

Laura Dean

From: ArcheolAP.Project
Sent: Monday, May 15, 2006 10:22 AM
To: Laura Dean
Subject: FW: Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects

From: Wilmoth, Stan [mailto:swilmoth@mt.gov]
Sent: Thu 5/11/2006 1:06 PM
To: ArcheolAP.Project
Subject: Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects

Archaeology Task Force:

We commend the effort to revise the 1988 policy. A daunting task to be sure. We generally found the Proposed Draft clear and very readable. And we can concur with the Policy intent to require respectful and carefully considered treatment of all burials.

However, as we worked our way thru the draft there appeared to be important implications, which if we interpret correctly, deserve explicit elaboration. Foremost, in the Definition section under Disturbance: "*Disturbance of burial sites 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 an historic property that qualify the property for inclusion in the National Register....'*" We may misunderstand, but does this mean that, by definition, all burials are eligible. Is that consistent with National Register guidance? In the Scope and Applicability section we note that only Eligible Historic Properties are to be considered under the Section 106 process while in the Goals of the Policy Statement the proposed policy would apply to all burial sites, human remains and funerary objects regardless of geography, nationality or religious belief. Again, how does a global inclusion reflect the National Register criteria and exceptions? For example, is it clear that all burials have traditional cultural values?

If all burials are by definition eligible, would testing be used to determine boundaries only - not eligibility? If some burials were not eligible for traditional religious and cultural values to native peoples could some be eligible under criterion d? If some may be eligible under d should that possibility be recognized and elaborated upon?

In Montana all burials are to be avoided on state and private lands, as well as during federal undertakings, and all other actions (when feasible and after a review process) - but not because they are eligible properties. But because they are human remains - not property abandoned. There is a permit process (unused as of yet) if there is reason to believe that significant scientific information warranted study.

We are concerned that in the rightful effort to legally extend protection under section 106 using National Register criteria both will be compromised. Isn't it possible that the Statement can establish the Council's Policy with the belief that human burial sites are worthy of consideration and respectful treatment and that consultation is the legitimate means to obtain those ends as the Policy? Is it not possible that the policy could and should apply to burials and have the same force to require consideration without making all burials eligible properties?

Stan Wilmoth, Ph.D.
Montana State Archaeologist/SHPO, acting

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