



Confederated Tribes  
of the  
Umatilla Indian Reservation  
Department of Natural Resources  
*Cultural Resources Protection Program*

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November 1, 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 Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Cultural Resource Committee (CRC) appreciates the opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) Working Principles for Revising the ACHP's "Policy Statement Regarding the Treatment of Human Remains and Grave Goods." The proposition under which these Principles are promulgated is deeply flawed. The statement that this policy is intended to "balance the public interest in the desire to treat human remains in a respectful and sensitive manner, while recognizing the public interest in knowing its collective past" glosses over the fact that this "balancing" was the practice that the Native American Graves Protection and Repatriation Act (NAGPRA) was enacted to end. Expansively broadening the policy so that it addresses all human remains does not offer any additional justification for the policy. In sum, the CTUIR reiterates our December 22<sup>nd</sup>, 2004 letter to the ACHP on the policy:

On the issue of the "Policy Statement Regarding Treatment of Human Remains and Grave Goods," we recommend that it be rescinded. Due to the fact that NAGPRA is now law, the policy statement has lost its significance. Further, we feel that the statement "where the scientific research value of human remains or grave goods outweighs any objections that descendants may have to their study, they should not be reburied but should be retained in perpetuity for study" is contrary to NAGPRA and reiterates the notion that tribal descendants should only have a "voice" in their treatment. NAGPRA is human rights legislation which acknowledges that tribes have a fundamental right to control the graves of their ancestors. Any policy that calls for the perpetual curation of Indian remains just because of their status as Indian remains reinforces the perception that tribal peoples, living or dead, are merely objects of curiosity and scientific study, ignoring the contemporary presence of tribes.

The premise that this policy could apply across all jurisdictional boundaries irrespective of “geography, ethnicity or nationality” is invalid. One only need look to Section 3 of NAGPRA which states that ownership or control of Native American human remains found on federal or tribal lands shall be in the lineal descendants. In this provision there is no room for balancing scientific or religious interests. Congress has determined that the right of lineal descendants shall have precedence. Given this fact, the logic of trying to apply the ACHP policy in all instances becomes both impossible and likely illegal. Put simply, the location where remains are found determines which laws apply.

Many of the Working Principles are unrealistic. For instance, “the policy statement should clarify the intersection between Section 106 and other legal authorities.” This type of clarification is simply impossible in a policy. Policies provide “high-level overall plan[s] that embrac[e] the general goals and acceptable procedures esp. of a governmental body” Webster’s New Collegiate Dictionary, Merriam-Webster (1979: 882). The degree of specificity that would be necessary to define the circumstances under which the Archaeological Resources Protection Act (ARPA), NAGPRA and National Historic Preservation Act (NHPA) interact, complement and conflict with each other is not conducive to generalized goals. Indeed, there are books on the subject and volumes more could be written.

Some of the Working Principles are positive, particularly Principle 3, acknowledging avoidance and preservation in place as well as the stewardship responsibility assumed after site identification. Further, the Principles are correct that planning for the discovery of human remains should begin at the early stages of the Section 106 process. However, this policy does not define the nature of the consultation obligation of the federal agency involved nor does it define the decision making process of the agency as Principles 4 and 5 attempt to do. Additionally, we are perplexed by the last bullet of Principle 5, which addresses how the policy will define how an agency will weigh different views. Prejudging the weight of views is at best disingenuous, and at worst contrary to law.

Principle 6 indirectly identifies both the problem and solution that this policy is intended to address. Federal agencies need to promulgate regulations which integrate regulatory compliance across the federal jurisdictional spectrum. For instance, the ARPA curation regulations, 36 CFR § 79, predate NAGPRA, and have not been amended to include NAGPRA even though the regulations govern the curation of items subject to NAGPRA. Likewise, the uniform ARPA regulations have only been superficially updated to address ARPA-NAGPRA conflicts. Section 106 regulations suffer from similar issues, such as the fact that the Army Corps of Engineers Regulatory Branch follows regulations which are not acknowledged by the ACHP, 33 CFR § 325, Appendix C. The federal agencies involved must coordinate uniform regulations, much like the agencies did for ARPA. However, a policy statement encouraging reconciling the federal regulatory framework seems relatively out of place in a policy purporting to address human remains.

Of the concepts addressed in the Principles, the following are broad enough to be in the draft policy, if the ACHP believes that it is necessary:

- Federal agencies should initiate discussions early in the Section 106 process regarding development of policy and operational procedures for treatment, including disposition, of human remains and funerary objects when they are inadvertently discovered.
- The policy and operational procedures should recognize that human remains must be treated with respect and dignity. Further, the policy must recognize that the Federal agency official under Section 106 has a duty to care for human remains and funerary objects
- The policy and operational procedures should emphasize that avoidance and preservation in place is the preferred alternative to disturbance of human remains and funerary objects.
- The policy and operational procedures should allow federal undertakings to disturb human remains and funerary objects only if absolutely necessary, and then only after exploring other alternatives early in project planning.
- Federal agencies must acknowledge that under Section 106 and other laws their responsibility to protect historic properties does not end after the identification phase; identification is only the beginning of their stewardship obligation.

Finally, of the original concepts in the 1988 Policy which aren't already addressed above, the following should be included:

All scientific studies should be carried out in consultation with those most likely descended from the dead, including consultation on the collection protocols, handling and, if necessary, curation. Proper reinterment following study should apply in all instances, consistent with mainstream social values and laws in all fifty states and with the cultural, social and religious values held by Indian tribes and Native Americans throughout the United States.

We appreciate the opportunity to comment on this proposal. If you have any questions or concerns, please feel free to contact me at 541-966-2020 or Teara Farrow, Program Manager, Cultural Resources Protection Program, Department of Natural Resources, at 541-276-3629.

Sincerely,



Armand Minthorn, Member  
Board of Trustees  
Chair, Cultural Resources Committee

Cc: Eric Quaempts, Director, DNR  
Cultural Resource Committee  
Teara Farrow, Program Manager, CRPP  
Valerie Hauser, ACHP