

## **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"**

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At Waimea, Hawaii (Big Island)

**Participants:** Chairman John L. Nau, III (ACHP); Valerie Hauser (ACHP); Javier Marques (ACHP); Geri Bell (Kaloko-Honokohau NHP/Pu'uhonua o Honaunau NHP); L. Mikahala Roy (Kuulana Huli Honua); Iwalani Arakali (her 'Ohana); William Ahyou Akau; Dr. Kuu Kahakalau (Kanuoka 'Aina NCPCS/Hawaii Island Burial Council); Roger Harris (individual/Hawaii Island Burial Council); Fred Cachola (NAAG); M. Kaauniai (Waimea Hawaiian Homesteaders/State Council of Hawaiian Homestead Associations)

### **Comments:**

#### Principle 1:

- (?): We are concerned that agencies will be dishonest in their assessment of whether disturbance is really "absolutely necessary" or regarding their assessment of the plausibility of "avoidance." Regarding "absolutely necessary," agencies maybe should rely on the assessment of honest engineers. Regretfully, consulting parties don't usually have the resources to hire their own engineers.
- (?): Policy should explain what is meant by "fully considered." Maybe give examples as to what is needed, such as search for lineal descendants, and discussions/opportunities to meet and talk to descendant communities. In Hawaii, the agency should at least talk to the relevant burial council. Otherwise you leave the standard of "fully considered" totally up to the Federal agency and up to abuse.
- (?): Agree that while relocation is fairly rare in the Big Island, the option of relocation (as opposed to avoidance always) should be there.

#### Principle 2:

- (?): What is "meaningful consultation"? There is a concern that agencies will abuse vague language and do less that they should really do regarding consultation. Maybe clarify things such as the need to consult with SHPO, elders, Native Hawaiian organizations, and descendant communities.
- (?): Policy should ultimately be clear on what constitutes "dignity and respect" regarding Native Hawaiian remains. Maybe use an addendum to delve more specifically into what this means regarding Native Hawaiian remains. Otherwise, there is a concern that agencies will not get it right.

#### Principle 3:

- (?): Perhaps principles 1 and 3 should be merged to highlight importance of consultation.

- (Fred Cachola): Specify that you are talking about the identification and treatment of human remains in this principle, as opposed to the whole universe of Section 106 consultations since this policy is about human remains.

#### Principle 4:

- (Fred Cachola): In the phrase “cognizant of their expertise,” the word “cognizant” is not strong enough. It is too passive a term. It just means they are aware, but it doesn’t mean they must give any real weight to the expertise of tribes and Native Hawaiian organizations. Maybe the policy should state: “utilize their expertise.”
- (?): This principle is missing “lineal and cultural descendants” when talking about whose expertise to consider. The descendants of the remains would have more expertise than other Native Hawaiian organizations. Also, specifically include Hawaiian Burial Councils in there as references for expertise. Use something like “... Native Hawaiian organizations, including Hawaiian Burial Councils, and lineal and cultural descendants, ...”
- (?): There is no reason why the first sentence of this principle should not also include Native Hawaiians (e.g., “The policy recognizes that Native Americans and Native Hawaiians are descendants ...”). Native Hawaiians do not consider themselves to be “Native Americans.”

#### Principle 5:

- (?): Specify that the expertise of tribes and Native Hawaiian organizations should be known and then applied/used/utilized when their human remains are handled in any way or disinterred.
- (?): Native Hawaiian human remains should only be handled and disinterred by practitioners. Native Hawaiians do not want anyone else handling their remains.
- (?): This principle is too vague and therefore allows for mishandling of remains.

#### Principle 6:

#### Principle 7:

- (?): Would like to re-emphasize in this principle the avoidance standard set in principle #1.

#### Principle 8:

- (Fred Cachola): What is meant by the term “descendant communities?” Please define this term.
- (?): Add that the disposition should also follow the appropriate, relevant cultural ways (in case those ways do not follow the described hierarchy).

#### Goals:

Scope/Applicability:

NAGPRA & other laws:

Definitions:

Documentation:

General Positive:

General Negative:

New Policy Needed:

Consultation Issues:

Info Access:

- (?): When remains are reburied, there should be a record that they have been reburied and are in a safe place and this should be made known to the public (not necessarily the location, but the fact that the remains have been reburied).

Recommendations:

Eligibility:

Miscellaneous:

- (?): There is a frustration over inability to prove that one is a lineal descendant (even though one knows the remains are those of one's family), and therefore one is treated merely as a culturally affiliated person. The problems regarding proof of being a lineal descendant may have come out of being displaced.
- (?): Could Native Hawaiians be referred to in this policy as the "oiwi" (their term for Native Hawaiian)?
- (?): The Federal Register notice (page 13068) mentions people with "legal and economic" interests as consulting parties but does not mention cultural or familial interest. It should.

- (?): You should consider including the Federal Register preamble, with all its explanatory material and definitions, as an official addendum to the policy.