

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**POLICY STATEMENT**  
**REGARDING BURIAL SITES, HUMAN REMAINS AND FUNERARY OBJECTS**

*Disturbing or disinterring human remains, when not requested by descendants or affiliated Indian Tribes or Native Hawaiians, should not be pursued unless there are no other alternatives. Where disturbing or disinterring must occur, the ACHP strongly encourages any federal agency affiliated with such actions to do so in full consultation and guided by the principles outlined in this policy statement.*

**Commented [IM1]:** I would like this to open with a clear position from membership similar to this - please provide feedback on that idea and a possible message.

**Preamble:** This policy statement offers leadership in how to properly plan for and consider burial sites, human remains, and funerary objects in federal decision making. The policy statement is not bound by geography, ethnicity, political status, or a system of belief and recognizes that the respectful consideration for burial sites, human remains, and funerary objects is a human rights concern shared by all.

The care for and consideration of human remains, funerary objects, and burial sites is of significant social and moral consequence in the United States. However, due to historical oppression, the human remains, funerary objects, and burial sites of certain groups of people, including but not limited to enslaved Africans and their descendants, Indian Tribes and Native Hawaiians, and other Indigenous Peoples,<sup>1</sup> were more likely to be unmarked, disallowed burial in established cemeteries, and placed in mass graves, and thus more likely to be impacted by development projects. As such, this policy statement emphasizes the need for additional consultation and coordination with underrepresented communities.

Section 106 requires agencies to seek agreement with consulting parties on measures to avoid, minimize, or mitigate adverse effects to historic properties. Accordingly, and consistent with Section 106, this policy does not recommend a specific outcome from the consultation process. Rather, it focuses on issues and perspectives that federal agencies should consider in the course of their decision making. In many cases, federal agencies will be bound by other applicable federal, Tribal, state, or local laws that do prescribe a specific outcome, such as the Native American Graves Protection and Repatriation Act (NAGPRA). The federal agency must identify and follow applicable laws and implement any prescribed outcomes.

For undertakings on federal and Tribal land that encounter Native American or Native Hawaiian human remains and funerary objects, NAGPRA applies. NHPA and NAGPRA are separate and distinct laws, with separate and distinct implementing regulations and categories of parties that must be consulted.<sup>2</sup> Compliance with one of these laws does not mean or equal compliance with the other. Implementation of this policy and its principles does not, in any way, change, modify, detract or add to NAGPRA or other applicable laws.

**Authority:** The ACHP, an independent federal agency established by the NHPA, has among its statutory authorities the duty to issue the regulations implementing Section 106 of the NHPA in its entirety (which includes the role of Indian Tribes, THPOs and Native Hawaiian organizations in that process), advise the President and Congress regarding historic preservation matters, educate, and recommend to federal

**Commented [IM2]:** New section

<sup>1</sup> The term "Indigenous Peoples" is used to identify all people, and their descendants, who occupied the United States or its territories prior to colonization.

<sup>2</sup> The ACHP's publication Consulting with Indian Tribes in the Section 106 Process and the National Association of Tribal Historic Preservation Officers' publication *Tribal Consultation: Best Practices in Historic Preservation* provide additional guidance on this matter.

agencies methods to improve the effectiveness, coordination, and consistency of their policies and programs with the national historic preservation program.<sup>3</sup>

This policy also recognizes the unique legal and political relationship between the federal government and federally recognized Indian Tribes as set forth in the Constitution of the United States, treaties, statutes, and court decisions, and acknowledges the federal Indian trust responsibility is a legal obligation under which the United States “has charged itself with moral obligations of the highest responsibility and trust” toward Indian Tribes.<sup>4</sup>

The ACHP's trust responsibility is to ensure that its regulations implement the requirements of Section 106 of the National Historic Preservation Act and that such regulations incorporate the procedural requirement that federal agencies consult with Indian Tribes that attach religious and cultural significance to historic properties that may be affected by their undertakings.<sup>5</sup> The ACHP views this trust responsibility as encompassing all aspects of historic resources including intangible values and includes duties to protect Tribal lands and cultural and natural resources for the benefit of Tribes and individual Tribal members.<sup>6</sup> As part of that trust responsibility, the ACHP offers this policy statement to further inform how the consultation process should consider human remains, burial sites, and funerary objects.

The ACHP shall be guided by principles of respect for the trust relationship between the federal government and federally recognized Indian Tribes. The ACHP will ensure that its actions, in carrying out its responsibilities under the NHPA, are consistent with the protection of Tribal rights reserved in treaties and those arising from statutes and executive orders.

**Principles:** When burial sites, human remains, or funerary objects will be or are likely to be encountered the following principles should be adhered to:

**Principle 1:** Participants in the Section 106 process should treat all burial sites, human remains and funerary objects with dignity and respect, physically and verbally, including during consultation, field surveys, handling, and other treatment actions, when documenting and/or reporting, and all other forms of interaction.

**Commented [IM3]:** Intent - Respect

**Principle 2:** Only through consultation, which includes a concerted effort to reach a consensus through the early and meaningful exchange of information, can a federal agency make an informed decision about the treatment of burial sites, human remains, and funerary objects. **[Principle 7:]** Through consultation, federal agencies should identify mechanisms, including consultation and treatment plans, agreement document stipulations, and other methods of documentation that will proactively identify how burial sites, human remains, and funerary objects will be identified, documented, evaluated, and considered in decision making.

**Commented [IM4]:** Combined principles #2 & #7. This creates a statement and an action.

Intent - Consultation and coordination

**Principle XX:** The identification, evaluation, assessment, and resolution of potential adverse effects to burial sites, funerary objects, and/or human remains is best informed by the Indigenous Knowledge and expertise of those Indian Tribes or NHOs that identify as associated. The Indigenous Knowledge held by an Indian Tribe, NHO, and other Indigenous Peoples is valid and self-supporting and does not require verification through western forms of knowledge.

**Commented [IM5]:** Intent - Indigenous Knowledge

<sup>3</sup> 54 U.S.C. §§ 304102 and 304108

<sup>4</sup> *Seminole Nation v. United States*, 1942

<sup>5</sup> [The Advisory Council on Historic Preservation's Statement On Its Trust Responsibility](#)

<sup>6</sup> [Policy Statement Regarding the ACHP's Relationships with Indian Tribes](#)

**Principle 4:** Disturbing or disinterring burial sites, human remains and funerary objects, when not requested by descendants or affiliated Indian Tribes or NHOs, should not be pursued unless there are no other alternatives, and only after the federal agency has consulted and fully considered avoidance of impact and whether it is feasible to preserve them in place.

**Commented [IM6]:** Intent - Disturbance is a last resort

**Principle XX:** Consultation should be conducted in a manner that provides deference to the requests of descendants, affiliated Indian Tribes or NHOs, or other legally associated individuals or groups. Where known, the cultural practices of the affiliated group or family should be followed if human remains, burial sites, or funerary objects may be encountered, are inadvertently identified or impacted, or must be disinterred.

**Commented [IM7]:** Intent - Respect for cultural practices

**Principle XX:** The Federal Indian boarding school system directly targeted American Indian, Alaska Native, and Native Hawaiian children in the pursuit of a policy of cultural assimilation that coincided with territorial dispossession.<sup>7</sup> The historic preservation community should seek to implement the recommendations identified in the Department of Interior's Federal Indian Boarding School report<sup>8</sup> by supporting community-driven identification, documentation, interpretation, protection, preservation, reclamation, and co-management of burial sites, human remains, and funerary objects across that system, including marked and unmarked burial areas, and supporting repatriation where appropriate.

**Commented [IM8]:** Intent - Federal Indian Boarding School initiative

**Principle XX:** Burial sites, human remains, and funerary objects are frequently important in and of their own right and may have several possible areas of significance including religious and cultural significance; the integrity of human remains, funerary objects, and burial sites is best informed by those that ascribe significance to them.

**Commented [IM9]:** Intent - Importance of burial sites and human remains and their ongoing significance

**Principle XX:** Histories of colonization and assimilation faced by Indian Tribes and legacies of slavery and oppression faced by African Americans have led to an uneven awareness of where and when practitioners are likely to encounter human remains, burial sites, and funerary objects, and why, and the historic preservation community has a role in expanding public education around this topic in Tribal, Native Hawaiian, federal, state, and local contexts.

**Commented [IM10]:** Intent - Education

**Principle XX:** Burial sites and cemeteries directly associated with histories of colonization and assimilation experienced by Indian Tribes, Native Hawaiians, and the African American community have increased potential to be National Register eligible because they are associated with events that made a significant contribution to the broad patterns of local, regional, and national history. The continued presence of human remains should not be essential to the integrity of that site or its relevance to a broad theme in history.

**Commented [IM11]:** Intent - Eligibility and Integrity

**Principle XX:** Burial sites, funerary objects, and human remains are frequently associated with cultural practices, Indigenous Knowledge, and other forms culturally sensitive actions and/or information unique to a people. Maximum effort should be taken to limit disclosure of confidential or sensitive information through all available mechanisms including but not limited to the proper handling and labeling of records, limiting documentation to necessary information, and through application of existing law.

**Commented [IM12]:** Intent - Confidentiality/Sensitive information

<sup>7</sup> Office of the Assistant Secretary of Indian Affairs, U.S. Department of the Interior, 2022. *Federal Indian Boarding School Initiative Investigative Report*. Volume 1. [online] p.5. Available at: <[https://www.bia.gov/sites/default/files/dup/inline-files/bsi\\_investigative\\_report\\_may\\_2022\\_508.pdf](https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf)>

<sup>8</sup>Ibid.

**Principle XX:** Indian Tribes, Native Hawaiian organizations, and descendant African Americans have the right to pursue the repatriation and reburial of human remains and funerary objects, and federal agencies should seek to enable this process through fair, transparent, and effective mechanisms developed in conjunction with the people concerned.

**Commented [IM13]:** Intent - UN DRIP/repatriation

**Principle XX:** The ACHP recognizes that climate change can impact the sacred sites, cemeteries, and burial areas significant to Indian Tribes and NHOs. To the extent feasible, federal agency climate change plans should support the advanced identification and protection of these locations.

**Commented [IM14]:** Intent - Climate Change

**Discussion:**

*Discussion section intentionally removed.  
Will be updated following member review of proposed policy principles.*

**Commented [IM15]:** This "Discussion" section has not been edited to reflect the proposed policy principles above.

"Discussion" section has been removed until draft policy principles have been reviewed and commented on.

**Implementation of the Policy:** Implementation of the policy is the responsibility of the ACHP's leadership and staff; however, the ACHP recognizes that the appropriate expertise and experience may reside in other parties. Accordingly, the ACHP commits to advancing consideration of burials, human remains, and funerary objects in the Section 106 process with our preservation partners through the following:

**Commented [IM16]:** New section

- A. ACHP staff and leadership will seek out opportunities to incorporate these principles into training resources, during presentations and webinars, and in other educational forums to increase awareness and understanding.
- B. Development of information papers or other ACHP resources that address:
  - a. The Federal Indian Boarding School Initiative
  - b. The intersection of NAGPRA and Section 106
  - c. Appropriate practices when encountering and working with human remains, funerary objects or burial sites
  - d. Acquiring and managing sensitive information
  - e. Marked and unmarked burial sites, human remains, and funerary objects of Indian Tribes, Native Hawaiians, and African Americans
- C. ACHP staff will seek opportunities to implement the policy principles into agreement documents and program alternatives to advance consideration of burial sites, human remains, and funerary objects.
- D. Encourage federal agencies, and other relevant parties, to give adequate and meaningful consideration burial sites, human remains, and funerary objects consistent with this policy statement.

**Policy Review Period:** The ACHP commits to reviewing this policy statement every 5 years from the date of its adoption. Amendments shall be pursued when ACHP staff or membership determine that amendments are required and/or would significantly improve the policy statement. All updates and revisions require that this policy statement undergo consultation pursuant to Executive Order 13175.

**Commented [IM17]:** New section

**Definitions:** Unless otherwise indicated all definitions are consistent with those used in 36 CFR Part 800.

**Commented [IM18]:** Definitions listed in 36 CFR Part 800 have been removed

- **Burial Site:** Any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited [25 U.S.C. 3001.2(1)].
- **Confidential:** Information that is protected by law, regulation, or federal policy. Preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information
- **Culturally sensitive:** Tangible and intangible property and knowledge which pertains to the distinct values, beliefs, and ways of living for a culture. It often includes property and knowledge that is not intended to be shared outside the community of origin or outside of specific groups within a community.<sup>9</sup>
- **Federal land:** Lands under a federal agency's control. Mere federal funding or permitting of a project does not turn an otherwise non-federal land into federal land (see *Abenaki Nation of Mississquoi v. Hughes*, 805 F. Supp. 234 (D. Vt. 1992), *aff'd*, 990 F. 2d 729 (2d Cir. 1993) (where the court found that a Clean Water Act permit issued by the US Army Corps of Engineers did not place the relevant land under federal "control" for NAGPRA purposes).
- **Funerary objects:** "items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains" [25U.S.C. 3001(3)(B)].
- **Human remains:** The physical remains of a human body. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets [see 43 CFR § 10.2(d)(1)].
- **Indigenous Knowledge:** Information provided by an Indian Tribe, Tribal member, Native Hawaiian, or other Indigenous person uniquely reflective of their knowledge, experience, understanding, or observation relating to cultural resources, practices, or actions. Indigenous Knowledge often constitutes sensitive information.
- **Native American:** Of, or relating to, a Tribe, people, or culture that is indigenous to the United States [25 U.S.C. 3001 (9)]. Of, or relating to, a Tribe, people, or culture indigenous to the United States, including Alaska and Hawaii [43 CFR 10.2(d)].
- **Preservation in place:** Taking active steps to ensure the preservation of a property.
- **Sensitive:** Information that may be protected by law, regulation, or federal policy; information that may be identified as sensitive by the sponsoring entity/original source. This information should be marked Controlled Unclassified Information (CONTROLLED or CUI) by government entities.
- **State Historic Preservation Officer:** The official appointed or designated pursuant to Section 101(b)(1) of NHPA to administer the state historic preservation program.
- **Tribal Historic Preservation Officer:** The official appointed by the Tribe's chief governing authority or designated by a Tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on Tribal lands in accordance with Section 101(d)(2) of NHPA.

[The members of the Advisory Council on Historic Preservation unanimously adopted this policy on XX]

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<sup>9</sup> Protocols for Native American Archival Materials, <https://www2.nau.edu/libnap-p/protocols.html>.