

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

Received on June 27, 2006

At Minneapolis, Minnesota

Participants:

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Comments:

The discussion followed the written comments of the Lac du Flambeau Band with each comment being read aloud. Participants then amplified or added to each of the points.

General comments:

1. Native American human rights principles should govern the treatment of Native American human remains.
2. The intersection of NAGPRA and NHPA is not clear in the policy.
3. The policy perpetuates the offensive notion that Native American human remains are objects to be studied.
4. Disinterment stops the spiritual journey of the dead and this wandering has negative consequences for the living.
5. Confidentiality of information is not addressed in the policy.
6. It is not possible to have a policy that covers all peoples. There should be a separate policy addressing the treatment of Native American human remains.
7. The treatment of human remains is a civil rights issue fought for by Native Americans for a very long time. The result was NAGPRA and it is important that ACHP not set the clock back.
8. The policy needs to include ACHP monitoring and the ability to bring ACHP into the process.
9. Mitigation needs to be included as well as an acknowledgement of the destruction of the burial site.

Principle 1:

There is a disparity in how Native American and European American remains are treated. There is an inherent assumption that when Native American remains are found, an archeologist must be called in. Instead, the agencies' first thought should be to call the appropriate tribe.

This principle is not worded strongly enough. Replace "should" with "shall." Define what is meant by "when absolutely necessary." The term itself is not necessary because it implies that it might be okay to disinter remains.

Principle 2:

Define "meaningful consultation." The government-to-government statement should be much earlier in the document, perhaps in the preamble as well. The preamble should explain tribal consultation and reference existing tribal consultation protocols.

Principle 3:

Again, "meaningful consultation" needs to be defined.

ACHP could have used a better term such as "items associated with the funeral of that human."

Principle 4:

Question raised about how agencies come to their final decisions, how they take into account the comments of others.

This principle highlights the need for there to be a separate policy for Native Americans because of the status and relationship to the Federal government.

Principle 5:

Again, this principle is not worded strongly enough: replace "should" with "shall."

It is not clear who determines if the remains must be removed. There should be a requirement for the remains to be reinterred.

This principle seems to go off in a direction different from the previous principles and minimizes consultation.

This principle supports scientific study, elevating the interests in studying human remains to the same level as that of Indian tribes. There is an assumption in the language that remains be removed by archeologists when Native peoples have their own way of handling remains. It minimizes the government-to-government relationship. This is a step backwards and is not unacceptable.

The ACHP seems afraid to directly raise the issue of analysis. Tribes clearly do not want remains analyzed. There is an assumption that since ACHP includes archeologists, ACHP is afraid to address the issue openly.

Principle 6:

Decisions about Native American human remains should not be made by Federal agencies.

What is “appropriate documentation?” Does this mean data recovery? It could imply many things.

Does the consultation referenced here include archeologists?

This is the point in the Section 106 process when communication between Federal agencies and tribes breaks down. Consultation needs to be clearly defined. There also needs to be accountability and the ability to bring the ACHP when communication breaks down.

Principle 7:

Not clear with whom consultation takes place.

Why should the Federal agency be the one to develop plans for the treatment of human remains. This principle does not mention tribes, yet it is about plans for the treatment of native remains.

ACHP needs to say that Native American human remains must not be treated as scientific objects.

Principle 8:

This principle is confusing.

It would be the exception and not the rule that remains would not be identifiable.