



MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

404 Frontage Road • New Town, North Dakota 58763-9402

TRIBAL BUSINESS COUNCIL
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FAX FORM

*to Chairmen John Nau and John Fowler, Exec. Directors
Advisory Council on Historic Preservation*

FROM Tex G. Hall, Chairman
Mandan, Hidatsa and Arikara Nation

November 1, 2005

RE: Draft Working Principles of the Archeology Task Force of the Advisory
Council on Historic Preservation



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October 31, 2005

John Nau, III, Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington DC 20004

Dear Chairman Nau:

Doh-sha! I am writing today to express my serious concerns on matters related to the activities of the Advisory Council on Historic Preservation, and to request your assistance in finding resolution to these problems.

The Mandan, Hidatsa and Arikara Nation of the Ft. Berthold Indian Reservation of North Dakota has enjoyed a long and fruitful relationship with the Advisory Council on Historic Preservation, particularly since your appointment as Chairman of the Council. Indigenous Nations on the Missouri River have struggled for decades to preserve and protect our ancestors' burials and our irreplaceable sacred and cultural places. Our sacred places are needed for the continuation of our ceremonies and spiritual lifeways, as they are spiritual and cultural classrooms for our People.

As you know, Missouri River Tribes, in collaboration with Advisory Council and others, have successfully worked with the U.S. Army Corps of Engineers to complete culturally-relevant Cultural Resource Management Plans; you and other members of the Council held a public hearing on the River to obtain comments from our elders and leadership about our concerns – this hearing also helped to obtain increased funding levels from the Corps for preservation and protection of cultural resources on the River; and your Agency issued a Letter of Foreclosure on the Corps' 1993 Programmatic Agreement which was negotiated and signed without participation or consultation of Missouri River Tribes. This action prompted the creation of the 2004 Programmatic Agreement, a document that provides for culturally relevant, pre-decisional consultation and is nothing less than a paradigm shift in the way our ancestors' sacred and cultural places are managed on the River. Many feel, in fact, that were it not for the involvement of

Marjorie Nowick of your Denver office, we would not have a working Programmatic Agreement today, and certainly not one as effective. Working together with staff from your Agency and others, we helped create the Sacred Places Coalition, which addresses preservation of Native sites on a national level. We have benefited from the support and advice of both the Denver and Washington offices of your Agency, through their attendance at Missouri River Cultural Resources gatherings at the Lower Brule Sioux Tribe and at trainings conducted by staff from these offices.

Many, many irreplaceable sacred and cultural places continue to exist in our homelands because of the strong relationship between our Tribal Nations and your Agency, and we wish to express our gratitude for this relationship and our desire to continue to work together.

We are, however, extremely concerned about some recent developments at the Advisory Council that we believe could have serious detrimental effects to all Native peoples, as outlined below.

On September 1, the Advisory Council published in the Federal Register the "Working Principles for Revising the Advisory Council on Historic Preservation's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods.'" On October 24, 25, and 26, one of my staff attended a meeting of the Native American Advisory Group to the Advisory Council to share our concerns about the Working Principles and to learn more about them.

We are very concerned that the Working Principles, as drafted, do not reflect the intent of the Native American Graves Protection and Repatriation Act (NAGPRA), which returns stewardship and decision-making regarding Native dead to Native peoples. We are gravely concerned that the Working Principles, as drafted, assume a scientific legal standing or interest in our ancestors' remains for those members of the scientific community who wish to study them. We believe that only Tribes have an interest in the contents of our ancient burials, legal or otherwise. Native Americans fought hard for the passage of NAGPRA and other federal and state laws so that we could protect our ancestors' burials for the sake of the deceased, and not for the sake of science.

We feel that the Working Principles, as drafted, are an attempt to restage the public debate concerning scientific study of Native dead that was resolved by the passage of NAGPRA. Although NAGPRA provides for study of Native dead if the culturally affiliated Tribe(s) gives their permission for the study, the vast majority of Native Nations do not want the remains of their ancestors excavated, collected, curated or studied. Language proposed in the Working Principles that suggests creating a balance of interests in Native human remains refutes both language in federal law and the repeated and consistent positions of the vast majority of Native peoples in America. If the language in the Working Principles is adopted as policy, Native Nations would have to fend off, again and again, attempts to subject their dead to expensive and destructive studies – and this struggle would become very intense if a particularly ancient burial is inadvertently discovered during a project. Many tribal governments with limited

financial resources would be forced to defend in court a self-evident, human right that everyone else in our country takes for granted: the right to rest in peace. Given that the Kennewick Man litigation dragged out for years and cost millions of dollars, this is not something your Agency should be encouraging, but I am afraid that is what the Working Principles would do if they were drafted into a policy.

Given that the vast majority of human remains subjected to study in this country are Native American, and given that your Agency received only 15 responses from Tribes or Native Hawaiian organizations in its solicitation for comments, I have two requests that I think will assist in resolving these serious concerns:

1. The Working Principles, as drafted, can apply to all other human remains, i.e., African American, Asian American, European American, that are inadvertently discovered during the course of a project. Public comment can be solicited from members of those communities.

If the Advisory Council still feels it requires a policy for Native remains (for use in those states that have no Native human remains law) a separate Native human remains policy, based upon the legislative history and language of NAGPRA, could be written and submitted to Tribes and Native Hawaiians whose aboriginal homelands are encompassed in those states for review and comment. An action such as this would return decisions about treatment of Native dead to Native Peoples and would therefore be consistent with existing federal, state and tribal laws. This action would also satisfy your Agency's trust responsibility to conduct government-to-government consultation on matters that impact Tribal governments, Tribal Peoples, tribal ancestors or tribal resources.

2. Given the low number of Native responses to your September 1 Federal Register request for public comment, as well as dangerous consequences that could result if the Working Principles are adopted into a policy as drafter, I request that you extend the public comment period for another 60 days, or until January 4, 2006. This will afford Native Peoples the time needed to educate themselves, their elders and spiritual leaders, and their tribal governments on the potential impacts of a Human Remains Policy that could allow scientists to study ancestral Native remains encountered during inadvertent discoveries.

I look forward to your response and to a collaborative working relationship with you and the Advisory Council on Historic Preservation. Our Nation will be submitting more detailed comments under separate cover. Thank you for your attention to this important matter.

Sincerely,



Tex G. Hall, Chairman
Mandan, Hidatsa and Arikara Nation

Cc: John Fowler, Director
Advisory Council on Historic Preservation
Senator Byron Dorgan
Senator Kent Conrad
Senator John McCain
Representative Earl Pomeroy
Representative Stephanie Herseth
Representative Richard Pombo
Representative Nick Rahall