



COMMENTS RECEIVED PER POLICY PRINCIPLE REGARDING DRAFT UPDATES TO THE ACHP POLICY STATEMENT ON BURIAL SITES, HUMAN REMAINS, AND FUNERARY OBJECTS

In August and September 2022 the ACHP engaged in early coordination with Indian Tribes, Native Hawaiian organizations (NHO), federal agency personnel, ACHP members, subject matter experts (SMEs) in African American burials, and ACHP staff to gain feedback regarding proposed updates to the ACHP [Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects](#). Overall, comments were supportive and collaborative with many identifying ways to make the principles more inclusive and concise. The following summary includes comments received specific to each proposed policy principle and an updated version of the associated principle.

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.

Comments - General agreement that this principle needs to ensure respect is considered in all dynamics, including expeditious response and treatment, regardless of the scenario. Several specific examples regarding respect and proper handling and treatment were provided that commenters asked the ACHP to include when updating this principle. Several commenters wanted the ACHP to reinforce that burials should be treated with respect regardless of eligibility or the circumstances of the federal action or decision (disasters, emergencies, waivers, etc.).

Updated principle #1 - Burial sites, human remains, and funerary objects should be always treated with dignity and respect, physically, visually, and verbally, including during consultation, field surveys, handling, and other treatment actions, when documenting and/or reporting, and in all other forms of interaction.

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. 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.

Comments - Strong consensus that reinforcing consultation is necessary. Some commenters requested more direct language (must, should, etc.) and to include additional terms to ensure this was fully comprehensive. One commentor noted that the principle required clarification on overall intent and timing of implementation in relation to the Section 106 process.

Updated principle #2 - Only through consultation, which includes the early and meaningful exchange of information and a concerted effort to reach consensus, can a federal agency make an informed decision about the identification, documentation, eligibility, and treatment of burial

sites, human remains, and funerary objects.

Principle #3 - The identification, evaluation, assessment, and resolution of potential adverse effects to burial sites, funerary items, 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.

Comments – Strong support from most commentors. Some commentors expressed concern over the inclusion of the term Indigenous Knowledge as self-supporting in relation to current National Register guidance. FPO reps and other federal staff requested that this principle be expanded to include Indigenous Peoples and generally be as inclusive as possible to allow for greater consideration during undertakings. Federal and tribal reps requested that underwater and above ground burial sites be specifically mentioned; conversely, Navy personnel expressed concern with the treatment of human remains associated with sunken vessels and existing Navy policy that may conflict with this principle.

Updated principle #3 - The Indigenous Knowledge held by an Indian Tribe, NHO, and other Indigenous Peoples is a valid and self-supporting source of information. To the fullest extent possible, deference should be provided to the Indigenous Knowledge and expertise of Indian Tribes, NHOs, and Indigenous People in the identification, documentation, evaluation, assessment, and treatment of their ancestors and funerary objects.

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.

Comments - One commenter asked about the application of this policy to private lands. Subject matter experts in African American burials placed particular emphasis on requesting that this principle continue to enforce the idea that descendant families or communities have a greater role in the process. They also stressed that any federal personnel or contractors involved in an undertaking related to the identification and evaluation of burial areas should have demonstrated expertise not only in the methods they are using but also specifically with the time period, geographic area, and social community associated with the resource. National NAGPRA also provided clarifying comments regarding the application of NAGPRA. Other comments requested that the language be as inclusive as possible while still bringing Indian Tribes, Native Hawaiians, and Indigenous Peoples to the forefront of the conversation.

Updated principle #4 - Disturbing or disinterring burial sites, human remains, or funerary objects, when not requested by descendants, associated Indian Tribes or NHOs, or required by applicable law or regulation, should not be pursued unless there are no other alternatives available, and only after the federal agency has consulted with descendants or other legally associated individuals or groups and fully considered avoidance of impact and preservation in place.

Principle #5 - 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

Comments - SMEs in African American burial identification and preservation supported how this principle was being reconstructed to include descendant communities or related groups. The

SME's requested terms like "deference," "informed consent," and "request" be integrated throughout the policy statement. An FPO noted that access to burial areas and cemeteries, particularly for Indian Tribe and African American descent community members, is a paramount concern that should be prioritized. Many commentors noted that burial sites are sacred sites and that this connects to federal responsibilities under 13007. FPOs, SHPOs, and Tribal members noted that, regardless of the current presence of human remains, a burial location may always be considered a sacred site and may also retain significance and integrity as a historic property. One Tribe submitted a document that outlines recommended procedures and considerations regarding their Tribe's human remains.

Updated principle #5 - To the maximum extent possible, decision making should provide deference to the treatment requests of descendants or other legally associated individuals or groups. Where known, the cultural practices of the descendants or associated group should be followed if human remains, burial sites, or funerary objects may be encountered, are inadvertently identified or impacted, or must be disinterred.

Principle #6 - 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 dispossession¹. The historic preservation community should seek to implement the recommendations identified in the Department of Interior's Federal Indian Boarding School report² 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.

Comments - Respondents universally supported directly addressing the legacy of the Federal Indian Boarding School system in this policy, with commentors remarking it warrants its own policy. Commentors supported the ACHP amplifying the FIBS report to increase awareness of and consideration for the report's recommendation by the historic preservation community.

Updated principle #6 - 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. In partnership with the historic preservation community, federal agencies should seek to implement the recommendations identified in the Department of Interior's Federal Indian Boarding School report 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.

Principle #7 - Burial sites, human remains, and funerary objects are frequently important in and of their own right, may constitute a sacred site, and may have several possible areas of significance including religious and cultural significance; the integrity of burial sites, human remains, and funerary objects is best informed by those that ascribe significance to them.

Comments - Respondents supported increased consideration for burial sites beyond criterion D. Additionally, respondents noted that the relationship between a site being "previously disturbed", and its current integrity is best informed by those who ascribe significance, particularly when the burial site is a property of religious and cultural importance. Many commentors noted that burial

1 Bryan Newland – FIBS report

2 FIBS report

sites are sacred sites and that this connects to federal responsibilities under 13007. FPOs, SHPOs, and Tribal members noted that, regardless of the current presence of human remains, a burial location may always be considered a sacred site and may also retain significance and integrity as a historic property.

Updated Principle #7 – Burial sites, human remains, and funerary objects are important in and of their own right. They may also constitute or be part of a sacred site and may include or incorporate several possible elements of historic significance including religious and cultural significance. The integrity of human remains, funerary objects, and burial sites is best evaluated by those that ascribe significance to them.

Principle #8 - 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 items, 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.

Comments - Respondents remarked that this principle reflects ACHP’s authorities under 54 USC 304102(a)(1) to “recommend measures to coordinate activities of federal, state, and local agencies and private institutions and individuals relating to historic preservation” and the THPO/SHPO duty to “provide public information, education, and training and technical assistance in historic preservation” (54 USC 302303(b)(7)). Commentors suggested that it be reframed to ensure that the language regarding assimilation and colonization weren’t being too narrowly interpreted; however, they supported the awareness this principle brought to historical factors that influence modern practices.

Updated principle #8 - The legacies of colonization, including cultural assimilation, forced relocation, and slavery, have led to an uneven awareness of where and why practitioners are likely to encounter human remains, burial sites, and funerary objects across the United States and its territories. The historic preservation community has a key role in expanding public education to support greater awareness of and consideration for the histories and lifeways of Indian Tribes, Native Hawaiians, African Americans, and Indigenous Peoples.

Principle #9 - 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.

Comments - Several commenters were concerned that the language used in this principle may unintentionally limit its application. Specifically, they recommended against a narrow focus on sites “associated with histories of colonization and assimilation” and the focus on Indigenous nations and communities and African American communities. Federal officials pointed to National Register Bulletin 41 guidance that removing human remains may or may not diminish historic integrity and recommended the principle reflect similar language. Tribal respondents, SHPOs, and federal officials remarked that the removal of ancestral remains does not always diminish the integrity or significance of the site and that this needs to be determined in consultation with affected communities.

Updated principle #9 - Human remains and funerary objects may be relocated or removed from

a location by or at the request of descendent communities for a variety of reasons. The continued presence of human remains or funerary objects may not be essential to the ongoing significance and integrity of a site or its relevance to a broad theme in history. The historic significance and integrity of such sites are best determined in consultation with lineal descendants and/or associated communities.

Principle #10 - Burial sites, funerary objects, and human remains are frequently associated with cultural practices, sacred sites, Indigenous Knowledge, and other forms of culturally sensitive actions and/or information unique to a people. Maximum effort should be taken to limit the 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 the application of existing law.

Comments - Limited comments. Broad general support for ACHP making this a specific policy principle. Respondents requested that this principle be broadened to be more inclusive and that additional guidance would be helpful, possibly linked to the implementation section.

Updated Principle #10 – No changes

Principle #11 - 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.

Comments - There was broad support for the policy's general consideration of repatriation. Some individuals suggested that the language in this principle could unnecessarily limit other communities not explicitly listed. Others appreciated the incorporation of the UN DRIP language. One respondent was concerned that references to repatriation may inhibit existing agency policy that identifies the sea as the final resting place for certain individuals. Others asked for the language to be strengthened to encourage more active support and cross-agency coordination in support of repatriation and reburial.

Updated principle #11 - Federal agencies should seek to enable the access to and/or repatriation of burial sites, human remains, and funerary objects through fair, transparent, and effective mechanisms, developed in conjunction with descendant communities, to the fullest extent of the law.

Principle #12 - 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.

Comments - There was universal support for the consideration of climate change in the policy. Tribal respondents emphasized the urgency of addressing climate change impacts on cemeteries, human remains, and funerary practices.

Updated principle #12 - The ACHP recognizes that climate change can impact the burial sites, cemeteries, and associated cultural practices significant to Indian Tribes, NHOs, and other groups of people. To the extent feasible, federal agency climate plans should support the advanced identification and protection of these locations.

Proposed Principle #13 (new, resulting from early coordination) – Personnel carrying out the

documentation, evaluation, and treatment of burial sites, human remains, or funerary objects should meet the Secretary of Interior's professional qualification standards and have a demonstrated familiarity with the associated time period, geographic area, and descendant community.

Comments – Commentors stressed that any federal personnel or contractors involved in an undertaking related to the identification and evaluation of burial areas should have demonstrated expertise not only in the methods they are using but also specifically with the time period, geographic area, and social community associated with the resource.