

**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 3, 2006
At: Portland, Oregon
Summarized by: Julia A. King

Participants: Julia A. King (ACHP member)
John Fowler (ACHP Executive Director)
Monique Fordham (ACHP Native American Program)
Kevin Cannell (THPO/Archaeologist, Nez Perce Tribe)
George Hill (Cultural/Heritage Coordinator, Spokane Tribe)
Justine James (Cultural Resources Specialist, Quinault Tribe)
Stephen Kelly (Attorney, Confederated Tribes of Grande Ronde)
Cheryle Kennedy (Chairwoman, Confederated Tribes of Grande Ronde)
Armand Minthorn (Confederated Tribes of the Umatilla)

Summary Comments:

Introductory remarks and a presentation of the meeting's purpose were made by Julie King and John Fowler, including a presentation on Section 106 and its applicability.

Preamble

- There was a question about the status of "policy," and the applicability of this policy during and beyond 106.
- There was a question asked about the Archaeology Task Force; including what are the terms of its members?
- A question was posed about a property that isn't eligible as a historic property?
- Mr. Minthorn asked why it has taken so long (since 1988) to develop a new policy?

Principle 1

- Chairwoman Kennedy asked, what does "absolutely necessary" mean? Can this be spelled out more – who decides? Whose voice would carry the most weight?
- Mr. Hill states he has the same question. What does absolutely necessary mean?
- Mr. Keller raises question of subjectivity. What does that mean? How is that decision made?

Principle 2

- No comments referred directly to Principle 2.

Principle 3

- Chairwoman Kennedy inquired about the rights (in consultation) of terminated tribes that are now restored. Ch. Kennedy noted that her tribe was once terminated; the difficulty emerges because other recognized tribes are not from the area but now had Federal status that allowed them to control the remains. How might that be addressed?
- Chairwoman Kennedy suggested injecting language to demonstrate to tribes that there were options and that Federal agencies considered them; to demonstrate those other options were genuinely considered.
- Chairwoman Kennedy provided an example of a burial site eroding and exposed; her tribe dealt with the Federal agency and state to protect the site, but it was being looted, and there was no real protection. The tribe sent letters, stating the agency was failing to perform its duties. They finally had to write to senator, which is a pretty drastic to do. She stated tribes need help with getting Federal agencies' attention.
- Chairwoman Kennedy described Federal agencies that deal with tribal issues. Federal agencies that deal with tribes still, for the most part, "don't have a clue." Tribal members represent one tribe, not all, but agencies don't always understand that. Individual tribes may disagree.
- Mr. Keller recommended to go further and express what the ACHP thinks consultation is. Tribe must participate as a partner in decision making. Spell it out.
- Mr. Minthorn referred to the continuing problem with Federal agencies re: consultation. Federal agencies don't know their consultation responsibilities. It would be most appreciated if ACHP can help. He expressed he is very frustrated that Federal agencies don't want to consult. Federal agency staffs change, while the cultural resources people in tribes usually have more staying power, and they end up with the institutional memory. Federal agencies need to have institutional memory. Mr. Minthorn noted that consultation is face to face and that it never ends (although he noted it might end on a project).
- Mr. Minthorn strongly suggested that ACHP adopt something, the sooner the better, because he and his tribe could use the policy like this. He also noted his tribe could use ACHP's help to consult with Federal agencies. Agencies are a big problem, not necessarily all of them, but some of them.

Principle 4

- Mr. Keller noted that Principle 4 states agencies should be 'cognizant' of tribes' expertise. He suggested to go a little further signaling that tribal people have expertise and should be taken into account, not just be aware ("cognizant").

Principle 5

- A question was raised about ceremonies. This places tribes in position where they don't now have ceremonies for removing ancestors; but Federal agencies are saying, 'invent a ceremony so we [the Federal agency] can remove the remains.'

- Mr. Keller expressed concern with subjectivity and statement “must be disinterred.” What does that mean? How is that decision made?

Principle 6

- No comments referred directly to Principle 6.

Principle 7

- Mr. Minthorn asked if the policy is arguing for having a plan in place for inadvertent discoveries? Mr. Minthorn noted that that would be a good thing. He discussed problems of consultation with inadvertent discoveries. He stated that having a plan in place would be helpful.
- Mr. Hill noted that his tribe has an inadvertent discovery plan but other tribes do not have one.

Principle 8

- Chairwoman Kenned does not understand what “legally prescribed” means in this principle.
- Mr. Keller: what do you mean by hierarchy? What are you getting at?

General Procedural Issues

- Mr. Keller asked if the ACHP has thought about outreach after the policy is finalized; to encourage agencies to adopt it?
- Mr. Minthorn noted that Federal agencies adopt policies on regular basis; why can't they adopt this policy when it is finalized? Mr. Minthorn asked how tribes were solicited for participation in the process?
- Some audience members asked about a timeline for completion and adoption.
- Mr. Minthorn asked if the policy would be ready for adoption by September?
- Mr. Minthorn expressed concern that the process is too long. He suggested the process sounds similar to the EIS process. Mr. Keller observed that it is a similar process. Mr. Minthorn noted that tribes have experience dealing with EIS. Maybe you shouldn't close comment period. You (TF) may need comments on comments. Agrees door needs to be left open. Tribes here have worked on human remains issues so long, we have some general agreement.

General Legal Issues

- No comments referred directly to General Legal Issues.

Miscellaneous

- A question was asked about the comments previously received on the Working Principles: what was general theme from tribes? King indicated one theme was that we were not clear about the policy's relationship to NAGPRA.
- It was stated Task Force was made up of all archaeologists. Why doesn't the policy then take a stand about whether scientific study is done; that's a concern. Tribes don't want study done. [N.B. I believe the comment was meant to say that, by not explicitly stating study should not be done, that study was implicitly promoted by the policy].
- Mr. Hill stated he believes the policy is heading in a good direction, but cautioned that some things can be read a different way than perhaps intended.
- Mr. Minthorn suggested that the ACHP learn more about and participate with the Affiliated Tribes of Northwest Indians, which he says counts 48 +/- member tribes. He noted the group is meeting in Spokane in May. This would present a good opportunity for the Council to begin relationship with tribes. He offered to help with pursuing that. He noted that NCAI would also be a useful organization to work with. Mr. Hill suggested working with Mr. Minthorn to get more involved with NCAI and to go through ATNI.
- Chairwoman Kennedy asked ACHP to come to ATNI in mid May.
- Mr. Minthorn also requested a NAAG member to attend.
- Mr. Minthorn asked about Native American representation on the full Council. Staff responded describing Mr. Jemison's role and the involvement of NATHPO and NAAG. Staff also noted that Mr. Jemison and NAAG members fully recognize they do not speak for all tribes.
- Mr. Minthorn expressed an interest in hearing a report from NAAG. He is not sure NAAG is benefiting those "on the ground."
- Mr. Hill inquired if NAAG members meet on a regular basis? After staff's reply, Mr. Hill asked if NAAG has its own budget or must tribes support?
- Mr. Hill asked, how would we contact NAAG? Staff asked if audience members knew Mr. Willie Jones? Staff also emphasized that NAAG members do not want to be perceived as representing "everyone." Mr. Hill stated he hopes to get some feedback. He would like to see communication. He further stated that he knows NAAG members are all good people.
- Chairwoman Kennedy expressed that she is pleased that the Task Force had tribal voices and that it is worthwhile to note that in the process the Task Force did look to tribes. She further noted that, now that the process has been going on for two years, her tribe was not represented earlier and therefore she and her members will take a more critical look at the draft policy.
- Chairwoman Kennedy also inquired after the Preserve America Summit.

- There was a question about why can't this policy address unassociated cultural human remains?
- Mr. Keller raised a question of confidentiality. Should there be a principle dealing with that issue? Seems core to issue. Are eight principles the limit?