of eligibility/ineligibility -- e.g. an isolated burial found during survey with nothing else around it? Seems to me you should say something like: This policy applies to all activities carried out by, on behalf of, or at the direction of federal agencies carrying out their responsibilities under the above-cited regulations.

Sequence number: 2
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:14:27 PM

A good statement, but at odds with the one immediately preceding.

must be consulted.[1] Compliance with one of these laws does not mean or equal compliance with the other. Implementation of this policy and its principles does not, in any way, change, modify, detract or add to NAGPRA or other applicable laws.

Principles: When burial sites, human remains, or funerary objects, will be or are likely to be encountered in the course of Section 106 review, a Federal agency should adhere to the following principles:

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

Principle 2: Only through consultation[1], 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.

Principle 3: Native Americans are descendants of original occupants of this country. Accordingly, in making decisions, Federal agencies should be informed by and utilize the special expertise of Indian tribes and Native Hawaiian organizations in the documentation and treatment of their ancestors[2]

Principle 4: Burial sites, human remains and funerary objects should not be knowingly[3] 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.

Principle 5: When human remains or funerary objects must be disinterred, they should be removed carefully, respectfully and in a manner developed in consultation[4]

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[5]. In reaching its decisions, the Federal agency must comply with applicable Federal, Tribal, State, or local laws.

Principle 7: Through consultation, Federal agencies should develop[6] plans for the treatment of burial sites, human remains and funerary objects that may be inadvertently discovered.

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 lineal descendants, and if none, then the descendant community, which may include Indian tribes and Native Hawaiian organizations[7]

[1] The ACHP's publication Consulting with Indian Tribes in the Section 106 Process and the National Association of Tribal Historic Preservation Officers' publication Tribal Consultation: Best Practices in Historic Preservation provide additional guidance on this matter.

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Sequence number: 1
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:18:17 PM

I don't think you can use "consultation" as a standalone noun in a situation like this; it has to be consultation with someone. I'd suggest "consultation with interested parties." And rather than the "which is" clause, which seems to prescribe a definition rather narrower than the one in 800.16, I'd refer them to the regulatory definition and/or the compatible definition in the 110 guidelines.

Sequence number: 2
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:24:17 PM

Non sequitur. It's not because they're descended from the original folk that they ought to be informed, etc.; it's because ANYBODY ought to be consulted in deciding how to treat their ancestors. If you were digging a Jewish cemetery you'd want a Rabbi on hand. I think you're trying to say two somewhat different things at once: (1) everybody ought to be consulted about their ancestors, and (2) most of the ancestors one finds lying around loose in North America are Indian ancestors, so absent evidence that a given bod is someone else's ancestor, it's the tribes that ought to be consulted.

Sequence number: 3
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:25:16 PM

Why "knowingly?" The principle ought to be don't disturb them unless you have to, and one of the ways you minimize the likelihood of disturbance is by becoming "knowing" about where they're likely to be.

Sequence number: 4
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:26:10 PM

Again, you've really gotta have someone consulted; "consultation" doesn't stand alone.

Sequence number: 5
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:30:26 PM

Not necessarily. Consider a Corps 404 permit in a state with an unmarked burial law. The applicant/permittee is responsible for making decisions in this case; the federal agency's job is simply to comply with Section 106. I think you're trying to say that WHILE it's the Federal agency's responsibility to make decisions regarding its undertaking, in accordance with the regs, the agency must address the requirements of other applicable laws. And of course, "applicable" is an important word, considering federal sovereign immunity.

Sequence number: 6
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:31:23 PM

and IMPLEMENT

Sequence number: 7
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:34:43 PM

Sorta begs the question of what happens if there is no obvious descendant community. Also suggests that the agency must go through all the NAGPRAesque agony of looking for descendants even where NAGPRA doesn't apply. And what "rights" do descendants have if nothing is legally prescribed? Seems to me an agency ought to proceed in consultation with all interested parties, giving special deference to those who may have some kind of genetic or cultural relationship to the bod.

DISCUSSION:

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

Because the presence of human remains and funerary objects gives a historic property special importance as a burial site or cemetery, Federal agencies need to consider fully the values associated with such sites. When working with human remains, the Federal agency should maintain an appropriate deference for the dead and the funerary objects associated with them, and demonstrate respect for the customs and beliefs of those who may be descended from them.

Through consultation with descendants, culturally affiliated groups, descendant communities, and other parties, Federal agencies should discuss and reach agreement on what constitutes respectful treatment.

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.

Consultation is the hallmark of the Section 106 process. Federal agencies must make a "reasonable and good faith" effort to identify consulting parties and begin consultation early in project planning, after the Federal agency determines it has an undertaking and prior to making decisions about project design, location, or scope.

The NHPA, the ACHP's regulations, and Presidential Executive Orders set out basic steps, standards and criteria in the consultation process, including:

- Federal agencies have an obligation to seek out all consulting parties [36 CFR § 800.2(a)(4)], including State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) [36 CFR § 800.3(c)].

- Federal agencies must acknowledge the sovereign status of Indian tribes [36 CFR § 800.2(c)(2)(ii)]. Federal agencies are required to consult with Indian tribes on a government-to-government basis in recognition of the unique legal relationship between Federal and Tribal governments, as set forth in the Constitution of the United States, treaties, statutes, court decisions, and executive orders and memoranda.

- Consultation on a government-to-government level with Indian tribes cannot be delegated to non-Federal entities, such as applicants and contractors.

- Federal agencies should solicit tribal views in a manner that is sensitive to the governmental structures of the tribes, recognizing their desire to keep certain kinds of information confidential, and that tribal lines of communication may argue for Federal agencies to provide extra time for the exchange of information.

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Author: Tom 1
Subject: Note
Date: 12/21/2006 3:36:44 PM
It's not only a matter of descent. Consider the need to respect Navajo attitudes toward Anasazi deadfolk. Suggest "who may have relationships with the dead or connections with the land in which they lie."

Sequence number: 2
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:37:46 PM
Suggest striking the quotes. They make it seem almost like you're denigrating the term.

Sequence number: 3
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:38:42 PM
Although they CAN wait to consult till after making this determination, PLEASE don't encourage them to. It's preferable for them to consult about it.

Sequence number: 4
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:41:23 PM
Wait, it looks like you're using the '86 regs' definition of "undertaking." That REALLY balls up the paragraph. Suggest you pick up the language from 800.8(a) (I think) about consulting when the purpose of and need for the undertaking are being defined and maximum alternatives are open for consideration.

Sequence number: 5
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:48:07 PM
What you articulate below are not steps; they're sort of elaborations on the first bullet.

Sequence number: 6
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:46:56 PM
As opposed to?

Sequence number: 7
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:43:54 PM
but not limited to. More and more agencies seem to be falling into the "just talk to the SHPO" mode. Really, agencies are obligated to seek out all INTERESTED PARTIES, since one doesn't become a CONSULTING PARTY until (duh) one is consulted.

Sequence number: 8
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:46:30 PM
While this is true, of course, it creates a gigantic practical problem for everyone, notably including tribes. I don't think it adds anything to make the point here, and because in point of fact many agencies do delegate, and many tribes are perfectly happy for them to, I'd leave this bullet out.

- Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined eligible for inclusion on the National Register [16 U.S.C. § 470a(d)(6)(A)], and Federal agencies must consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to such historic properties [16 U.S.C. § 470a(d)(6)(B) and 36 CFR § 800.2(c)(2)(ii)(D)].

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

This principle reiterates existing legal requirements found in Federal law, regulation and executive orders, and is consistent with positions that the ACHP has taken over the years to facilitate enfranchisement and promote broad participation in the Section 106 process. Federal agencies must consult with Indian tribes on a government-to-government basis because they are sovereign nations.

Indian tribes and Native Hawaiian organizations bring a special perspective on how a property possesses religious and cultural significance to them. Accordingly, Federal agencies should utilize their expertise about, and religious and cultural connection to, burial sites, human remains, and associated funerary objects to inform decision-making in the Section 106 process.

Principle 4: Burial 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.

As a matter of practice, Federal agencies should avoid impacting burial sites, human remains, and funerary objects as they carry out their undertakings. Avoidance means ensuring that the burial site is not physically disturbed. If impact to the burial site can be avoided, this policy does not compel Federal agencies to remove human remains or funerary objects just so they can be documented.

As this policy advocates, Federal agencies should always plan to avoid all sites, human remains, and funerary objects altogether. When a Federal agency determines, based on consultation with Section 106 participants, that avoidance of impact is not appropriate, the agency should minimize disturbance to such sites, remains, and objects. Accordingly, removal of human remains or funerary objects should occur only when other alternatives have been considered and rejected.

When a Federal agency determines, based on consultation with Section 106 participants, that avoidance of impact is not appropriate, the agency should then consider any active steps it may take to preserve the burial site in place, perhaps through the intentional covering of the affected area, placement of markers, or granting of restrictive or other legal protections. In many cases, preservation in place may mean that, to the extent allowed by law, the locations of burial sites, human remains, and funerary objects should not be disclosed publicly. Alternatively and

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Author: Tom 1
Subject: Note
Date: 12/21/2006 3:51:23 PM
This makes it look like it's all about (federally recognized) tribes and Native Hawaiians. Don't African-Americans, non-recognized tribes, Asian-Americans, etc. etc. get any consideration at all? What happened to environmental justice? And what about the decision in the K-Man case, indicating that physical anthropologists had a right to be consulted? This is beginning to look like the Louisiana National Guard PA. Congress didn't enact NHPA only for Native Americans.

Sequence number: 2
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:52:35 PM
It also pretty much reiterates what you've just said under the preceding principle. And see previous comment on this principle.

Sequence number: 3
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:53:19 PM
Right. Which means more than avoiding "knowingly" disturbing them.

Sequence number: 4
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:54:56 PM
Why do you need this definition? It begs the question of whether avoidance by 60 feet or 6 inches is sufficient, and in some cultural contexts it may be appropriate to avoid not only physical disturbance but inappropriate sounds, smells, activities, or people in the vicinity.

Sequence number: 5
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:56:22 PM
Putting this and the following sentence together, you're giving comfort to the "flag and avoid" philosophy that equates physical avoidance of the bod (or whatever) with avoidance of impact. Avoidance of IMPACT is the point.

Sequence number: 6
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:56:47 PM
as infeasible or not in the public interest.

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consistent with the Section 106 regulations [36 CFR § 800.5(a)(2)(vi)], natural deterioration of the remains may be the acceptable or preferred outcome of the consultation process.

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

When the Federal agency decides that human remains or funerary objects must be disturbed, they should be removed respectfully and dealt with according to the plan developed by the Federal agency in consultation. "Careful" disinterment means that those doing the work should have, or be supervised by people having, appropriate expertise in techniques for recognizing and disinterring human remains.

This policy does not endorse any specific treatment. However, Federal agencies must make a reasonable and good faith effort to seek agreement through consultation before making its decision about how human remains and/or funerary objects shall be treated.

The plan for the disinterment and treatment of human remains and/or funerary objects should be negotiated by the Federal agency during consultation on a case-by-case basis. However, the plan should provide for an accurate accounting of Federal implementation. Depending on agreements reached through the Section 106 consultation process, disinterment may or may not include field recordation. In some instances, such recordation may be so abhorrent to consulting parties that the Federal agency may decide it is inappropriate to carry it out. When dealing with Indian tribes, the Federal agency must comply with its legal responsibilities regarding Tribal consultation, including government-to-government and trust responsibilities, before concluding that human remains or funerary objects must be disinterred.

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 its decisions, the Federal agency must comply with applicable Federal, Tribal, State, or local laws.

Federal agencies are responsible for making final decisions in the Section 106 process [36 CFR § 800.2(a)]. Consultation and documentation that are appropriate and necessary to inform and support Federal agency decisions in the Section 106 process are set forth in the ACHP's regulations [36 CFR Part 800].

Other laws, however, may affect Federal decision-making regarding the treatment of burial sites human remains, and funerary objects. Undertakings located on Federal or Tribal lands, for example, are subject to the provisions of NAGPRA and the Archeological Resources Protection Act (ARPA). When burial sites, human remains, or funerary objects are encountered on State and private lands, Federal agencies must identify and follow State law when it applies. Section 106 agreement documents should take into account the requirements of any of these applicable laws.

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.

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Sequence number: 1
Author: Tom 1
Subject: Note
Date: 12/21/2006 3:59:02 PM
and caring for (conservation is a term that would probably raise hackles, but the point is that whoever takes them out of the ground ought to have an eye toward their conservation, at least on an interim basis.

Sequence number: 2
Author: Tom 1
Subject: Note
Date: 12/21/2006 4:01:55 PM
Here more than anywhere else -- though it's pervasive in the document -- you've abandoned the balanced approach promoted by the '88 policy in favor of a completely descendant-focused, anti-science policy. Where NAGPRA applies, that's sort of unavoidable, but I don't see why you should extend NAGPRA's strictures to situations where NAGPRA doesn't apply.

Sequence number: 3
Author: Tom 1
Subject: Note
Date: 12/21/2006 4:02:38 PM
Yes, which is not the same as making decisions regarding avoidance and treatment.

Sequence number: 4
Author: Tom 1
Subject: Note
Date: 12/21/2006 4:03:21 PM
Say SOMETHING about state, tribal, and local laws!

Encountering burial sites, human remains or funerary objects during the initial efforts to identify historic properties is not unheard of. Accordingly, the Federal agency must determine the scope of the identification effort in consultation with the SHPO/THPO, Indian tribes and Native Hawaiian organizations, and others before any archeological testing begun [36 CFR § 800.4(a)] to ensure the full consideration of avoidance of impact to burial sites, human remains and funerary objects.

The ACHP's regulations provide Federal agencies with the preferred option of reaching an agreement ahead of time to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking. In the absence of prior planning, when the undertaking has been approved and construction has begun, the ACHP's post-review discovery provision [36 CFR § 800.13] requires the Federal agency to carry out several actions –

(1) make reasonable efforts to avoid, minimize, or mitigate adverse effects to such discovered historic properties;
(2) notify consulting parties (including Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to the affected property) and the ACHP within 48 hours of the agency's proposed course of action;
(3) take into account the recommendations received; and then
(4) carry out appropriate actions.

NAGPRA prescribes a specific course of action when Native American and Native Hawaiian human remains and funerary objects are discovered on Federal or Tribal lands in the absence of a plan - cessation of the activity, protection of the material, notification of various parties, consultation on a course of action and its implementation, and then continuation of the activity. However, adherence to the plan under Principle 5 would cause new discoveries to be considered "intentional excavations" under NAGPRA because a plan has already been developed, and can be immediately implemented. Agencies then could avoid the otherwise mandated 30 day cessation of work for "inadvertent discoveries."

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 lineal descendants, and if none, then the descendant community, which may include Indian tribes and Native Hawaiian organizations.

Under the ACHP's regulations, "descendants" are not identified as consulting parties by right. However, Federal agencies shall consult with Indian tribes and Native Hawaiian organizations that attach religious and cultural significance to burial sites, human remains and associated funerary objects, and be cognizant of their expertise in, and religious and cultural connection, to them. In addition, Federal agencies should recognize a biological or cultural relationship and invite that individual or community to be a consulting party [36 CFR § 800.3(f)(3)].

When Federal or State law does not direct disposition of human remains or funerary objects, or when there is disagreement among claimants, the process set out in NAGPRA may be instructive. In NAGPRA, the "ownership or control" of human remains and associated funerary

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Sequence number: 1
Author: Tom 1
Subject: Note
Date: 12/21/2006 4:05:16 PM

This makes it seem like archaeological testing is always a part of ID, which is a notion that the ACHP should PLEASE not encourage. And bods can be found during ID when testing's not done -- in cutbanks, streambottoms, gopher holes, etc. etc.

Sequence number: 2
Author: Tom 1
Subject: Note
Date: 12/21/2006 4:06:16 PM

I agree with that, but does NPS?

Sequence number: 3
Author: Tom 1
Subject: Note
Date: 12/21/2006 4:08:32 PM

The whole business of who has the "right" to be a consulting party needs better thinking than it's gotten, but the regs do say that some parties may be "entitled" to be consulting parties based on their interest in impacts to historic properties. "Descendants" would certainly have that level of entitlement, assuming they wanted it.

Sequence number: 4
Author: Tom 1
Subject: Note
Date: 12/21/2006 4:09:12 PM

Oh god, now we're going to have agencies measuring blood quantum as a precondition to consulting party status?

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objects lie with the following in descending order - specific lineal descendants; then tribe on whose tribal lands the items were discovered; then tribe with the closest cultural affiliation; and then tribe aboriginally occupying the land, or with the closest "cultural relationship" to the material.

Definitions Used for the Principles:
- **Burial Site**: Any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited [25 U.S.C. 3001.2(1)].
- **Consultation:** The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 review process [36 CFR § 800.16(f)].
- **Consulting parties:** Persons or groups the Federal agency consults with during the Section 106 process. They may include the State Historic Preservation Officer; the Tribal Historic Preservation Officer; Indian tribes and Native Hawaiian organizations; representatives of local governments; applicants for Federal assistance, permits, licenses, and other approvals; and/or any additional consulting parties [based on 36 CFR § 800.2(c)]. Additional consulting parties may include individuals and organizations with a demonstrated interest in the undertaking due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties [36 CFR § 800.2(c)(6)].
- **Disturbance:** Disturbance of burial sites that are listed in or eligible for listing in the National Register of Historic Places will constitute an adverse effect under Section 106. An adverse effect occurs when "an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, setting, materials, workmanship, feeling or association" [36 CFR § 800.5(a)(1)].
- **Federal land:** Lands under a Federal agency's control. Mere Federal funding or permitting of a project does not turn an otherwise non-Federal land into Federal land (see Abenaki Nation of Mississquoi v. Hughes, 805 F. Supp. 234 (D. Vt. 1992), aff'd, 990 F. 2d 729 (2d Cir. 1993) (where the court found that a Clean Water Act permit issued by the U.S. Army Corps of Engineers did not place the relevant land under Federal "control" for NAGPRA purposes).
- **Funerary objects:** "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 human remains" [25 U.S.C. 3001(3)(B)].
- **Historic property:** "Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. It includes artifacts, records, and remains that are related to and located within such properties, and it includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register of Historic Places criteria" [36 CFR § 800.16(1)].
- **Human remains:** The physical remains of a human body. The term 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 made into ropes or nets [see 43 CFR § 10.2(d)(1)].
- **Indian Tribe**: "An Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are

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Sequence number: 1
Author: Tom 1
Subject: Note
Date: 12/21/2006 4:10:59 PM
Particularly when one considers "feeling," it's obvious that one can have adverse effects without physically disturbing the bod.

defined in Section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians" [36 CFR § 800.16(m)].
- **Native American:** Of, or relating to, a tribe, people, or culture that is indigenous to the United States [25 U.S.C. 3001 (9)]. Of, or relating to, a tribe, people, or culture indigenous to the Unites States, including Alaska and Hawaii [43 CFR 10.2(d)].
- **Native Hawaiian:** Any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii's [36 CFR § 800.16(s)(2)].
- **Native Hawaiian Organization:** Any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians [36 CFR § 800.16(s)].
- **Policy statement:** A formal statement, endorsed by the full ACHP membership, representing the membership's collective thinking about what to consider in reaching decisions about select issues, in this case, human remains and funerary objects encountered in undertakings on Federal, tribal, state, or private lands. Such statements do not have the binding force of law.
- **Preservation in place:** Taking active steps to ensure the preservation [1] property.
- **Protection of Historic Properties**: Regulations [36 CFR Part 800] implementing Section 106 of the National Historic Preservation Act.
- **Section 106**: That part of the National Historic Preservation Act which establishes a Federal responsibility to take into account the effects of undertakings on historic properties and to provide the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such action.
- **State Historic Preservation Officer:** The official appointed or designated pursuant to Section 101(b)(1) of NHPA to administer the State historic preservation program.
- **Tribal Historic Preservation Officer**: The official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands in accordance with Section 101(d)(2) of NHPA.
- **Treatment:** Under Section 106, "treatments" are measures developed and implemented through Section 106 agreement documents to avoid, minimize, or mitigate adverse effects to historic properties.

Acronyms Used for the Policy Statement
- **ACHP**: Advisory Council on Historic Preservation.
- **ARPA**: Archaeological Resources Protection Act [16 U.S.C. 470aa-mm].
- **NHPA**: National Historic Preservation Act [16 U.S.C. § 470f].
- **NAGPRA**: The Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 et seq].
- **SHPO**: State Historic Preservation Officer
- **THPO**: Tribal Historic Preservation Officer

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Sequence number: 1
Author: Tom 1
Subject: Note
Date: 12/21/2006 4:12:03 PM
Huh? See the statutory definition of "preservation," which makes this definition circular at best.