



# *Seneca Nation Tribal Historic Preservation*

467 Center St. Salamanca, NY 14779  
Phone (716) 945-9427 ♦ Fax (716) 945-0351



July 28<sup>th</sup>, 2006

Archaeology Task Force  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue, NW, Suite 809  
Washington, DC 20004

## **Re: Comments on Advisory Council on Historic Preservation's Draft "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects."**

The Advisory Council on Historic Preservation's concise background has contributed tremendously towards a better understanding of the reasons behind the policy change. As stated, these changes seek to bring the policy in place today into synergy with recent legislation. In light of this fact, the necessity for a policy that progresses federal agents' understanding of this recent legislation is required. A policy should not provide a space for people seeking to undermine the intent of proposing a policy that works with current legislation. Thus, SNI THPO looks to the ACHP to produce a progressive document that recognizes the inherent and essential obligation of all federal activities to follow and further the objectives set forth by the Native American Graves and Protection Act (NAGPRA), National Historic Preservation Act (NHPA) section 106, and the high moral standards that guided the production of these two acts. With some minor criticisms, SNI THPO feels that the current draft "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" is close to fulfilling the reasons set forth by the ACHP to recompose its current policy.

## **Addressing Comments from Draft 1:**

After reading over the comments provided by various individuals, organizations, tribal nations, and government agencies, it must be noted that the debate between the rights of Indigenous Peoples and the right of other people to claim a profession from studying these peoples' ancestors has been provided space. It is obvious from the plethora of comments that certain members of the archaeology profession are attempting to use the ACHP in order to undermine Federal legislation and Executive Orders.

SNI THPO notices that the current draft "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" does not fundamentally undermine any Federal legislation or associated order or act. However, it is still SNI THPO's belief that some individuals will continue to seek to develop and promote a balancing test where burdens of proof are shifted to Native Peoples as a result of determinations made by non-Indigenous Peoples. This would be excellent if every proof did not involve Indigenous

Peoples' ancestors and artifacts, but that is far from the case. Therefore, if this policy does discuss the study of human remains, then a discussion of the implications of studying native remains is a requirement. Any discussion of this nature will incorporate the ACHP into a debate that places the ACHP as interpreter and judge of federal laws plus executive orders. According to the ACHP the purpose for reconstituting this draft is to bring the ACHP's old policy up to date with present legislation, not rescind this legislation back 18 years.

SNI THPO requests the ACHP to continue to pay attention to examples of undue influence by overzealous advocates of pro-Native human remains studies. Unfortunately for Indigenous Peoples, it only takes one ground disturbance for a populace to rely on someone's "fifteen minutes of fame" expertise. If only a single inaccurate "discovery" existed where everyone could look to and say, "this was ethically wrong." Then someone would be justified in issuing a proclamation of moral absolution from it. Instead, millions of inaccurate depictions of "discoveries" have been made to the detriment of a discreet and insular minority group (Native Peoples). Essentially, rectifying this produced the guiding legislation that reduced many of the unscrupulous burdens Indigenous Peoples had to perform in order to attempt to ensure a measure of care for all interred remains and cultural sites.

For those people that did not look to past morally unjustifiable examples, the urge to shift the burden back upon Indigenous People is apparently too tempting. Understand the faux nature of every native origin hypothesis made since a famous colonial person attempted to fit Indigenous Peoples into a colonial worldview. At one time or another, "evidence" has been "discovered" to prove and then disprove everything from West Indies inhabitation to lost Jewish ancestry to mythological Atlantians to million mile tundra treks. For each of these past examples, some form of evidence was produced that unerringly proved that Natives do not control their past, the evidence producer does.

For a recent example, someone might explain if the premature flashing of Patrick Stewart's visage to the world in order to explain an ancient remains heritage would have any undue influence on the US Army Corps of Engineers, general population and the US Courts? It did, and once this "evidence" was produced it fit very nicely into new colonial minded theories of Native habitation. From the SNI THPO point of view, it is important that this red herring presentation style not continue to disenfranchise Indigenous Peoples from the time-immemorial practice of caring for and respecting the people of the past, a practice that is part and parcel with Indigenous governance.

As such, SNI THPO rejects any form of this influence, as it undermines Indigenous governance and is inconsistent with Executive Order 13175 outlining government-to-government relationships. Indigenous governance has been recognized by the United States since the signing of the Declaration of Independence via treaty, legislation, nationalistic and non-nationalistic precedent, racist and non-racist precedent, and executive order. Examples of people, groups, agencies, and agents of a local, state, or the federal government attempting to undermine Indigenous governance would fill up every Town Library in the United States. Thus, the ACHP should try not to reinforce or

perpetuate this trend. Instead, the ACHP should strive to reduce the incidents of any present day undermining of Indigenous governance as recognized by the Self-Determination Act (PL-93-638).

SNI THPO recognizes that the ACHP has not overtly delved into the depths of this debate, and is encouraged by the ACHP's willingness to provide discussions about the policy statements that work with and integrate with NAGPRA and NHPA. ACHP has, however, addressed that it "does not take a position against scientific study of human remains." Let it be perfectly clear, in reference to native remains this document should pay attention that the ACHP does not take a position for this activity either and this position must be stated clearly as well. SNI THPO is looking forward to more efforts by the ACHP to produce a progressive document that recognizes the inherent and essential obligation of all federal activities to follow and further the objectives set forth by NAGPRA and NHPA.

## Comments on Principles:

**Principle 1** is precise and acceptable as written.

**Principle 2** makes no mention of the people on the ground floor of an undertaking. It is important to note that the people doing the digging and excavating become part of the Section 106 process and should be duly informed of the mutual understating stemming from any "meaningful consultation."

**Principle 3's** "early and meaningful consultation throughout" and the discussion provided herein is one of the most precise and informational six paragraphs on this subject. It is suggested that this principle include the attached discussion section. Without the location of readily available resources for agents to review, the requirements of consultation will not be stressed.

**Principle 4** needs to recognize that not only are Native Peoples descendants of but also possess the same general characteristics as the people indigenous to this land. References to "occupying" or descendant only descriptions mask the relationship to the materials that this policy formation revolves around. Also, the last sentence should read: "*Sovereign Native Nations are recognized by the Federal government and Federal agencies shall conduct consultation with Native Nations on a government-to-government basis, as required by law.*" The way the sentence read before made it sound like the Federal government bestowed sovereignty upon Native Nations, which is entirely inconsistent with the first sentence noting the aboriginal nature of Native Peoples. For instance, if the US granted sovereignty upon Native Nations, then did this occur prior to 1492 because this is when these nations were governing the affairs of their respective communities? In the end, statements that reinforce US bestowed sovereignty upon Native Peoples derive

from a horrific history of oppression, racism, nationalism, and genocide that does not need to be reinforced by the ACHP.

One clarification is required; Executive Order 13175 stresses that a government-to-government *relationship* between Indian Governments and the Federal Government is recognized by the US and this relationship requires all subordinate agencies to the US Government to consult and coordinate with Indian Governments. Plus this order recognizes Native Nations as on a government level of consultation, thus consultation and coordination at the government-to-government level does not look the same as consultation with an organization. Therefore, government-to-government consultation and coordination between Federal Agencies and Native Governments can, should and will resemble political negotiation.

Stressing the heightened sense most Native Peoples have towards this subject matter is important.

**Principle 5** is precise and comprehensive. The discussion should eliminate all references to “grave goods.” The attention to the sensitive nature of disinterment is a must is a welcome addition to this policy, and as such this textual discussion should also accompany the policy.

**Principle 6** is concise and acceptable. No comment.

**Principle 7** is a welcome statement in that it takes into account the recognition of pre-planned projects as possessing more reasonable expectations of any undertaking, especially with the unearthing of burial sites, human remains, or funerary objects. The conflict prior to this statement was with the term “inadvertent discovery” and the associated laws surrounding this term. For any given plan the possibility of encountering a “discovery” remains constant, however, if a well consulted and coordinated plan is in effect then this eliminates the mislabeled “inadvertency” and applies the correct label of pre-planned and intentional excavations—i.e. not planning to find something during an undertaking when you know there is a probability that something is there should be labeled a “planned yet unmitigated disturbance” and not provided a free pass anymore.

**Principle 8** presents a situation where a preplan does not exist, but the undertaking has been proven to require a disinterment. This is a worst case scenario, and SNI THPO envisions all Federal agencies that lack understanding of the NHPA process will encounter this principle. While the goal of these policy statements should be to prevent this exact occurrence, it is encouraging that the ACHP has paid attention to the realization that not all Federal agencies will adhere to these policies until the expressed necessity arises (i.e. the aforementioned “planned yet unmitigated disturbance” noted in principle 7). The deference to NAGPRA in the discussion should be inserted in the principles text; for example: “... and other descendent communities, pursuant to NAGPRA.”

## **Meaningful Consultation**

SNI THPO looks forward to attending a meaningful government-to-government consultation in the near future with the ACHP leadership concerning the continuation of the Draft “Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects.”

Prepared by Seneca Nation of Indians—Tribal Historic Preservation Office Staff  
467 Center Street  
Salamanca, NY 14779