

Laura Dean

From: King, Julia [King@dhcd.state.md.us]
Sent: Monday, October 24, 2005 4:21 PM
To: Javier Marques; Tom McCulloch; Laura Dean
Subject: FW: ACHP Working Principles on Treatment of Human Remains - Comments

FYI...

-----Original Message-----

From: Sullivan, Maureen, Ms, OSD-ATL [mailto:Maureen.Sullivan@osd.mil]
Sent: Monday, October 24, 2005 3:41 PM
To: King, Julia
Cc: Lumley, Paul, Mr, OSD-ATL
Subject: FW: ACHP Working Principles on Treatment of Human Remains - Comments

Julie -- I reviewed my notes from the July 17th meeting, Tom's July 19th version, and the Federal Register notice. I did find some differences, but only one section I never saw before. We can discuss at the meeting on Wednesday.

Most importantly, I rec'd these unofficial comments from our Navy folks and I thought you would be interested. I think they really hit some big issues that we haven't discussed, in particular the intersection of NHPA and ARPA and eligibility of human remains for the National Register. Although these get to the center of our discussions, we haven't specifically discussed either issue.

so, the Navy folks believe we are getting into cemetery management. I'm not sure how, but they see that in the language.

Thought you might find their perspective informative.

See you Wednesday.

Maureen Sullivan
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-----Original Message-----

From: Thomas, Jay CIV NAVFACHQ, ENV [mailto:Joseph.B.Thomas@navy.mil]
Sent: Monday, October 24, 2005 1:56 PM
To: Sullivan, Maureen, Ms, OSD-ATL
Cc: Egeland, Tom A CIV ASSTSECNAV IE WASHINGTON DC, OA
Subject: FW: ACHP Working Principles on Treatment of Human Remains - Comments

Maureen, an advance copy of Navy comments on the human remains FR notice, with Tom's permission.

Jay

---Original Message-----

From: Hayes, Dan CIV CNI HQ
Sent: Friday, October 21, 2005 15:53
To: Egeland, Tom A CIV ASSTSECNAV IE WASHINGTON DC, OASN(I&E)

10/24/2005

Cc: Campagna, Robert CIV CNI, Environmental; Spicer, William A JR CIV CNI HQ; Thomas, Jay CIV NAVFACHQ, ENV; Trotta, Andy CDR N46; Easter, Chris CTR CNI HQ

Subject: ACHP Working Principles on Treatment of Human Remains - Comments

Tom,

Attached are our comments on the Advisory Council on Historic Preservation's Working Principles for Revising the "Policy Statement Regarding Treatment of Human Remains and Goods." This was prepared jointly with NAVFAC HQ staff. I've also attached a Word version of the comments for your use.

Please let us know if you have any questions.

V/R,
Dan

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<<ACHP Working Principles on treatment of Human Remains.pdf>> <<ACHP Human Remains Comments - Final - 19 Oct 05.doc>>

10/24/2005

19 Oct 05

Comments on the Advisory Council on Historic Preservation's
Working Principles for Revising the "Policy Statement Regarding
Treatment of Human Remains and Goods"

General comments:

The proposed working principles recognize that the authorities governing agency management of human remains can lead to conflicting approaches, unhappy stakeholders, and uneven results. However, the proposed working principles do not adequately emphasize several important and often challenging areas of ambiguity. The proposal clearly addresses a "Kennewick Man" situation in which remains are discovered, and the agency must decide whether to allow their study, re-inter/repatriate them, or some combination. However, agencies also manage human remains in other situations, like cemeteries, that are not "Kennewick Man" situations but nevertheless will be subject to the proposed policy. The final policy should omit cemeteries and similar collections of identified, managed remains.

- Application of principles. Although the principles are intended to apply to "treatment of all human remains and funerary objects in the context of compliance with" the National Historic Preservation Act (NHPA) section 106, the model that appears to drive the principles is the discovery of unmanaged, probably unidentified remains in the course of other work. While this scenario has probably been the most troublesome over the years, agencies may manage human remains under other circumstances as well; for example in cemeteries. If the principles are indeed to be universal, they must address these other situations (more below).
- Classification of remains and associated features. The principles apply within the context of NHPA section 106 compliance. However, the application of NHPA to human remains is grounded on National Register (NR) eligibility. Graves and cemeteries are not usually eligible for NR listing, although various exceptions exist, including one for archaeological research potential. The Archaeological Resources Protection Act (ARPA) presumably can be interpreted to apply to graves that are over one hundred years old as with other century-old artifacts, but the cultural and political question of when a burial site stops being a grave and starts being an archaeological assemblage of human remains and funerary objects must be considered by

agencies that manage cemeteries or other gravesites. The final policy should provide clarification.

- Management approaches. There are several potential agency management approaches to human remains that should be acknowledged in the final policy.
 - *Presence of remains not known; no management framework in place.* This is the "unanticipated discovery" scenario to which the principles are primarily addressed.
 - *Remains present and located; management framework in place.* This situation applies to known cemeteries or gravesites, which are managed as such. The final policy should consider the extent to which NHPA compliance should be overlaid onto cemetery management, especially for active cemeteries. (This discussion would be similar to that held decades ago on whether certain kinds of artifacts in museum settings should also or alternatively be managed as NR objects.)
 - *Remains likely present but are not located; management framework in place.* This "war graves" scenario applied to unlocated sunken aircraft or ship wrecks, or located sunken wrecks where deaths are known to have occurred but remains have not been located. Navy policy (<http://www.history.navy.mil/branches/org12-12.htm>) is that such remains are to remain undisturbed out of respect for the deceased individuals, as well as to preserve the archaeological value of crash sites. Note that many of these wrecks are outside the United States, either in other countries or in international waters.

Specific comments:

- Principle 1. Respect for human remains. No comments.
- Principle 2: Intersection of NHPA section 106 with other authorities.
 - The final policy should provide a complete listing and discussion of other laws that intersect with NHPA section 106, especially state and local laws that may apply on federal land.
 - The final policy should address the classification questions mentioned above, especially NR eligibility of human remains.
 - The final policy should acknowledge that other agency officials have an interest in or responsibility for

human remains that must be considered along with that of the agency preservation official, for example agency medical, law enforcement, or cemetery management officials. The responsibility of the agency preservation official does not necessarily override the others.

- The final policy should be explicitly limited to the United States. This is already implied by the announcement's focus on NHPA section 106, which only applies in the US and its territories. However, the final policy should be unambiguous, in view of DoD's extensive overseas presence and the existing, potentially confusing overseas component to NHPA.
- Principle 3: Preference for preservation in place. Some management frameworks, such as cemetery management, already include a strong preference for preservation in place. The final policy should address the implications of applying an NHPA-centered policy approach to these existing management frameworks.
- Principle 4. Consultation. The final policy should recognize and privilege family input, when available. Family input is most likely to be available for cemeteries, or for sunken ship/aircraft wrecks for which crew lists exist, but also may be present for other remains.
- Principle 5. Policy as guidance.
 - The working principles recognize that federal or State law may prescribe outcomes regarding human remains. However, they may also prescribe procedures even if no outcome is prescribed, and these processes may conflict with NHPA procedures. For example, local law may require giving a medical examiner access to discovered remains, and medical examiner procedures for remains (even those quickly determined not to be recent) may differ from archaeological procedures.
 - The final policy should provide guidance in determining whether remains are not likely to be of archaeological value (e.g. unstratified, disarticulated material), and the resulting management implications.
- Principle 6. Procedures. The final policy should provide explicit guidance on determining when human remains are subject to NHPA or ARPA.