



the
Chickasaw
Nation HEADQUARTERS

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Bill Anoatubby
Governor

Jefferson Keel
Lieutenant
Governor

October 24, 2005

Mr. John M. Fowler, Executive Director
The Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania AVE, NW, STE 809
Washington, DC 20004

Dear Mr. Fowler:

Attached are comments provided in response to the notice of intent to reconsider the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods," as published in the Federal Register, September 1, 2005 (Volume 70, Number 169).

Please include our comments in the response.

If you have any questions please call Kirk Perry at (580) 436-7263.

Sincerely,

Jefferson Keel, Lt. Governor
The Chickasaw Nation

Enclosure



God Bless America!

Attached comments:

Our comments are added below in bold following the lines quoted from the federal register notice.

Working Principles

Any ACHP revised and updated policy will:

--Address treatment of all human remains and funerary objects in the context of compliance with Section 106 of the National Historic Preservation Act (Section 106);

--Encourage Federal agencies to initiate the Section 106 process early in their planning processes;

--Address human remains and funerary objects of all people;

--Be consistent, and work in concert, with other Federal, State, tribal, and local laws;

Principle 1: The policy statement should recognize that human remains must be treated with respect and dignity.

Comment: We are in agreement with this principle as written.

Principle 2: The policy statement should clarify the intersection between Section 106 and other legal authorities.

--The policy statement needs to clarify the intersection between the requirements of Section 106 and the Native American Graves Protection and Repatriation Act (NAGPRA).

Principle 2: a.

Comment: We are in agreement with this principle as written.

--The policy statement needs to clarify the intersection between the requirements of Section 106, State burial laws and other applicable laws.

Comment: On tribal lands, policy statement needs to clarify the intersection with tribal laws.

--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.

Comment: The state agency officials need to have a policy on the treatment of human remains, funerary and sacred objects.

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.

Comment: We are in agreement with this principle as written.

--Federal undertakings should disturb human remains and funerary objects only if absolutely necessary, and then only after exploring other alternatives early in project planning.

Comment: Federal undertakings should disturb human remains, sacred sites, objects of cultural patrimony and funerary objects only if absolutely necessary, and then only after consultation with the tribes and only after exploring other alternatives early in project planning.

--In order to realistically consider avoidance and preservation in place, Federal agencies need to initiate the Section 106 process early in planning.

Comment: We are in agreement with this principle as written.

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

Comment: The policy should give guidance that the agency official must draft a plan or a restrictive covenant for the site's long 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.

Comment: The policy statement should add language recognizing that Federal agencies are responsible for meaningful consultation with all Federally Recognized Tribes and interested parties as a means to achieve compliance with the law.

--In accordance with the NHPA, the Federal agency official with jurisdiction over the undertaking has the responsibility to make the final decisions in Section 106 review after completing, and being informed, by the consultation process. However, it is recognized that Federal or State law may prescribe a certain outcome.

Comment: The policy should also instruct the state agency to strongly consider the comments of the affiliated Federally Recognized Tribes who are consulting parties.

--Agency decisions regarding treatment and ultimate disposition must be based on a careful consideration of all views.

Comment: When a determination of cultural affiliation has been made with Federally Recognized Tribes, their views should be afforded the strongest consideration.

--The legal Government-to-Government obligations of Federal agencies to Indian tribes emanating from various statutes, Executive orders, treaties or court decisions should have a bearing on Federal agency decisions regarding the treatment and disposition of Native American human remains and funerary objects.

Comment: We are in agreement with this principle as written.

--Planning for the disposition of human remains should occur early in the process.

Comment: Add to the sentence: following consultation with the Federally Recognized Tribes.

Principle 5: The policy statement should guide the Federal agency official in decision making.

Comment: Add only if the Federally Recognized Tribes concur.

--The policy statement should clarify the roles of different groups concerned with the effects of the undertaking on historic properties in making decisions.

Comment: We are in agreement with this principle as written.

--The policy statement should clarify how the Federal agency weighs the views presented by the different parties in arriving at a final decision, recognizing that Federal or State law may prescribe a certain outcome.

Comment: Change the sentence to add; recognizing that Federal, Tribal, or state law may prescribe a certain outcome.

Principle 6: The policy statement should call for Federal agencies to develop procedures for the preservation and treatment of human remains discovered inadvertently, or when there is the potential for an undertaking to discover human remains.

Comment: The policy statement should also call for State officials to develop the same procedures, when the federal official assigns responsibilities to a state agency.

--The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects when they are inadvertently discovered.

Comment: These principles should apply to state agencies when assigned by federal agencies.

--The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects where they may be anticipated to be encountered as part of National Register eligibility investigations and data recovery investigations.

Comments (change to read): **The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects where they may be anticipated to be encountered.**

This sentence should end here. There is no reason to limit the policy only to national register eligible sites. This policy should also extend to sacred sites and objects of cultural patrimony (anytime human remains are encountered the site is a sacred site).

--The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects exposed during natural disasters or encountered during emergency responses to such disasters.

Comment: The policies that have already been written should continue to apply.

--The policy should encourage Federal agencies to develop these procedures in consultation with all interested parties consistent with Principle 4.

Comment: **The policy statement should add language recognizing that Federal agencies are responsible for meaningful consultation with all Federally Recognized Tribes and interested parties as a means to achieve compliance with the law.**

Comment: **It is recommended the federal agencies seek to budget funds to accomplish tribal face-to-face consultations as tribes do not any funding source or federal grant sources to travel to often far away cities where consultations may be conducted.**

--If a site is avoided, Federal agencies should have a procedure in place to provide the owners with guidance developed by the Secretary of the Interior under Section 112(b) of the NHPA and supplemental guidance that encourages protection of important archaeological properties, including burial sites.

Comment: **We concur with the statement, but also recommend to include traditional cultural properties (TCP).**

End of text of the principles.