

**Summary of Public Comments on the Advisory Council on Historic Preservation's  
Draft "Policy Statement Regarding Treatment of Burial Sites, Human Remains and  
Funerary Objects"**

**Received on:** May 4, 2006  
**At:** Sacramento, California  
**Summarized by:** Julia A. King

**Participants:** Julia A. King (ACHP member)  
John Fowler (ACHP Executive Director)  
Monique Fordham (ACHP Native American Program)  
Teresa Dixon (THPO, Susanville Indian Rancheria)  
Mark Franco (Headman, Winnemen Wintu)  
Javier Silva (Member, Sherwood Valley Rancheria)  
Arlene Ward (Cultural Coordinator, Mechoopda Indian Tribe)

**Summary Comments:**

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Introductory remarks and a presentation of the meeting's purpose were made by Julie King and John Fowler.

**Preamble**

- Ms. Ward asked, the policy is for whom?
- Ms. Ward asked about the 1988 policy. Is the draft document regurgitating the old policy? Are the principles in the draft policy new principles?
- Mr. Franco asked if ACHP foresees a separate tribal policy?

**Principle 1**

- Ms. Ward stated that Principle 1 was a good statement for avoidance.
- Mr. Franco expressed his concern that, with Principle 1, who is being talked to, who is being given the initial permission? He reiterated the need to make sure that people who might not be at the top of your list are there.

**Principle 2**

- Ms. Ward stated she had no comments on Principle 2.
- Mr. Franco observes that Native American religions are sometimes seen as "something else," as "magic" or "superstition," and not given the kind of mainstream recognition that religions like Christianity are given. He asked how is religious belief used and weighed in the agency decision making process. It was suggested by ACHP that "dignity and respect" is not just for burial sites and human remains, but for the participants in the Section 106 process as well.

### Principle 3

- Ms. Ward raised a question about Principle 3, especially the idea of “early and meaningful consultation.” She read the definition in the Federal Register notice and pointed specifically to the phrase, “seeking agreement with them.” She wanted clarification on who this “them” includes. She further asked, what is the mechanism for seeking agreement? Ms. Ward noted that her tribe is a sovereign nation – but is the view of her tribe given equal weight? Does a sovereign nation carry more weight in the process?
- Ms. Ward inquired about the possibility of ACHP’s help to streamline and to facilitate Native American efforts to nominate properties to the National Register. Currently, tribes must hire a professional consultant at a high cost because tribes may not have in-house expertise. How can these be addressed? Ms. Ward expressed her opinion that this concern is a key component for Native Americans and for the policy, especially since, in order to be protected, a property (burial site) must be listed or eligible for listing in the National Register. So, how do we get there? Bulletin 38 of the NPS was suggested, and it was also suggested that this topic should also be referred to the Task Force when developing the guidance documents.

Ms. Ward asked for further clarification, re: NHPA, ACHP, Section 106, SHPO, etc. Ms. Ward noted that this question comes from her concern about consultation, and noted a current project that she is certain will be found to include burials; her tribe is struggling to deal with this now. The idea of serious and meaningful consultation, she noted, is not working. After further discussion, this project appears to be fully a state undertaking with no Federal “hook.”

- Ms. Ward stated that, on the Federal level, the agencies are more accepting and cooperative in consultation than state and county agencies, which are like the “dark ages.”
- Ms. Ward stated she had no further comments on Principle 3.
- Mr. Franco raised a question about the Area of Potential Effect. Should the APE be mentioned in the burial sites policy guidance? Mr. Franco then gave as an example a project of the Bureau of Reclamation and a proposal to flood an area with known sacred and village sites and very likely burial sites. But, he said, significance (of the historic properties) is not being included in their plans, at least not at this time; that the Bureau does not want to speak with him or his tribe. Can this draft policy be used as a stop sign? What recourse does a tribe have? (Principle 3).
- Ms. Dixon observed that everything is connected and that Native Americans see things, like the Burial Policy, as part of a much larger whole. She noted that we have discussed consultation guidance and other guidance not necessarily directly related to the draft Burial Policy but that is nonetheless, in the final analysis, connected, and part of a larger picture.

### Principle 4

- Mr. Franco expressed a concern with drawing distinctions between Federally-recognized and state (California) recognized tribes. The non-Federally recognized tribe will be at the “bottom of the list” when considering who consulting parties will be. He was especially concerned with Principle 8 and the hierarchy it suggests, although during the meeting, it was pointed out that Principle 8 has to do with the disposition of human remains and funerary objects.
- Mr. Franco found the policy to be good but cautioned that California is unique. Federally- recognized tribes are specifically mentioned in the policy while state-recognized tribes are not. State-recognized tribes become regular consulting parties. To disregard state-recognized tribes, he stated, is insulting. Whose America will be preserved? He used a curation example to emphasize his point, in keeping with the goal of Principle 8. A Federally-recognized tribe “will keep what they want and send the rest to Stanford;” even though the remains and funerary objects may not be the Rancheria’s ancestors, but are the ancestors of members of Mr. Franco’s tribe.
- Mr. Franco again expressed his concern with the role and/or rights his tribe will have without Federal recognition. Ms. Ward observed that Senate Bill 18 provides state-recognized tribes a seat at the table in California. Mr. Franco discussed the remains of lineal ancestors of his wife’s then curated at the Phoebe Hearst museum. These remains were repatriated to a Federally- recognized tribe rather than to his wife and her family. He specifically requested that we include in our notes that there are Native Americans in California that are not recognized by the Federal government but that are nonetheless Indian people.
- Mr. Franco noted Principles 4 and 6; He noted that Principle 6 deals with the law; he then observed that SB 18 in CA, which has passed, is law, and that it gives rights to state-recognized tribes. This, he points out, is a law. So go back to Principle 4 and to the Federal agencies and say, California law requires that state recognized tribes are treated as tribes. Encourage agencies to follow policies in state law.

### **Principle 5**

- No comments appeared to apply to Principle 5.

### **Principle 6**

- Mr. Silvia inquired about the policy’s effect or impact on NAGPRA.
- Ms. Ward suggested that under Principle 6, there should be something to enhance or bolster avoidance as stated in Principle 1. It would help to enhance or bolster Principle 1. She noted that in Principle 6, the Federal agency official is responsible for decision. She asked if Native American views should be included in Principle 6.
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- Ms. Ward observed that the policy makes it sounds like state law takes precedence.

#### **Principle 7**

- No comments appeared to apply to Principle 7.

#### **Principle 8**

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#### **General Procedural Issues**

- Ms. Ward asked about a diagram of the implementation (flow chart?) of the policy, especially when it is passed.

#### **General Legal Issues**

- No comments appeared to apply.

#### **Miscellaneous**

- Mr. Franco inquired about whether or not the policy recognizes a “historic/prehistoric” distinction as was done by an archaeologist in California. Mr. Franco expressed disagreement with this distinction.

- Ms. Ward asked about referencing other policies that overlap and that would be helpful in the consultation process?
- Meeting participants discussed a monitoring program as it currently exists. Ms. Ward spoke of a specific project and Federal agency (FERC), although from her description, the project does not appear to contain burial sites – or they have not yet been discovered. Ms. Ward was referred to the ACHP staff handling this project. Ms Dixon said that, sometimes, it seems as if by participating in the monitor program, you are giving agencies permission to do what they want to do.