

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"

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Participants:

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Comments:

1. Clarify that the policy applies only in the context of Section 106.
2. Clarify the intersection of NAGPRA and the policy in the policy itself.
3. Use "items and artifacts" rather than "objects." Use of the word "object" perpetuates the view of American Indians and American Indian burials as objects to be studied.
4. Use "American Indian" not "Native American."
5. Under Principle 1, what is "unless absolutely necessary?" What is this based on? Delete the phrase.
6. Principle 2: What is "meaningful consultation?" It needs to be defined. Agencies need to be reminded that they have a fiduciary responsibility to Indian tribes.
7. Principle 3: Define "early."
8. Principle 4: NAGPRA defines "Native American." Use NAGPRA language. Use "indigenous" rather than "aboriginal."
9. Principle 5:
 - Both the policy language and the discussion open the door for scientific study. Should replace "removed carefully, respectfully" with "spiritual handling."
 - ACHP should establish a protocol that consultation begins early in planning, contacting at least the nearest tribe(s) to the site and that consultation takes place with the duly appointed representative of a federally recognized tribe. This would eliminate much of the problem.
 - The last sentence in principle 5 is good.
10. Principle 6:
 - Needs to emphasize non-invasive technologies to identify sites.
 - Is there a way to leverage the tribal official and Federal official on the same level in decision making? Federal and tribal officials should make decisions jointly when such sites are being impacted; it should not be the agency's decision.
 - The problem begins with Federal agencies not making determinations that their actions are undertakings and, thus, not going through the Section 106 process. Many sites are then discovered inadvertently or are

simply destroyed. Agencies should be reminded that they have a trust responsibility to contact the affiliated tribes when determining if the action is an undertaking. Lack of consultation at this stage is resulting in destruction of sites.

11. Principle 7:

- This principle needs to be clearer.
- Define “meaningful consultation. Is it a dialogue, discussion, consideration, consensus to arrive at an outcome? Look at how consultation was defined in the Muckleshoot decision, as a minimum level of effort.
- Land that contains burials should be transferred to the tribe.
- Define “treatment,” tie it down. Treatment for Native remains is different than treatment for non-Native remains.

12. Principle 8:

- The hierarchy does not make sense; very awkward. If the remains are not Native, this principle does not apply. Set up a procedure for the beginning of the process to determine who needs to be a consulting party. There can't be American Indians in the same process as everyone else.

13. The policy needs to acknowledge that Indian tribes are not like others. They have legal rights and a position that others just do not have.