

Meeting Regarding the ACHP's Draft Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects

Hotel Washington

Washington, DC

May 2, 2006

9 am to 3:45 pm

ACHP Representatives:

Julie King, Chair, Archeology Task Force (ATF) (JK)

Jay Vogt, ATF member (JV)

Valerie Hauser, ACHP staff (VH)

Bambi Kraus, ATF member (BK)

Sherry Hutt, ATF member (SH)

Commenters:

Tobias Vanderhoop, Chairman. Cultural and Historic Commission, Wampanoag Tribe of Gay Head Aquinnah (TV)

Cheryl Andrews-Maltais, THPO, Wampanoag Tribe of Gay Head Aquinnah (CAM)

Edith Andrews, Repatriation Officer, Wampanoag Tribe of Gay Head Aquinnah (EA)

Bettina Washington, Cultural Resource Monitor, Wampanoag Tribe of Gay Head Aquinnah (BW)

Sheree Bonaparte, Tribal Historic Preservation Officer, St. Regis Tribal Council (SB)

About these notes:

Where the thread of comment was lost, it is indicated by a series of dots. Where I was able to insert a clarification from the context of the comment, it is indicated by parentheses. This is not an accurate record of all that was said. I captured as much as possible and tried to record it verbatim but because the notes were taken in long-hand, I lost large parts of the comments.

Speakers are indicated by their initials.

The meeting:

The meeting began with opening remarks and a presentation by Julie King on the development of this draft policy statement. Before the presentation was finished, some discussion began.

CAM: Asked for clarity on the intersection of NAGPRA and state law and what JK meant about comment on this in the presentation.

The group then discussed NAGPRA's applicability and where the policy applies.

EA: Stated that whether or not there is a burial law, it [burials] should be respected regardless of ethnicity. There should be some kind of law that says that. Indians were here long before others came. Asked JK about her work [as an archeologist] and if she encountered Native human remains.

JK: Responded that she has not encountered human remains in her work.

CAM: There needs to be something that says that for any undertaking, NAGPRA applies. It should not be left up to interpretation that Federal law and respect for burial law applies. In MA, there is a burial law which predates NAGPRA and circumvents the tribes. We are not aware of what is going on because state agencies aren't notifying us before they excavate. They apologize after. There is too much latitude. The policy needs to clarify that Federal law does apply. Mentioned permitted actions and the problems with them.

JK: Invited input to augment the policy and resumed the presentation.

CAM: Asked for a heads-up when ACHP is going to consider the policy for action [when the policy will be put before the membership for consideration]. While it impacts all, it has a preponderance of impacts to Native Americans.

BK: Stated that the ATF members should also make comments.

JV: Made very brief remarks including his experiences in working with Indian tribes.

EA: There is a difference between Indians on the East coast and Indians on the West coast. East coast peoples had very early contact, had to conform, have had to live side-by-side, keep their traditions and add other traditions. East coast peoples have had many more impacts to their lands. Their places have been paved over. We're still here. Whereas, out west, you can still find those sites. Everyone always thinks of Indians as being from out west..... {missed much of what was said}

We want to make sure the Federal government is not going to dig up more of our ancestors.

CAM: Significantly more impacts in the east....felt more because of the long-term encroachments...Last ditch efforts to keep sites intact.

The policy is a huge undertaking...maybe components should be segmented. My problem is my people, not other people. I don't want the effort to protect my people overshadowed by this larger effort....maybe separate out Indian peoples....start broad [in the policy] but then focus on Indian peoples...real concerned because the challenges are so big. Tribes have a very specific mission whereas others, like SHPOs, have very big missions. Fiduciary responsibilities seem to be getting watered down.

Time means more is being lost. If the policy effort takes too long, much more will be lost.

BK: offered some background on how the ATF dealt with NAGPRA and discussed the views of specific ATF members.

CAM: One tribal representative does not speak for other tribes. USET selected two people to work on the policy but I have not received anything on the policy.

JK: will check on that.

CAM: It is a financial burden to get to the meeting...part of the problem with consultation as a whole...need to set something up to help tribes get to the meetings. As a result, we are missing perspectives. You can't use these meetings to say you got representative tribal comments. 2 tribes out of 24 tribes in USET is not a good showing.

BK: NATHPO doesn't consider these government-to-government meetings....ACHP didn't pay for travel. Some discussion ensued.

JK: Added more information about other work of the ATF.

SH: Offered some background on the ATF and policy.

CAM: Lack of participation or comment does not imply acceptance. It is generally the opposite. Whenever you don't see tribal governments, it generally means they don't like it. It takes individual calls

and letters to draw them out. Government must draw tribes out. Could be that tribes do not have funds to travel or do not feel the meeting is government-to-government consultation. You come to tribes. Eastern tribes only got one shot at meeting in DC. The meetings are a good start. ACHP should only be meeting with tribal nations and with individual tribes because each is very different. It has to be acknowledged and respected.

JK: Mentioned other things the ATF is doing.

TV: The Wampanoag Tribe does care about its government-to-government relationship, policy development and implementation. While it was a hardship to send a delegation, the Wampanoag Tribe will participate. Where there is an opportunity to facilitate tribal participation in the east, please do that. Tribes in the east do care about NAGPRA. The Wampanoag Tribe does care about this policy development.

EA: These are our people, our ancestors. They show that we were here....we do whatever we can to [preserve??] them.

In the Federal Register it includes the Hawaiian group. The Task Force had a Native Hawaiian so his voice was heard but who was there representing the tribal voice. We're not there when it counts, when the last word is written....Something is lost in the interpretation...no ambiguous language...There should be more American Indian participation in writing the words. When policy is being made, make it with the Indians then, possibly, it may be correct.

As a repatriation [officer] I never saw funerary objects returned. Those the things people do not return. Yes, we want human remains but we also want the objects....

It should be one law so there is no confusion in interpretation.

BK: Asked SH for clarification on NAGPRA on state land.

SH: Explained the applicability of different sections of NAGPRA.

CAM: It takes time to go through these processes. Some things are only discussed at certain times....

The Wampanoag Tribe does not like ambiguity. Take into consideration that certain things have great meaning for tribes but may not have meaning for others. The perspective of each tribe is different. Talk to each tribe, find commonalities, then go forward [start drafting]. But this process [of consultation] is not one day, it is long term....Our actions on something like this have major implications. There is no room for mistakes...Too important to have a short process to work on this...We need to look at it from many perspectives, talk about it among all our people [in the Wampanoag Tribe].

SB: The main thing to come here for..there are aspects of the principles....much time has gone into this [the policy statement]. The policy doesn't state what happens to the records....important under Section 106, NAGPRA and NEPA. NAGPRA doesn't talk about repatriating the records, just giving us summaries. The feeling is that the intellectual property belongs to the archeologist. But for my people, the very act of digging is a criminal violation..the records are the property of the tribe. The records come from a criminal act. Nations need to have a say in who has access to the records. The nations can't get copies of records, even. The ideal is that each nation would have it's own archives, and have control of them. Of, if the nation can't hold them, keep them in a repository close by so our people can study them, have access....talked about co-custody or repatriated records...

You keep throwing terms at Indian tribes so now I am throwing back a word: Area of Potential Effect...There is also an intellectual area of potential effect...when someone is studying these records [there is an impact]...like the human genome project...Native peoples should have some say in who gets to study the old records. Field records are also not shared with tribes...gave example...Whether it goes in the policy or NAGPRA, Native peoples should have a say in the disposition of the records...It needs to be stated simply and clearly.

Once these kinds of crimes have occurred to our people, we need control of the records...it could fit in principles 3, 4, 5, or 7...Co-custody or co-ownership or repatriation ...Control the kind of research that happens from the records.

Talked about a state museum example regarding associated funerary objects to be repatriated...so moving...one young man said that to look at them it so commit the same crime as those who dug them up. ...[taking] pictures of these things is to steal from them.

A tribal attorney reviewed ARPA...all artifacts, samples, collections and notes must be turned over. On tribal lands, the nation has the first option on objects but not records. The records must be archived [under ARPA].

JK: Responded-principle 5 might be the place to pull this concept out.

BK: mentioned RPA's comments on the first principles-about repatriating or reburying the records.

CAM:didn't need to dig it up in the first place. We know it is there and why and we do not want it dug up. It is supposed to be a final resting place...Trying to accommodate what needs to happen but at what price? It is all linked to a crime [the records]. We view them from a different perspective.

SH: Added a comment: Sheree just brought up the biggest issue coming down the pike, access and control of records, as we go through the next decade...NAGPRA office uses the term "intangible" rather than "intellectual property."

EA: MA institutions allowed access in the beginning, when we {Wampanoag Tribe} did repatriation, some of our people, we removed the numbers off of our people...we had a different experience...depending on what state you're in and what university you are dealing with. We did get copies of the records.

SB: With New York State Museum, they were very cooperative...talked before and agreed to turn over the records but when the repatriation actually happened, they only turned over the remains, not the records.....Wouldn't even restrict access to the records...without a policy that says they can restrict access or Native peoples have a say in the disposition of the records.....

CAM: If its in the rules and authorities, it arms them to make it happen. Then the tribes determine who sees/knows the information and can protect sensitive information...having that information helps the tribe know where things are and how they should be treated...looting...because they [looters] can get the information...Unless these things are worked into the language, we can't protect them.

What is the ACHP's definition of "meaningful consultation?"

JK: Responds with definition of consultation in the regulations.

SB: It is interesting that ACHP representatives and tribal representatives are not agreeing on consultation.

TV: Wants to know what the term in the policy means.

JK asks VH to clarify and VH provides some information on the ACHP's overall plan in response to EO 13175.

TV: What do the words "meaningful consultation" in the policy mean?

JK: talked about what it means to her...attempting to address the fact that consultation is not taking place [in many instances] on issues other than human remains, has heard of many cases where consultation is not taking place...it has a direct impact on this policy and this issue.

SH: We are in a discussion about consultation, not on the policy. It may be unrealistic to be able to discuss the policy in the first round.

JK: Individual contacts, phone calls, may be the route we take.

EA: Will ACHP go to USET?Some discussion about who, if anyone from ACHP will be there, Chairman met with Culture and Heritage Committee...Always different people from agencies. More people from ACHP need to go to USET than Valerie to understand their issues. She is always there and knows our issues....need consistency in staff.

BK: Talked about establishing a good process then it doesn't matter who the individual is.

SB: [Made 2 points]: 1) Consultation is not just an exchange of information, it is an understanding of ideas. ..it takes time to develop that...it is about understanding, you don't have to agree.
2) All the people aren't here....maybe it can be shown that non-compliance is reflected...NYPA cases...We need something in the policy about why Indian tribes are not in the consultation and what it might mean because it's a statement itself.

CAM: That is part of the process to understand the way Native peoples think. Define "meaningful consultation." It is a process. This is not consultation, it is the building block. It's not government-to-government because it has to be the President and the Chairman of the tribe. Consultation is with the entire Council [all the decision makers] and the tribal government. That is what consultation is to the Wampanoag Tribe. Otherwise, it's dialogue and you go to the tribe to deal with the leaders.

The word and how it's defined is very important...and has been used against us...work in definitions....consultation is the beginning of establishing a rapport and relationship....Each agency should have its own leadership understand what the tribes want then it trickles down....

DoD training was excellent...took place in NE...the DoD attorney told them that you have to assist the tribes.... Indian people came in [to the training] to talk about how to consult with Indian tribes.....

Each tribe has its own cultural protocols, traditions and practices....agencies want to know where they can get all this information.....Agencies need to go one-on-one with the tribes. There is no shortcut....can pull together guidelines as a start...It needs to be noted when tribes are not in agreement.

JK: ...The principles refer to NATHPO's Best Practices Report...

BK: Explained what the report addresses, then explains what the policy says and how it was discussed by the TF.

SB: Is it possible to have a term like “dissenting” when a tribe disagrees....but include them in dispute resolution....gave example when tribes do not want to sign but do have to participate to take care of their ancestors...

VH: Clarified that this can be done in Section 106 agreements.

CAM:template language with definitions...problems in interpretation of language....Need to be part of it but compromising the protection of the ancestors...

SB: Agencies say it the way they want it, not the way tribes want to say it....

SH:Signing against your will=under duress. Signing under a certain understanding so you're not....the Federal agencies makes the decision in the end but what information did you have in making the decision?

CAM: Each one of these is a potential legal battle....Have it in black and white...the record is clear....lack of financial resources means that tribes can't challenge these decisions.

SB: ...land claims in NY....laches...so sometimes it's not having the time.....we are forces over and over to play their game.....

SH: “Inadvertent” can you avoid this by following the policy....planned excavation vs. inadvertent discovery...

EA: Planned excavation has been in MA before NAGPRA.

SH: A plan is always better than inadvertent [discovery].

JK: Asked how many THPOs there are and if a minority of tribes have THPOs, are the other tribes served by this policy? Will the policy work to do away with inadvertent discoveries?

CAM: As a THPO, we assumed the SHPO duties on tribal lands....Federal government has responsibilities to contact the [tribal] government and THPO. Another tribe may have the same kind of function, without the recognition...

BK:....misconception about tribe's interest in THPO program. Clarified....

EA: A lot of tribes in OK came from the east and come east to reaffirm their connections.

SB:Inadvertent finds....we'll always have them even with planning... Before reservations, there were single burials, burials not in cemeteries....So, we have to have something in place.

CAM:having to send out the 500+ tribes....reach out and find out who the government leader and cultural person is. Then, at least there will be some sort of dialogue even if the comment is not formal....the letter of notification gets pushed aside because of no time....No win choices and it takes time to deliberate on the impacts of the decision.....part of the consultation protocols...individual contact and create familiarity with each tribe.

BK: Principle 8...where would this apply? Discussion followed with Sherry explaining where NAGPRA applies....where there is no state law....discussed term, “consulting parties by right....”

CAM: Government-to-government consultation but now with an individual...the individual has to document their connection.

EA: ...harder to prove lineal descent than it is to prove a tribe...

BK: Discussion section under principle 8 is confusing....

CAM: ...expansion of Greenfield airport...disconnect in the chain of title and there are burials out there but the Narragansett Indian Tribe is the only consulting party, not the lineal descendants... What documentation is acceptable to prove lineal descendancy?

These are the kinds of issues that will keep coming up...oral traditions... How do you deal with the nuances in the Northeast that are different than elsewhere? ...non-recognized tribes...

BK:...aboriginal homeland issues are also big in Alaska...

EA: Treaty language is not honored...[treaty] language was viewed as poetry so treaties were abrogated. Use lawyer's terms so the rug can't be pulled out from under.....State it..."NAGPRA-like" is ambiguous....

BK: First sentences in principle 4...

BW: Why isn't principle 3, principle 1?

JK: Explained ATF reason-to say up front that there should be avoidance, then dignity and respect if there has to be removal...Consultation is a theme throughout the policy.....Mentioned African Burial Ground...

EA: Talked about how the differences in how African-Americans are heard and how American Indians are heard....There are laws about cemeteries...Wampanoag Tribe, when it wrote up its resolution, used "burial sites." Let people know you know the difference....Words change over the years....

BK and JK talked about the process of developing the policy...inclusion of the term "burial sites" and taking out "grave goods"....

SB: Principle 4...name our people in 3 different ways.....

CAM: Language should be consistent with Self-Determination Act.....How we want to name ourselves...For me, Native American is offensive....

EA: Native American phases us out of the picture in 50-60 years because everyone will be Native American....Aboriginal people, then the tribe's name....American Indian is preferable...

CAM:...go back to the definitions....

BK: Principle 4 should be rewritten....

JK: I will take it back to the ATF..

CAM: Principle 3, should this come before principle 1? ...Feds claim ignorance...The first order of business is to consult...Players keep changing so we have to keep educating them...Put principle 3 first....

JK: We wanted to put avoidance first. ...one page policy...

EA: Text is used to dispute the policy...use it to look for loopholes...Unless it affects you directly, you think it's okay. But no one has asked us if we like it.

CAM: A lot of the issue is that the policy is for all peoples, not just tribes...may require a separate section on tribes. It's totally different dealing with tribe and their ancestors...differences for other people's...General language doesn't adequately address tribal issues...We are trying to protect ours and it doesn't dovetail.

JK: You read them in a linear way but the order of the principles doesn't imply that one is more important than another.....ACHP has to be concerned about all burials.

CAM:...but tribes are other than and separate from other peoples...we go way back...have a separate and distinct standing...Government has a distinct responsibility to tribes...

BK: One of the very first things I kept asking was "what is archeology" because we view it differently....

CAM: Be specific about terminology.

JK: Discussed further....

Lunch Break

CAM:...multiple opportunities to consult...

JK: This document is a draft, we have extended the deadlines before...

CAM: This is the first round of dialogue...

SB: Principle 4...from most of the Mohawk traditional point of view "aboriginal" is not acceptable....use "indigenous"....Use "nations" rather than "tribe"....Our people prefer "nation." Nation includes all the communities, not just the political entity of the tribe.

EA: "Indigenous peoples" is a very good term...use "Indian nation"...Wampanoag Nation includes all the Wampanoag, not just the tribe...address Indian nations as you would address a European nation.

CAM:...diminishes sovereignty to use "tribe"

SB: The policy doesn't mention culturally unaffiliated...Our people see ourselves as custodians, regardless of who the ancestors are...Inherited the responsibility to ensure everyone stays buried within our ancestral territories.... These isn't anyone culturally unaffiliated because of this responsibility.

EA:...King Philip's War...all the east coast people came together...Our people were all over and we are the custodians...

CAM: If they are native people, we don't draw lines. We have a responsibility to take care of them. For the most part, as long as an Indian nation is taking care of it, it's okay.....All Native remains are recognized by the tribal nations and belong to the nations in that region....Allows for all of us to step up and take care of them.

SB: RPA is saying that nations asking for the records is excessive. But nations believe that any excavation of a burial is a desecration but archeologists don't think that. They say they will compromise and give back the remains and objects but keep the records. But the records are part of the burial.

CAM: For every one letter written, there are others that fell that way [referring to RPA's letter and archeologists]. It's a practice...We still have that fight.

SB: There were Haudenosaunee people killed in battle in Canada..... Our people allowed them to be reburied there...It's not a territorial thing, it is a spiritual thing.

EA: ...King Philip's War...all those people that fell in battle will be reinterred where they fell...Oren Lyons....Wherever people rested, that's where they should stay....Final resting place.

CAM: Final resting place was supposed to be forever...Not trying to bring ancestors home...Need a separate process for dealing with Native peoples.

SB: Our policy is to reinter as close as possible to the original burial site....Paul Waterman developed good relations with the townspeople...so they would keep ancestors in place.

CAM: This is just a beginning....Continuity, consistency...needs definition when it breaks off into indigenous issues.

JK: Closing remarks and encouraged written comments and as often as possible.

SB: Where is the dialogue between Native people and archeologists happening?....The sacred things in the record...the protection of that is for everyone's good.

EA: We still get restraint even when everyone wants to help. We have asked for places to be avoided but it never happens for indigenous peoples. It happens for other people's ancestors...With the Revolutionary War, there are people that fought that got land but what are they giving to American Indians [that fought]? Wampanoag were fighting for their land but given nothing...Taking Wampanoag land to give to other people...The American Indian is always giving. It's about time that they recognized that we deserve something. At least be reasonable...We are not asking for it all back.

I hope the wording will be on our side so we get a fair shake.

CAM: What did the TF mean in principle 6-"appropriate documentation?"

JK: Responded.

CAM: Sounds like data recovery...in most cases, we don't want it studied, excavated...sounds like it is allowing it...

SB: There is no mention of oral tradition.

CAM: ...I was thinking we would go line-by-line....No Algonquin representation in the TF. Seems a preponderance of an archeological perspective...."Unless absolutely necessary"...Need clearer language.

JK: Explained that there has to be a determination of eligibility to know if Section 106 applies and that the policy applies.

EA: What we need is fewer areas where we can say "but." We want "this shall not be done." Don't need "should" and "may."

BW: The problem is that it can't be done by law...it is the way of the elder...

SB:...a nation has the right to exist...have it's own law...When you enter consultation, you are accepting their laws...If it was really government-to-government, it would be negotiation, not consultation. If you don't have a law, then their law applies.

EA: Just do what you say you're going to do....We had to prove we are a government....

BK: Should tribal property rights be added in principle 6?

CAM: wants a list of tribes that come to each meeting.

Meeting concludes 3:45 pm.

Valerie Hauser