

Review and comments of ACHP “Policy Statement Regarding Treatment of Human Remains and Funerary Objects” from Seneca Nation of Indians – Tribal Historic Preservation Office

These comments were compiled by the Seneca Nation – Tribal Historic Preservation Office staff.

Practical and Theoretical responses and comments

Part 1

Practical Comments to ACHP “Policy Statement Regarding Treatment of Human Remains and Funerary Objects”

Introduction:

While the revisit/expansion of the 1988 principals is an admirable effort, the principals in of themselves, at best, remain as mere extensions of the original (1988) general themes. One of the fundamental issues which probably provided the foremost impetus to the revisit appears to have been a recognized need to bridge the obvious gap between the 1988 principals and their actual application by the various federal agencies.

The often time failure of the Section 106 process, however, is not due to an over confining set of definitions, but is rather the result of various agencies’ practices in which the Section 106 process is given a low priority. Frequently, our own office has been notified or invited to consultation at a time far after a project’s planning has been completed, or following an archaeological survey, after a discovery has been made, or after the construction phase has been initiated. It is with this in mind, that the emphasis of the stated principals should at all times focus upon the utmost necessity for federal agencies to develop appropriate policies and procedures that are contingent upon approval by individual Native American tribes/groups.

In addition, all federal agencies should be made lawfully accountable for not only the timely development of these policies and procedures, but also for their timely and rigorous application. Barring this, the Seneca Nation recognizes that the ACHP is not a mandating organization; however, we also recognize that the authority of the ACHP can go beyond a legal mandate.

Practical Application to the Seneca Nation THPO:

This move by the ACHP has the potential to be very rewarding to Indian Nations. Currently, the NHPA does not outline any such procedures and therefore forfeits the proper course of action to the often-subjective discretion of the Federal Agency. The SNI THPO has experienced both sides of the spectrum concerning these procedures and thus has a wealth of valuable experience to offer any such discussion. From past experience and common sense alone, a preferable policy would be one that is sincerely considerate of both human respect towards its past and in this case, tribal customs and procedures. This said, a major point of consideration, or in this case, a “working principle” should be one that allows leeway for tribal variation (concerning proper procedure), but at the same time, strictly states authority. SNI THPO does not feel that any Federal Agency has any right to say how the physical remains of an Indigenous Nation will be handled and cared for.

This is where cultural sensitivity, a notion the ACHP should be very familiar with, must be taken into consideration to the fullest degree. The principles laid forth in the document at hand are indeed considerate and it is clear that the ACHP is attempting to do its job and rope in a wandering problem within the Section 106 process. However, if the ACHP truly is sincere in their outreach, they will be attentive and more importantly, sternly authoritative about the following recommendations.

1. A jurisdictional principle of ownership needs to be clearly stated. Furthermore, subsequent rights need to be detailed so as to tell the Federal Agency that we (Indian Nations) are the SOLE decision makers when it comes to such objects. There is no question as to who is making the decisions from here on. If human remains and invaluable cultural resources are being disturbed (and that’s indeed what it is), the price for such an action must only be a direct shift of control. Just as the contracting company is not out to wreak havoc on both Native and American history, Indian Nations are not out to ‘delay’ or ‘shut down’ any such work. This is the game that both of us were placed into and if indeed there is to be justice in this event, this is the only method.
 - a) Subsequent rights of Nations:
 - A no-questions-asked quarantine and halt to the entire project area.
 - Immediate and persistent notification.
 - The respectful window of time for all considerations regarding the project at hand.
 - Total control with respect to the handling, storage, further excavating of (if necessary), and transportation of any such cultural items and/or human remains.
 - The opportunity for full compensation for related expenses.

It is understood that the working principles generated by the ACHP somewhat allow for the aforementioned requests in the form of signatory agreements between parties (programmatic and memorandum of agreements), but more often than not this is insufficient. If the past is any indication of the entire Section 106 process, then Federal Agencies will not change their ways even with the adoption of such a policy. In order for a change to be effective for an Indigenous Nation (which is the entire point of this), a significant change needs to be made at the root of the problem. The addition of a principle (or several principles) including the prior considerations would vastly increase the potency of this attempt.

Getting back to the initial statement that was made, it must also be remembered that Indigenous Nations are different. Just as our toes are stepped on by such Federal policies as such (unknowingly), we must make sure that our policies do not prohibit other Nations from the opportunity to act as they feel necessary regarding these issues. The SNI THPO has a good understanding of Northeastern methodology, but it is a hard to speak considerately for all Indigenous Nations as each one has their own individual history and traditional mindset. Despite that unquestionable fact however, SNI THPO feels this jumble of thoughts and points is a good practical start.

Part 2

Theoretical Comments on ACHP “Policy Statement Regarding Treatment of Human Remains and Funerary Objects”

Introduction:

The NATHPO-News notice from ACHP is a bit too self-evidentiary concerning the reason to adopt a new policy. Reviewing it raised some interesting questions. For instance, is section 106 of the NHPA inconsistent with the current policy? Has there been progress in regard to ACHP’s understanding of the spiritual & cultural resources of Indigenous peoples to include Indigenous perspectives of ancestral remains? Has this progress in understanding been driven by the masses (general US public), who are concerned about the implications of the current policy on their ancestors and “grave goods?” Were Indigenous peoples’ viewpoints and perspectives not included in the discussion of the current policy (the 1988 policy)? If not, then why were they left out? Has the staff or committee of the ACHP drastically changed? Is the ACHP worried that it will lose relevancy as more Federal agencies work directly with Indigenous Nations’ THPO and other associated organizations? And *vice versa*, are Indigenous Nations irrelevant to the ACHP as new disciplines and fields in archeology have developed? Or is the current policy a relic of prejudicial architect(s)? In tandem with these unanswered questions arise a plethora of past, present & future troubles; an explanation of some of the above questions (even in brief) within

the notice would have assisted the comment process. The explanation of the current debate within the notice seems to produce a binary where science and spiritual respect are in opposition (read: in conflict) and is not satisfactory as to why a change in the current policy is needed (this same debate was raging when the first policy was formulated). Yet this conflict model does not necessarily have to be the case, *per se*.

Background:

There is a history of serious abuse behind this subject matter. A history that has been dominated by accredited science (at the time) such as phrenology, eugenics, physical & social Darwinism, anthropology and archeology with the associated practices thereof including looting, body snatching, negative stereotyping, assimilation, categorization, labeling, and a persistent drive to prove the ultimate superiority of all things Western (placing things perceived Indigenous as secondary or inferior concerns). It seems surprising that as time and experience has altered (even “enlightened”) some scholarly perceptions; there is still persistence in academic fields to gain or maintain “professional” credentials by demeaning and belittling viewpoints of the very people being studied (whether they are deceased or in living communities). Perhaps some Indigenous professionals should propose to study the “remains” of past scholarly professionals in order to obtain concrete evidence about an individual’s obnoxious tendency to disregard the enormous conglomeration of Indigenous peoples’ worldviews. Certainly, the descendants of these professionals would have no viable objections, or could make contradictory claims that their interests should outweigh the important search for Indigenous truth(s).

So while comments on the principals follow below, the comments provided may lack agreement with the explicit reasoning behind this change. Who knows, maybe the current policy is something that most people would agree needs to be rectified. Concomitantly, it would be far too obvious if standards were set concerning non-Indigenous “pioneer” sites that conflict with Indigenous sites. Even as this response is being written, SNI THPO knows of no instance where a “pioneers” remains are placed on display or locked in a vault for future study—if there is one such a case, then this represents an exception that proves the rule.

Regardless of the rationale, the proposed principals are a step in the right direction. The overarching working principals, while predominately driven by Federal law when concerning Indigenous peoples, are obtainable & basic.

Comments on Principles:

Principle 1.

The seriousness in which human remains are to be treated is encouraging. Hopefully, this principal will be incorporated into the ways and methods humans are treated whether deceased or alive.

Principle 2.

There requires some clarification of these policies, and this is currently occurring in many Indigenous cultural regions. Certainly this is also true in regards to the treatment of so-called “pioneer” cemeteries. Regardless, the intersection of section 106 and NAGPRA should work to ensure the best possible care outcome and any policy statement needs to strengthen this intersection pursuant to these Federal laws. As such, any clarification must work towards providing information and direction to the people on the ground floor as much as any official decision maker. In this regard, there is no mention of Indigenous nations as possessing any “legal” authority over their ancestral remains or funerary objects. Why is this not mentioned, even as a question of ethical or moral conducts over and above Federal or State or Local or even International law? It appears that the issue at hand is simply the preservation and protection of historical properties and that there is a level of responsibility that people have to recognize when occupying an unspecified official position within a Federal agency. As such, the duty of caring for an Indigenous ancestor or funerary object or other Indigenous material that is unearthed during a Federal project must include incentives for Federal officials. These incentives should provide for Indigenous Nations to apply culturally relevant care “duties” to all exposed remains, objects, or other materials.

Within this principle there is no mention of social (or cultural) laws. If this policy can ask a Federal agency to recognize a duty to care, then it can also ask the same official to recognize that part of this duty is to have at minimum a basic understanding of the cultural implications of an action being pursued. Many Federal agencies have tribal liaisons for this exact purpose, however, their importance within these agencies has been underutilized, under stressed, and in some instances the individual occupying this position is a “newbie” that has no formal understanding of the position other than possibly a general course in college on “Indians.” Thus recognition by the ACHP of this ethical or moral duty to care would assist in strengthening and stabilizing the Federal tribal liaison and build better relationships with Indigenous governance.

Principle 3.

Curiosity, intrigue, knowledge, and comprehension all take a back seat if a policy is to stay within the guidelines set within Principle 1. This is only true if Indigenous values are respected, which they should be if Principle 1 is to have any real meaning.

Principle 4.

This entire section is conspicuous in its omission of any recognition of Indigenous Nations law. As such, while this principle requests Federal officials to carefully consider every view, the principle itself does not. Also, there is a legal and moral obligation to include Indigenous Nations in the decision making process to include control of all Indigenous remains or objects by Indigenous nations being “disturbed.” This is over and above any so-called “determinations of ancestry” as any Indigenous Nation that is acting to presently protect ancestral objects does so with the contention that all such objects regardless of time constraints

are to be respected as if they are of that Indigenous Nation. Thus, the legal aspect will trigger the Federal agency involved to initiate consultation with an Indigenous Nation, and the moral aspect (in a case by case basis as each Indigenous Nation possess varying social customs) should guide the agency towards an equitable decision. Of course, this does not consider non-Indigenous sites where state laws and even local ordinances generally govern, but in light of this fact, it is quite telling that non-Indigenous law governs all non-Indigenous sites. The converse should be applied equally as well.

Principle 5.

The consideration of all views, when placed in the context of a raging debate among scientists and Indigenous peoples (e.g. Kennewick man) has not occurred in many Indigenous peoples perspective. At present, this is not because Indigenous people are not being considered, although this was a key practice in the past. It is because, in many instances, Indigenous views are not taken seriously, emphasized, or are considered invalid or suspect in the most egregious cases. In total, the history of the practice of archeology on Indigenous remains and objects has not taken into account the strong views of the peoples whose ancestors' remains and belongings are being "discovered." The problem is the mentality of many misinformed and misguided officials who practice Eurocentrism and/or have strong beliefs in myths such as "manifest destiny," "civilized versus savage" dichotomies, and that this continent was "settled" instead of invaded. These represent just a few that are out there. These are the myths propagated in the US education system and dealing with them is a daily occurrence for many educated Indigenous and non-Indigenous peoples alike. So, while altering the US education guidelines is not in your discretion, recognizing the extreme bias that exists within and throughout this process would put many Indigenous peoples at ease. Why? It will underline and stress that the leading archeological forum has fully engaged itself towards the production of an equitable solution and refuses to permit the shadow of nationalistic prejudice, ignorance, racism, or malice to perpetuate the dispossession of a people's values and customs. While it is recognized that many archeologist do not have an "agenda" and strive for the production of knowledge, this does not mean that Indigenous peoples are not damaged by those few who do have agendas to re-produce knowledge that then are used to explain and prop up the myths propagated by those who would oppress Indigenous Nations.

Very often Indigenous Nations are viewed (again in the realm of mythology) as peoples "disturbing" the natural progression of development. This is not the case. Most Indigenous Nations simply want to have control over their ancestors and the cultural objects that sustained or were relevant to their existence. Blocking a project is not the goal. Instead, let the record indicate that any disruption of a project or resistance to scientific discovery merely seeks to prevent the perpetuation of or even the production of more erroneous myths through the use of selective citation and misevaluation. Certainly, we cannot expect every Federal official or agency to comprehend that they believe in a myth about Indigenous peoples; however, we can expect the ACHP to know that Federal officials have been well educated within the confines of these myths. These myths have implications that can and often reach into the highest levels of government. It

should be a goal of the ACHP to alter these myths towards something that will assist everyone in understanding the cultural traditions and beliefs of Indigenous peoples.

Principle 6.

This principle has a unique instance that portrays a type of occurrence indicated above in the comments on Principle 5. The term, “inadvertent discovery” when taken alone seems innocent and descriptive. “Inadvertent discoveries” describe the finding of (in this case) remains or objects with no intention to do so. However, when placed into the context of how these items are found, this description falls apart. A Human is disturbing a swath of the North or South American continents, and as every educated person knows—there is a chance (in some regions higher than others) that Indigenous peoples have interred something in the area that could be disturbed. If they are misinformed in this regard, or claim that their intention is to only disturb the earth in areas where Indigenous peoples have not interred anything, then this indicates that ignorance is a guiding factor in these operations. Simply put, if the find is inadvertent, then why have contingencies for possible finds? Meaning, you cannot both plan for finding an object (claim of knowledge), and then say you did not know one was there (claim of ignorance).

When placed out of context, this is simply a debate of semantics; however, this terminology does not sit alone in this principle. For example, when Principle 6 is considering the instances where a natural disaster has occurred, any resulting find is considered exposed. Certainly, it has been exposed, but there is no intentionality of the earth to do so and it is absurd to claim as such. The exposure is then found by a person investigating the natural disaster, which resembles much more closely the image conjured up with the term “inadvertent discovery.” Go on a mental journey to a site where a man is operating a backhoe digging a big hole versus the same man on a search a rescue mission after an earthquake. Both find an object. One knew there was a possibility because of his action of digging, while the other tripped over the object during an attempt to coax a dog out of a hiding spot.

Thus the contrast is that there is an intention by a human to excavate the earth and pursuant to federal law any find within the excavation area gets attached to that intention. Thus, this represents an underlying reason for a policy guiding the treatment and disposition of human remains and objects. As such, an EXPOSED site should represent and describe instances where human disturbance produced a find. Conversely, when a natural occurrence produces a find—an inadvertent discovery is made. Concomitantly, this would also apply the same terminology to known and unknown cemeteries & settlements. This change will make this policy more consistent, which incidentally is one of the overarching working principles.

The development of procedures must mention the necessity for flexibility. This causes some complex issues to arise for Indigenous communities, as there are well over 500 separate nations in the US alone. There are some fundamental similarities throughout most Indigenous communities in regard to the disposition of human remains and funerary objects. Yet the differences in practice or custom can cause the federal official to appear insensitive or ignorant if say a Lakota custom is referenced to the Ojibwe'-Annishnabee. Thus, a way to strengthen

Principle 6 will be to include a section that recognizes organizations that have representation from a variety of Indigenous Nations and are working to provide clarity on their collective position. While the Federal official has an obligation to work with Indigenous Nations in a government to government relationship, there is a need for some validity to be applied to these non governmental organizations or task forces. This may be covered by guidance to include all parties recognized by a conglomeration of Indigenous Nation that have been formed to protect Indigenous interests within the Section 106 process. However, in instances where there is a plethora of known and the possibility of unknown Indigenous sites there is a need for recognition that the Indigenous communities or Nations within the area (or even Nations that have been historically removed through genocidal practices through public expense) have heightened and vital interests over all parties and thus have a controlling interest in the disposition of any exposed find.

This last recognition should be mandated, and it is unfortunate that it is not. It does not undermine the government to government relationship, nor diminish the role of ACHP or other non-Indigenous organization. It does take into account several key facts.

1.) The amount of archeological collections within various institutions is massive and it is understudied, underreported, misrepresented, misappropriated, misfiled and misused.

2.) The amount of Indigenous objects and remains within private collections is even greater, yet it is looked at as a hobby to be capitalized on by unregulated individuals with disposable income or time. Getting to the who, what, when, why, how, and, if, that, can, will, *ad nauseam* of these cultural objects is something that many Indigenous communities are waiting for, so why is this not being done by the so-called “pure knowledge” seeking archeologist? The challenge should not be placed at the foot of Indigenous Nations to perform “good” archeology or even approve of it when an exposed find is made.

3.) There was ample opportunity to gain vast levels of knowledge through the sharing of information during the initial years of contact; however, colonialism, nationalistic sentiment, racism, greed, malice, and ignorance took precedent. As a result, this opportunity was lost. Attempts to regain this knowledge through more of the same perpetuate the oppression of Indigenous peoples and Indigenous knowledge.

4.) Following from #3, the knowledge that is left concerning the disposition of Indigenous objects within Indigenous Nations is ignored while a search for non-Indigenous explanations on Indigenous objects and remains persists virtually unabated.

5.) The US along with almost all International Nations desires every other world Nation to respect their dead and return them to their possession in a timely manner without desecration or deprivation due to scientific study. This is universal for everyone, yet apparently Indigenous peoples on this continent are not of this world so long as capital is spent from a public fund. This is untenable. For example, if the remains of POW's from Vietnam were placed on display in Ho Chi Min city based on the qualification that the Vietnamese government (the public) paid for the remains to be exhumed. Then it was proclaimed that these remains were subject to the whim of Russian scientists who developed negative conclusions about the society in which the remains belong. This would be an ignominious outrage; the US would be appalled and rightfully

so. In contrast, no Indigenous Nation that SNI THPO is familiar with has ever exposed a non-Indigenous site for the sake of knowledge, nor have they ever placed such burdens on the descendants of any remains for the sheer pleasure of glory mongering, myth propagation, academic back riding, or claims of monetary expenditures.

There is an opportunity here to not be judged harshly by the “lens of history” and refuse the cope out of being labeled “people of your time.” Take it.