

**Laura Dean**

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**Sent:** Friday, November 04, 2005 2:19 PM  
**To:** Tom McCulloch; Laura Dean  
**Cc:** Kent A Schneider; William G Reed; Alan Dorian; Josborn  
**Subject:** FS Southern Region -ACHP Notice of Intent, Treatment



R8 Comments ACHP  
proposed rebur...

Hi Laura and Tom. Laura, its been a long time and we've come along way with the DBoone days, thanks to your help back then. Here are R8 comments on Notice of Intent to Reconsider the Advisory Council's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods. They are not sorted according to any criteria. They are just our comments. Thanks.

(See attached file: R8 Comments ACHP proposed reburial policy.doc)

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"Growing old is mandatory...Growing up is optional"

**Southern Region R8 Comments – ACHP Proposed Reburial Policy  
November 4, 2005**

**General**

What need is this new policy addressing? Has there been rampant digging of graves, stock-piling of human remains and/or funerary objects, since 1988 by federal agencies? It states that the policy covers "undertakings" *outside* of the Section 106 process. What role outside of NHPA does the federal agency have? If NHPA does not apply, it's not an "undertaking" (federally funded or on federal or Tribal lands). What does this "policy" win anybody? People go to court for breaking laws, not policies. Agencies typically do not accomplish work associated with unfunded mandates. They certainly won't crank out plans and policies or do any other type work with unfunded "policies" not based in federal law. On the flip side of that same argument, no one needs to hit the panic button if they don't particularly like the new policy because there are no repercussions for not complying with it. It has no teeth.

The two sections in the old policy that are left entirely OUT of the new policy are " - Prior to reburial, scientific studies should be performed as necessary to address justified research topics." And "Conversely, where the scientific research value of human remains or grave goods outweighs any objections that descendants may have to their study, they should not be reburied, but should be retained in perpetuity for study." Those are the sections that guaranteed support from the scientific community in the 1980s.

The implication, on the whole, is that federal agencies haven't been sensitive enough and have room for improvement thanks to the "collective thinking" of the ACHP. Appears ACHP is seeking to diminish the value of research vs reburial and strengthen early planning and consultation which isn't emphasized as much in the 1988 version.

There is a need for legislation enacted for burials related to other ethnicities other than Native American, especially African American. Perhaps this policy statement is the first step in developing new legislation.

**Specific**

Funerary objects; "As NAGPRA defines them they are "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 remains". If this new policy is for ALL human remains sites, historic and prehistoric, we may end up having to curate plastic flowers and weird things like they collect from the Viet Nam Veterans Memorial in DC. The "policy" should advise us on exactly what a "funerary item" is.

Principal 5. "The policy statement should guide the Federal agency official in decision making." This sure sounds like Agency decision will be determined by ACHP policy.

"The policy statement needs to recognize that a Federal agency official under Section 106 has a duty for the care of human remains and funerary objects". This seems like back-door lawyer speak for trying to impose a duty. What it should say is the agency official has a duty to follow the law concerning the care of human remains and funerary objects. If that duty is already IN the law, it should be referenced. If NOT, it is imposing a new duty.

"Principle 3: The policy statement should emphasize that avoidance, followed by preservation in place is the preferred alternative to disturbance of human remains and funerary objects." A preferred alternative should be determined by 1-Law, 2-Regulation, or 3- the regular decision making process, not by an advisory agency.

"-Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site's long term preservation."

The policy should tell us what the ACHP will do to assist the agency with those efforts.

Please clarify exactly what constitutes "meaningful consultation".

Much of the internal dialogue seems to center on scientific study and perpetual curation of human remains. The 1988 policy appeared more specific, and to some a bit skewed, partially because scientific values could be perceived as outweighing tribal concerns and curation in perpetuity was a viable option. The time of permanent curation has changed.

Scientific study as a whole, beyond that needed to comply with state laws to determine whether remains are subject to criminal investigation, is a holdover facet of the past; wherein the scientific community often spent less effort in dialogue with the living descendants of the people they studied than was healthy.

The policy needs the flexibility to consider the wisdom of thoroughly justified, case-by-case, consideration of "extraordinary" circumstances warranting scientific study, and that local decisionmakers retain the authority to make those decisions after meaningful, soul-searching, consultations with their Tribal partners - and the scientific community.

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