

November 3, 2005

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

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

Dear Task Force Members,

The issue of updating the "1988 Human Remains Policy" is a great attempt by the ACHP to assert its leadership in historic preservation in dealing with the Section 106 process. However, the Task Force composed of ACHP members that drafted this set of working principles were formed based on archeology, which we find completely biased. The ACHP Task Force is biased because it is an archeology task force and should have been comprised of SHPO's, THPO's, federal agencies, and representatives of tribal governments so that there would be a balance in dealing with the revisions in this policy.

The Caddo Nation like other Nations and tribes in the U.S. have developed their own policies on the treatment of human remains and associated funerary objects in consultation with federal agencies, organizations, private property owners, state officials and other tribes. The Caddo Nation has their own "Inadvertent Discovery Policy" in place to deal with human remains, funerary objects and unassociated funerary objects. We have used this policy for planned excavations and possible unanticipated discoveries when dealing with federal undertakings and where federal and state laws do not apply.

For example, the State of Texas does not have an unmarked burial law in place and is named by the Caddo and comes from the word "taysha" meaning friend. Looters in the state have plundered more Caddo graves than that of probably any other native group that lives or lived in the state in the past.

All Caddo graves and cemeteries are sacred sites and traditional cultural properties of the Caddo Nation. If the ACHP wishes to assert its leadership in historic preservation for the federal government and for parties affected by the Section 106 process then the ACHP should offer some sort of workshop for all federal, state, and tribal authorities to learn what rules and responsibilities ACHP work under and what should be expected of federal, state and tribal authorities in dealing with ACHP under Section 106. This could be a jumping off point for the ACHP Task Force to explain the revisions to the "1988 Human Remains Policy".

However, if the ACHP finds that it is necessary to revise the policy we offer the following comments.

A consulting workshop offered to tribes, federal, state, and local authorities as an opportunity to suggest revisions to the policy collectively.

The task force should then prepare a draft revision of the policy that would be subject to further review and comment.

The policy should also take into account that tribes consider graves and cemeteries sacred and also traditional cultural properties as part of the National Register eligibility investigations.

Finally, we find that it would be impossible to clarify the roles of different groups concerned with the effects of undertaking on historic properties as to the treatment of human remains and funerary objects. Over 500 hundred federally recognized tribes reside within the United States which all have different ways of handling their concerns when dealing with human remains and funerary objects.

However, we do agree that revisions should be made to the policy in absence of federal and state laws which could guide decision-making under Section 106 as to the treatment of human remains and funerary objects determined to be culturally affiliated to living descendants where no federal or state law protects their civil rights as next of kin.

We appreciate the opportunity to have commented on this proposal. If you have any questions please feel free to contact me at 405-656-2901 Caddo Nation Cultural Preservation Department

Sincerely,

Bobby Gonzalez
NAGPRA Coordinator
Caddo Nation

Comments on the “Working Principles for Revising the ACHP’s Policy Statement Regarding Treatment of Human Remains and Grave Goods (Funerary Objects)”

By Robert Cast, THPO, Caddo Nation of Oklahoma

Background: As the Tribal Historic Preservation Officer for the Caddo Nation of Oklahoma, I have been involved in numerous Section 106 undertakings off tribal lands in the Caddo people’s homelands of southwest Arkansas, northwest Louisiana, southeast Oklahoma, and northeast Texas. All the above-mentioned states have policy, guidance, and an unmarked burial law, to coincide with the Section 106 process except the state of Texas. In Texas, where there is around a 98% private land ownership, we have worked on numerous projects that involved federal permitting on private land and we have usually worked out agreements during the project that addressed the treatment, handling, and disposition of human remains and funerary objects encountered during these projects. On several occasions there have been landowners who have asserted what they believe to be their “finders keepers” rights, basically to own the human remains and funerary objects placed with them in the ground that just happened to be buried on their land. My question here would be: “Is the ACHP going to assert its leadership role and address this issue in any formal way? Or will the Caddo, (among other Indian tribes), along with the agencies be at the mercy of a landowner who is using federal/state funding in the Section 106 process to help him discover, identify, evaluate, then possess and amass collections. Until the issue is addressed at a higher level, the Caddo will continue to try to consult, develop, and try to work with individual landowners on the cultural and religious importance that human remains and funerary objects have for us.

Our cultural preservation office has in place an Inadvertent Discovery Policy that we have used to extend also to “planned excavations” during archeological projects. This policy addresses how the Caddo wants to see things done, not the archeologists, the federal agency, or the landowner. With that in mind, we have always tried to come to agreement with all the parties involved in the project and in the majority of cases, have done so, that is, on projects we are made aware of.

My general comments on the policy follow:

One of the most important things that the policy makers need to keep in mind when developing the policy is that the “human remains” and “funerary objects” are most likely found in the context of a “Traditional Cultural Property” to the Native Americans that may be impacted by the project. If, following 36CFR Part 800, human remains and funerary objects are going to be disturbed, this should be considered as an “adverse effect” which then is the agency officials responsibility to provide a reasonable opportunity for the Indian tribe to “participate” in the resolution of adverse effects. From tribe to tribe, this is going to be different, and each tribe may define “participation” in a very different and unique way. Part of this participation may be in the form of developing agreements as to how the human remains and funerary objects will be treated, any reburial plans, study of the remains or objects, etc. can all be part of this “participation”.

Comments on the Working Principles:

Principle 2, “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.” Which needs to be fully addressed when the project is on private land and the landowner states that he “owns” the remains and objects.

Principle 3, “Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site’s long-term preservation.” No joke. How about a cemetery site within a state highway right-of-way that extends on to private land. Did the identification of the site create an adverse effect? Yes, because the landowner now knows where the cemetery is located and can legally dig up the cemetery on his/her land because, yes, he/she lives in Texas. I think that federal agencies, when it comes to the protection of human remains and funerary objects have enough trouble with “short term” preservation.

Principle 4, “The policy statement should recognize that Federal agencies are responsible for meaningful consultation with all interested parties as a means to achieve compliance with the law. This, I believe, should be the driving force behind that policy. Open communication and development of trust during these consultations should be the goal and the planning for the treatment, care, handling of the human remains and objects should be discussed and outlined prior to any ground disturbance. The legal Government-to-Government obligations of the Federal agency should also keep in mind the treaty rights, land cessions, and tribal policies that assert presence of the tribal nation in a geographical area, NAGPRA claims associated to the area, and the history of the tribe’s presence within the state and specific geographical area where Section 106 projects take place. The irony is that many landowners don’t recognize these treaties, land cessions, or tribal claims to human remains and funerary objects, but treat these remains and items as “treasure” that was found on their property. Whereas, if the status of the land were federal, there would be no question as to what tribe these remains and funerary objects were culturally affiliated with under NAGPRA. How will this contradiction be reconciled under the policy?”

One example that is valid in the case of the Caddo is that many of the east Texas counties were not recognized in any land cession in 1835 when the Caddo ceded to the United States Government over 900,000 acres of land in Louisiana and Arkansas. Because Texas was a “republic”, the policy has been that the Caddo had no claims to lands in east Texas, and hence no history there, even though the presence of Caddo archeological and historical sites is very well documented from 800 A.D. up to 1842 in these east Texas counties. The Great Bend of the Red River known as a “heartland” of the Kadohadacho (where the term Caddo comes from) is in the area of Bowie County, Texas. We have recently completed a TCP inventory on a Tulsa COE permitted project in this area, on private land. Because of the negotiations and consultations that took place with the landowner, we have come to agreement concerning any human remains and funerary objects that may be encountered on the project. However, we developed this relationship

with this landowner over several years because of the TCPs located on the property. Another landowner might not be so accommodating.

Principle 5, I don't know that I necessarily agree that the ACHP policy needs to "clarify the roles" of those in the process as I believe the regulations at 36 CFR Part 800 do that, but I do believe that it needs to be clear "how the Federal agency weighs the views" I think part of this has to relate to the history, traditional use of, treaties, cessions, etc. as discussed previously. A landowner simply should not be able to take human remains or funerary objects because they are found on a project. They should also not be allowed to separate the funerary objects from these remains as something of a "recompense" for the project being on their property. If cultural affiliation with an Indian tribe can be determined, based upon similar evidence as previously described, then the agency official should make a reasonable effort to see that the remains and the objects are properly treated according to the affiliated tribe's traditions. This may entail policies or agreements early in the planning process with the landowner releasing any ownership to artifacts, funerary objects, or human remains that may be encountered during the undertaking.

Principle 6, As mentioned earlier, the Caddo Nation already has an "Inadvertent Discovery Policy" in place and has now for many years. This policy has extended to archeological investigations describing the protocols related to timing and notifications of the discoveries. Landowners should be encouraged to protect "important archeological properties, including burials." TCPs should be added here as stated before sometimes the archeological property is part of a bigger and broader TCP. Burial sites to the Caddo are considered to the TCPs, not archeological resources or properties.

Thank you for the opportunity to comment on the revisions to the policy statement.

Sincerely,

Robert Cast
THPO
Caddo Nation