

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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Kucate stated that his comments today were preliminary and for discussion only and the deadline is June 28, 2006, to submit comments.

King gave project background and presented archaeology task force handout. She asked Alan Downer to introduce/give comments.

Downer: Archaeology task force has been intensive process. Many in the archaeology community have been trying to reverse all the “bad stuff” that NAGPRA did. The task force tried to eliminate a lot of that stuff. If tribal communities don’t comment, the archaeologists may have more influence than like to think.

King: This is one of the ACHP duties. NAGPRA applies on state lands except at back end of process re: collections.

Folwer provided a short 106 overview and when this policy would appear (federal funding or federal permitting as part of NHPA).

Question from _____ -: To what time period would remains policy apply?

King: Only possible limit would be 50 yrs.

Kraus: Provided an overview of issues that NATHPO has been concerned and other background information to help participants make informed decisions. NATHPO asked to be part of this project from beginning. NATHPO concerned, in particular, about a direct quote from Frank McManamon about affiliation made during the first meeting. This appeared to be an attempt to

change the definition of cultural affiliation to exclude consultation with tribes by implying that their non-association with past cultures. Though NATHPO is not big organization, it decided to devote time to this project because of the impact on NAGPRA. She read the statement on “balance” from an earlier Federal Register that sought to balance Native American legal rights with scientific interest in studying Native American remains and items. Even though THPOs are created by NHPA, THPOs wear many hats, including working with NAGPRA.

Gachupin: Want to reserve the right to submit written comments by deadline. 1988 version looks like an Anglo document and this document is pretty concise. Policy good but comes down to implementing. NAGPRA was good and bad. Intention was good and implementation found some loopholes. Presently are re-interring more and more remains and want to keep that going. Aside from that, the ACHP draft policy seems like we’re on the right track. Need to realize that tribes are all different. What works for one tribe does not necessarily work for another tribe. The position of one tribe might not be position of another. For inadvertent findings we need to have one local tribe take lead and the others respect that rather than bickering over specifics, so that we can re-inter and take lead and rebury. We don’t have a reburial policy as tribes. When our ancestors were buried it wasn’t with intention or idea that 100 or 1000 years from now they would be dug up and put in museums and that we would have to come back as descendants to rebury them. There is no policy. There is no ceremony. For those of us involved in this re-interment we do it because the necessity and our caring and feeling for our ancestors. That is the reason we do it. We basically come up with new position in talking with our elders and leaders, and for lack of better term, at Zia Pueblo we call it a forgiveness ceremony. Our creators offer forgiveness for those people who dug them up -- those people who handle them -- those of us who have to come to these meetings to discuss this issue and those people who have to deal with the re-interment and reburial. It’s something that’s necessary. It’s not a reburial per se, it’s more a forgiveness ceremony. Again, there are a lot of issues, tribes vary, and I think the intentions are good and I commend the people that took part in the drafting of this policy for their time and effort and we’re leaning from past documents and past consultation processes that we’ve developed and hopefully a lot of other agencies will use this document and be more concise rather than use various polices or various agencies.

Yellowman: Thank you for having this meeting. For him, sure they will submit written comments before the deadline. Right now, his tribal government is going through transition period and just adopted a new constitution so within this period we are trying to reorganize and get in compliance and get current with this new constitution that governs our tribe. Doing the work since 1993 in NAGPRA, NHPA, NEPA, we see a lot of these polices that work and some don’t work. This language includes words that they don’t have within their tribe. For example, there is no word for reburial, there is no word for exhume. When you start talking these words, it brings back a lot of hard feelings, emotional feelings on how our ancestors were treated and it is very sensitive and this has to be considered. Words are very powerful and as native people, this black & white document, it’s a thing that’s a policy in writing. For us, we have traditional responsibilities, spiritual connections that we’re responsible for. It’s not physical. It’s spiritual. When we start dealing with the spirits of these remains, it becomes very powerful. We have to cleanse ourselves and do things for ceremonies to make things right, not for our ancestors, but also for people of today. It’s important that this task force keep this in mind. It’s unfortunate, I don’t who served on this task force, but I wish there was a Plains tribes representative on this task force. Each culture group, each area has different ways of handling this and they’re not going to be the same. And we talk about having a voice, a strong voice that’s equal to the archaeologists. Well, we need to start with this task force. Naïve people have to have equal representation and I’d like to see that. It’s probably too late in this process but it’s unfortunate that it wasn’t there. I’m myself speaking for the Plains tribes, especially the tribes in Oklahoma. We have 39

federally recognized tribes there and I do understand that you had a meeting in Shawnee. I had conflicting schedule so I couldn't make it. I don't know the attendance that you had there and I'd be interested in knowing that. We talked about NAGPRA, that it came later, regardless, I think that we have something to work with. We could strengthen that. This is moving pretty fast and you did develop a draft and I commend you for the short time that you had. But for us as Native people, it takes us a longer time to process. We have a lot of seasonal things that we have to consider. Four seasons of the year. We don't just do things on the time that your comments are due on the 18th. We have solstice, winter and summer. All of this has to be considered in regards to our input. And I'm not saying for us that these deadlines are not critical for us, we work in season and we work when we know it's time to do it. These are some of the things that I'm interested in and like I said, we (end of tape)

King said that there is diversity among archaeologists. There is an extreme range of opinions. You would be surprised to see that all archaeologists don't think with one mind. One way that we tried to take care of that diversity is through the consultation process.

Guchupin: The document states that "under this policy, _____[inaudible] options may range may reach from immediate repatriation or reburial upon removal from the group to detailed scientific study." The tribes from day one have gone on record that we oppose the continued scientific study of human remains or study or scientific analysis or any purpose. (King asked if he was looking at the Federal Register and what page? Yes, page _____, middle column in background material.)

Fowler: This is a policy that applies to all human remains, not simply Native American remains. In the 106 process the vast majority of remains that are encountered are Native American but there have been a number of situations in the east where the remains of African Americans, white colonists, and so on, have been encountered.

Kucate: It is significantly important that in consulting with any such agencies that tribes have to keep in mind in making sure that we're overlapping our cultural and spiritual linkages for something that's important in Indian country because being where we are in the now and certainty of the future with ongoing development and laws that consistently change, it's really important that tribes take consultations seriously and expect the same from any agencies, such as ACHP. Specifically for Zuni, we have quite a great deal of experience with sec 106 because that's something that we have to apply within our respective Pueblo. There's project developments as well as outside of our reservation where we're engaged in trying to have as much full participation and understanding of how these policies affect tribes. As stated, each tribe has different perspectives and points of views on how we view such policies. But nonetheless, laws change regularly and we are thankful that the 1988 policy is being amended to be much more significant as to how tribes take a look at where we are now as from the past. Not much was supported in years back where tribes were looked over when certain developments took place which really become a much more of a negative _____[inaudible]. We understand the policy statement will reflect the advancement of laws like NAGPRA and ARPA and the policy statement is not intended to displace NAGPRA or any other federal statutes and we wanted to go on record that that's the position that we're going to be coming from as to what we have in looking at in general for policy statement principles. I want to keep reiterating that looking into the future when I got involved with a lot of the historic preservation and cultural issues, it was very foreign to me. I'm not an expert in it. But nonetheless I want to learn as a tribal leader, truly make sure that we're very effective and it's a comprehensive effort for all the tribes to get together and really understand what it means and how does it apply to tribes. For the record, just kind of a general overview on where we stand on the policy statement principles, we recommend

adding language that urges federal agencies to avoid these as a matter of policy as well as practice. And this added language would encourage federal agencies to adopt the avoidance principle in the policies that govern their work, not just adhere to the principles as a matter of practice. And that everyone involved, including the federal government and the private companies in projects that require sec. 106 consultation, must treat human remains and funerary objects with respect. Recommend that the first sentence to be changed to the participants in the 106 process including federal agencies, federal contractors, and private companies doing business on federal lands shall treat all burial sites human remains and fun objects with dignity and respect. We feel that the Advisory Council can advise federal agencies to include this principle in permits, visas, licenses and other agreements they have with non-federal entities. And in looking at principle 5, we feel that that should be clarified to ensure that the consultation proscribed in this principle is done before human remains or funerary objects are disinterred. As written, we feel that this point is not emphasized. We recommend the following: When human remains or funerary objects must be disinterred they should be removed carefully, respectfully and according to procedures developed in consultation prior to disinterment. And then also, in conclusion, as a general observation, the Zuni tribe is encouraged by this statement regarding the tragedy of September 11, 2001 event because it places the issue in the context that is more easily understood and appreciated by mainstream Americans. For too long, the issues of disturbing ancestor burials and ensuring protection of funerary remains were seen as only Native American issues. To the extent more people especially federal decision makers appreciate the sensitivity of burial issues and can relate to the issues then more meaningful policies can be created and implemented. In general, that's our position as we speak but we will be submitting our official positions and statement prior to the deadline date.

Joe: The Navajo Nation through its Historic Preservation Department and under the authority of Title 19 of the Navajo Nation Code manages all Navajo historic and cultural resources. We have reviewed the draft policy statement of burial sites, human remains and funerary objects proposed by the ACHP. The Navajo Nation does not view the proposed policy statement as a useful step because it fails to provide substantial additional guidance for the treatment of burial sites, human remains and funerary objects not already covered by existing policies, regulations or legislations. The language of the draft policy is unclear and mostly unnecessary. For example, this policy is mindful of the values reflected in the guarantee of a burial for every person as expressed in the laws of every state. What is this guarantee of a burial supposedly reflected in state law? The Navajo Nation recommends the ACHP simply repeal its outdated policy and prepare a guidance statement that directs federal agencies to adhere to the procedures outlined in the NAGPRA. The 1992 amendments to the NHPA and associated regulations, as well as applicable state and tribal laws in all federal undertakings, even those impacting non-federally recognized tribes and other groups, existing federal legislations and the accompanying regulations contain enforceable mandates that ensure the appropriate implementation of these laws. Specific civil or criminal penalties necessary to ensure compliance are detailed therein. The ACHP policy should include specific proactive processes to follow in cases where NAGPRA does not apply. For example, non-Native remains or private property, as well as procedures to resolve problems arising as a result of conflicting interpretations on the part of consulting parties and federal agencies. Granted different descendant communities have different beliefs and practices associated with death. But to provide leadership and guidance the ACHP's draft policy statement must be more specific than simply talking about human rights and respectful treatment. The Navajo Nation's policy for the protection of ____ (gravesites, human remains and funerary items), for example clearly and specifically limits the scope of research allowed when human remains are encountered on our lands. Further, when non-Native remains are encountered on Navajo land, we enter into consultation with appropriate parties and follow their recommendations for treatment. The ACHP needs to be clear in its policy statement with regard to the results to consultation as the

Navajo Nation has been in ours. The Navajo Nation will be providing formal written comments prior to the deadline.

Break

Vernelda Grant asked to hear from Kraus about tribal concerns _____[inaudible].

Kraus: Overview of the Washington, DC, meeting on May 2, 2006, on the same topic. Format was similar in WDC. When it comes down to providing guidance to federal agencies, state governments or private landholders, it was deemed helpful if you could hold up policies that fit on one page. The discussion sections in the Federal Register were to provide more background on why each principle was developed. There were only two tribal representatives who attended the Washington, DC, meeting. There was some concern about the low attendance. On the other hand, there are no federally recognized tribes within the immediate Washington, DC, area. It was a small meeting, which allowed for in-depth discussion. Jay Vogt, who is the SHPO for South Dakota and also the president of the National Conference of SHPOs, was able to attend the meeting. She gave an overview of the general comments and then outlined some specific discussion on the actual principles and policies from her meeting notes. One of the first major discussion issues was that the policies and principles need to be clear on when NAGPRA applies and it should be definitive. There was concern by some of the tribal representatives – they want to know when does NAGPRA apply and do these principles make it clear when and how. There was a lot of discussion on the lack of tribal response and participation should not be seen as acceptance of these principles. Because tribes may not respond doesn't mean that they accept or deny the issue. They may refuse to participate on the grounds that it's not something that they approve of in any form or fashion. There was a question from the tribes on why was the task force working and talking with anyone other than tribal nations. As a side comment to Julie King as a task force member, we have to do a better job in making it clear why the Archaeology Task Force and the ACHP are working with tribal governments in the area of burial sites and human remains and why the Council is working and talking with tribal representatives in a format such as this. It needs to be clearer that these policies will be implemented whenever there are burial sites or human remains found. This point has been obscured by other NAGPRA discussion points. Another comment was that human remains seem to be the main object of attention but there are many, many funerary objects and yet people don't seem to be able to get them back through the repatriation process and they're not really discussed or made available for repatriation. The policies and principles that the council is seeking input on do include that in their title -- funerary object -- and the tribal representative comment was we really have trouble repatriating those. Another comment was that federal agencies need to do their homework before starting and engaging in tribal consultation. Because of the large number of tribal governments in the United States it's not just one policy for every tribal government. When a federal agency is beginning to start a new project, they should engage the tribal government(s) in a meaningful exchange explaining the project up front before any planning gets underway and that the federal agency should make the time and effort to understand which tribal government(s) they are about to be working with. There is a comment on the burden on tribes to keep up to date on technical terms for cultural resources, what is a TCP, an APE, NAGPRA, ARPA, etc. Specific comments on the principles that were heard in Washington, DC, per the Federal Register notice. There was an interest in the written records and notes that are generated in the event of an archaeological discovery and who has access to that information and what's the ultimate disposition of that information. For the tribes at the DC meeting, they were concerned about people having access to that information and there are specific times and reasons for cultural information and it shouldn't be considered that just because somebody was involved in an archaeological excavation that they are now able to dispose of that information or any record in any way that they determine

to be their right. It's not their right and the tribal representatives felt that they weren't being included in how the information – that was part of that excavation for example -- what was the ultimate disposition of that. If you read the comments on the ACHP website, the Register for Professional Archaeologists submitted a comment that they were outraged that a tribe had requested that any written information be re-interred with any human remains that were found. I don't know how often that happens but the RPA comment the tribe requested that human remains be re-interred and that the written records be re-interred with the remains. This discussion could have been included in principles 3, 4, 5, or 7 – the discussion on written records. Under principles 2, 3, 5, and 7, the question is, "What is meaningful consultation." Sometimes the draft principles says "consultation," sometimes it says "meaningful." And the concern was that either a federal agency has consulted with an affected tribal government(s) or it has not. There has to be some consistency. There was a concern about the correct and consistent terminology on whether it's "Native American," "Indian tribe," "federally recognized tribe," or "aboriginal occupant." Under principle 4 on page 13068 in the middle of the page, "the policy recognizes that Native Americans are descendants of aboriginal occupants of this country." The request was the word "the" be inserted so that the first sentence would at least read "the policy recognizes that Native Americans are the descendants of aboriginal occupants of this country." There was general concern that this principle be rewritten. Under principle 6 on the same page, the first sentence, "the federal agency is responsible for making decisions regarding the avoidance or treatment of burial sites, human remains, and funerary objects based on consultation and appropriate documentation." There was concern, what do the words "appropriate documentation" mean. There was discussion on reordering the principles. Under principle 6 in the discussion section, there was concern that there was so much detailed information that would be something that would be developed and included in official government-to-government consultation with an affected tribal government. As it's included in this document there seems to be some kind of prejudgment that this is how it would work rather in terms of the basic principle "do not disturb" has it been clear in the working and the writing of these principles that you do not disturb and if you do you enter into meaningful consultation and during that consultation you would be developing this type of detailed wording under principle 6 it seems to be a little premature and not appropriate for the actual principle of the ACHP. Another question in this discussion section, "that burial laws vary from state to state and the federal agency must identify and follow these laws when they apply." There was some concern that that language should also include tribal laws and codes. Finally, on principle 8 on page 13069, need for clarification on should and may be instructive when NAGPRA applies.

King explained the structure of the principles and related, printed discussion.

Question _____: Does ACHP have a policy on media coverage when it comes to reburial and treatment, and so forth? Do you go to the tribes?

King: It's a diverse answer that we referred to earlier and it's something that is decided in consultation. I suspect with most exhumations or dis-interments that most people would not want that. I don't think that ACHP can state that. I've also seen where families have been involved and that want people to know so you see it in the paper.

Fowler: I think that it's one of those things that should be identified in the more amplified guidance part that media coverage should be considered in consultation with descendant communities. By comparison, when we were involved with the African Burial Ground in New York City, which was a cemetery dating to the 18th Century of ___ [inaudible] and enslaved Africans. There was a great deal of media attention that the descendant community actually saw. It's a cultural issue that has to be dealt with on a case-by-case basis.

Kraus: I know that you posted the Federal Register notice, but you might want to go over the remaining tasks to be done to finalize these principles. For example, you have this meeting and a few other meetings, deadline, etc.

King: The current deadline, and we have changed deadlines before, is June 28, 2006. Anything that you have to say today or in the future until June 28th, we want to hear from you. Right now the task force is working on the guidance issues. We're taking a break and we hope to get together by the end of this month to work on the guidance issues, curation, consultation, that are not necessarily the purpose of this meeting but check on our webpage and talk with me later because I do want your involvement. But we're not actually developing policies in that process. After June 28th we'll take the input we got, which will consist of the recordings from these meetings, material that we hope to receive by mail or email, and then start to organize it to see where we are with this draft policy. How has it been received? How can it be made better? Where do we go from here? I'm not sure how long that process will take. We may re-engage Indian tribes again after looking at material. It's hard to say where we'll be after this. We will present the draft policy – a new revised draft policy – to the full membership of the ACHP for adoption. It is very optimistic to say by this fall. It's more likely to be next year.

Principle-by-principle discussion.

Question _____ [inaudible]: What is your definition of meaningful consultation?

King: If you look in the Federal Register notice, page 13069, you'll see how consultation is defined for the principles. We also suggest under principle 3 under discussion that.

Fordham: What the ACHP Native American program is working on now is a set of general consultation guidelines for agencies, which will be made available to anyone who wants them. It is something, particularly for tribal consultation, so that agencies have more accountability for making sure that they are going through the process to make sure that they are being sensitive to cultural concerns of different native nations and the ways in which they may want to approach consultation. It also outlines of consultation taken from our regulations. Right now that document is going through different interagency agencies to get their feedback. We anticipate that we will be able to make it public in a couple of months and will have it up on our website for everyone to access.

Discussion on tribal consultation. A unknown tribal representative stated that a power point presentation is not consultation. Is it a briefing? A meeting? There are so many definitions as to what consultation means. Fowler wanted to read the ACHP regulations and get it up on the screen so that define in a legal 106 sense what a consultation means. The Council has a definition that is general enough to cover a wide range of situations that they deal with in a 106 process.

Question _____: Is it a letter?

Fowler: In some cases in the 106 process, it may very well be a letter. Understand that 106 regulations apply to over 100,000 actions per year that range from reconstruction of World Trade Center site or the construction of a major interstate highway to a Corps of Engineers permit to a boat dock on the lake, etc. 106 regulations applied in all those cases so the legal term consultation has to embrace that full range. What we try and do with guidelines materials that we're working on with some agencies (Army, Federal Highway) to flesh those out so that we can say in this kind of situation consultation means such and so and here are some steps that you

should take. When you consult -- whether an Indian tribe or community group -- recognizing that when you're working with Indian tribe, federal agencies have not only a government responsibility but also the trust responsibility so there's a much higher standard. ... This is my 4th meeting in this series and I'll probably go to a couple more. One of the most consistent messages that we've gotten at these meetings is the need for setting the kind of standards and guidance to get agencies to seriously engage in consultation with tribes. This is not part of policy that's before you, but it is critical to making policy work. I think that's a message that we're taking back to the Council and raising the understanding and willingness of federal agencies to engage in meaningful consultation. – [Note: portions of the audiotape are inaudible] – updates from ABQ and AZ regions about their efforts to inform tribes about today's meeting.

King: Seems like we've had good discussion on principle 2.

Break for lunch.

Tribal caucus.

Meeting reconvened.

Kucate: Before we conclude with the final wrap up, there was a question on the floor on principle number 8. _____ had a question on that.

_____ : All I asked if someone would come up with a scenario or example that this would fall under, understanding that NAGPRA or ARPA would take affect.

King: The purpose of principle 8 was to recognize that NAGPRA doesn't apply to some situations on private lands and to encourage federal agency officials to look to NAGPRA as a possible model – the hierarchy that's specified – for final disposition of human remains. The other part to remember on the draft policies applies to all people.

Fowler: The only thing to add is that this policy applies to every situation that sec. 106 applies. Sec. 106 applies to all federal assisted and licensed actions whether they occur on federal and tribal lands or affect private property. And the situation where there was not a state law that governed how human remains that were encountered were disposed of. This would have no bearing on tribal lands or federal lands – that would be NAGPRA. Perhaps where there is a situation where there are non-native burials.

Kucate: Like to ask the same question to Al [Downer]. Do you have anything that you might provide us as an example or was there any discussion on principle 8 with the task force?

Downer: I think John and Julie pretty well summarized the discussion that we had. I guess I'm a lot less convinced than most of the other task force members that there are a lot of these sort of gaps that this policy statement will resolve. My personal feeling and from experience is that state law is not necessarily clear and it's certainly isn't necessarily to the benefit of tribes and Native Americans, in most cases. Nonetheless, there is a state law and if you're off federal or Indian lands, it's going to control. I find it very difficult to believe there is a single state in the union that doesn't have a law that covers how you treat human remains when they're encountered.

_____ : To further clarify my question and answer on principle 8 regarding non-Indian remains. It seems to be talking specifically about Native American remains.

King: If you read it, it's not "shall," it's "should." Looking to NAGPRA as a possible model for non-Native communities.

_____ : Someone in the group recommended changing the "should" to "shall."

_____ : A point of information for the federal agency so you know what we did. We went through in detail each of these principles and there were about five or six comments per principle and we left it at that. I want to be clear that you don't have the expectation that we came up with consensus of things to bring here. There were some questions that we had clarified for us during that session. Just to let you know that there were substantive recommendations that will come with the written comments but we did not as a group feel that that was our place to conference and to present them right now.

Fowler: One point to make on the "shall/should" conversation – we can't tell federal agencies that they have to follow what eventually comes out of this document. I was waiting to see how consultation and public comment process would unfold. As an attorney for the Council I have some problems with a policy statement saying that an agency shall because we can't say that. If this were a regulation, then we could say an agency shall. That this document that we will promote in the end as something agencies should follow as a matter of sound policy but all we can do is urge them to do it. We can't legally enforce it.

_____ : Like to get your opinion on -- we had a discussion on the issue of confidentiality – principle 6 – appropriate documentation. How is information to be stored, etc.?

King: Appropriate documentation would be decided through the process of consultation. If you go to principle 7, that is our inadvertent discovery principle and you should have plans in place. Ideally, you would be thinking of those issues before a discovery.

Fowler: This is a policy, and Sec. 305 of the NHPA authorizes withholding of information. That provision would continue to govern and wouldn't be altered by the policy.

Etter: In principle number 4, we had talked about "cognizant" – changing "cognizant" to "recognize."

Padilla: Change recognize that they "have expertise in." The basis of the change was the ambiguity that there's room to interpret this phrase as written to mean that federal agencies would want to know about this expertise and know more about what goes on in ceremonies, etc. Zuni may or will recommend that "be cognizant of" to be changed to "recognize that they have" to lessen ambiguity.

Etter: For principle number 7 it was brought up that the phrase "federal agencies shall after meaningful consultation develop plans" and the word "plans" was a little vague and to add wording, such as plans of action or action plans, might give it more meaning.

Padilla: On principle number 2, and the term "participants" – does ACHP and federal agencies interpret include consulting parties?

King: Everyone.

Fowler: That is correct. There are terms in the sec 106 regulations about consulting parties. The term “participants” is to be as inclusive as possible.

Etter: If 3 or more tribes claim human remains or funerary object, who determines who claims that? Is that a NAGPRA issue? Which policy applies?

King: If on tribal or federal land, NAGPRA applies. This policy wouldn't apply. If it was on private land and it was before the collection – if the collection comes into a museum or other institution that receives federal funds – then NAGPRA applies. But if it's on private property and NAGPRA doesn't apply, if the federal agency adopted the model in principle 8, then it would be expected the federal agency would look to the model.

Fowler: I could see that arising in a non-NAGPRA situation where, let's say you're dealing with a Federal Highway project and remains were encountered or anticipated and you had 2 or 3 tribes. In those circumstances, if NAGPRA doesn't apply, if there's no state law that governs that kind of situation, then it seems the federal agency will have to be the one to decide and who do they listen to. Which goes back to the fact that we're encouraging these decisions to be made in consultation with the tribes.

Gachupin(?): My point this morning was that tribes need to stay away from that. We don't need to get in that arena about arguing and let one tribe to take the lead.

King: Should that be in the policy and if yes, how would it be phrased? I would hope that through the consultation process that would emerge.

Gachupin(?): Through the consultation process if it becomes obvious those tribes should come together and delegate or designate one to take the lead and the other be respective of that.

Amadeo Shije: On principle number 5. Here in the State of New Mexico we have 19 Pueblos. Each has a different way to handle remains if they are disinterred. Isn't it best if there is a project and remains are uncovered, shouldn't they automatically be reburied as close to where they were unearthed rather than removing and storing them elsewhere? Ceremonies had been performed and there is no other ceremony once they've been buried.

King: You bring up a point on why we're putting the emphasis on consultation. In principle 5, if must be disinterred – should be discussed in consultation and to consider the views of the consulting parties.

_____ : Can you give me a clear understanding of what principle number 8 is saying?

King: Trying to provide the federal agency with some idea that there are frameworks out there that exist for Native American human remains under NAGPRA. And when NAGPRA doesn't apply. Most states do have laws. Some are very basic and older and predate 1988. The idea was to give the federal agency an opportunity to think about the process of what to do with human remains. Talking about human remains of all races and to cast a wider net. Intent to recognize that there are interests in human remains.

Fowler: What I'm not sure of is how many jurisdictions or situations could arise where neither NAGPRA nor state law would determine the issue of disposition of human remains. This provision was put in because we know there are some situations that are out there in that case

where there's no legal statement that says, here's what you do when you encounter human remains. We don't know how many cases that might cover. Maybe we need to find out. Is this a real rare occurrence or is this something that requires us to give it a little more thought because it's not a rare occurrence. It's come up in prior consultation meetings. This principle 8 may impact non-Native American more than Native American because the ways the laws have developed.

Fordham: Ken Carleton said that Alabama or Arkansas has either no law or their state law is really bad and when remains encountered on private land there is very little recourse in how the state repatriates them. Even if there was just once instance, we wanted to put it in there, even if it was a rare occurrence.

Shije(?): There are variables. In New Mexico there were Native Americans living elsewhere and Native people being moved to different areas. What about inadvertent discoveries through sec. 106 process? What happens to the remains or objects? How do you gauge lineal descendants? People moved around. Who is going to identify them?

Fowler: You raise a valid point and it's not exceedingly rare. How do you respect affiliation with the relocated tribe? There are situations where principle 8 applies – on Civil War Battlefields administered by National Park Service and this might give some guidance for a community that has a relationship to the person who has been disinterred. The goal is to try and encourage federal agencies to find and consult with that community that has the closest relationship to the remains that were discovered, recognizing that in many cases, that may be a guess but the best one can do in the circumstances.

_____ : Do you consult before or after the applicable regulation kicks in?

Fowler: The policy is to fit into the 106 process that has consultation prior to the action that is going to disturb the ground. [tape ran out]. The goal is to have those issues talked through in face-face consultation before decisions are made and that the systems get into place so if remains are discovered that there's a way to deal with them that is agreeable to the parties in the planning process.

End.