

## Laura Dean

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**From:** Archeol AP. Project  
**Sent:** Friday, November 04, 2005 3:33 PM  
**To:** Laura Dean  
**Subject:** FW: Working Principles on Treatment of Human Remains and Grave Goods - comments

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**From:** jack trope [mailto:jt.aaia@verizon.net]  
**Sent:** Fri 11/4/2005 1:09 PM  
**To:** Archeol AP. Project  
**Subject:** Working Principles on Treatment of Human Remains and Grave Goods - comments

To Whom It May Concern:

Thank you for the opportunity to comment upon the draft principles for revising the Advisory Council's Policy Statement on Human Remains and Grave Goods.

The Association on American Indian Affairs is an 83 year old Indian rights organization located in Maryland and South Dakota that is governed by an all Native American Board of Directors. The Association played an active role in obtaining the enactment of NAGPRA and has worked to repatriate both human remains and sacred objects to Indian tribes. We are also very familiar with the section 106 process as we have used that process to advance our efforts to protect Native American sacred sites.

We have reviewed the "Draft Working Principles for Revising the Advisory Council on Historic Preservation's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods'" and have the following comments.

We support Principles 1 through 3 and Principle 6, particularly the emphasis that is placed upon avoidance, followed by preservation in place. We believe that this emphasis reflects the preferences of tribal communities. We also agree that it is desirable for agencies to have policies in place.

We have serious concerns, however, about the underlying approach of Principles 4 and 5, however. In short, Principles 4 and 5 set out a process where all parties are consulted and decisions are made after considering all viewpoints. The Government-to-Government relationship is said to have "a bearing" on agency decision-making and the and the principles suggest that agencies develop policies as to how the views presented by the different policies ought to be weighed.

On its face, this appears to be a substantial retreat from the principles recognized as federal policy in the Native American Graves Protection and Repatriation Act. Congress enacted NAGPRA to address what it deemed to be a human rights issue -- the sordid treatment of Indian human remains and funerary objects over the ages. Remains of tribal ancestors had been treated as artifacts to be studied, without the sanctity accorded to the burials of non-Indians. To address this historic and ongoing wrong, Congress specifically provided for ownership and control by tribes of imbedded human remains and funerary objects discovered on federal and tribal lands where a tribe is culturally affiliated with the remains or the remains are discovered on tribal land or land that has been legally recognized as the aboriginal land of a tribe. In such cases, there is no weighing of interests that takes place. The tribe is entitled to make decisions about the disposition of the remains and objects.

Your proposed policy statement rejects this approach and goes back to the pre-NAGPRA idea of a case-by-case balancing with no special deference to the tribe's point of view. We believe that this is an unacceptable retreat from the principles recognized by Congress when it enacted NAGPRA. Any proposed policy that addresses the treatment of human remains and funerary objects discovered as part of the section 106 process -- regardless of whether they are technically covered by NAGPRA -- should adopt NAGPRA principles. Specifically, the policy should recognize the overriding tribal interest in such remains and objects -- particularly where the remains and objects are culturally affiliated or discovered on tribal or aboriginal land.

We recognize that there are disagreements about how so-called "unaffiliated remains" that are discovered on non-tribal/aboriginal land should be handled. (In general, tribes have stated that tribes ought to have the decision-making

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authority in regard to those remains as well -- a position that our organization supports.) Perhaps in that limited circumstance, a process such as the one laid out in the draft principles would be appropriate on a temporary basis --until that issue has been resolved. But a neutral balancing process should not be the basis for a federal policy that applies to all human remains and funerary objects that are discovered during the section 106 process.

Moreover, we would note that it is likely that in most of the instances where grave sites are discovered during the section 106 process, NAGPRA will apply. That should be made clear in the Policy Statement.

Finally, we believe that the draft principles should encourage agencies to provide financial assistance to tribes to fully engage in this process and to repatriate human remains and funerary objects. Too often, tribes are unable to exercise their rights in regard to human remains and funerary objects because of financial considerations.

Thank you for considering these comments.

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