ADVISORY COUNCIL ON HISTORIC PRESERVATION

POLICY STATEMENT ON BURIAL SITES, HUMAN REMAINS, AND FUNERARY OBJECTS

February 2023
Consultation with Indian Tribes and Native Hawaiian Organizations
Primary Goals of Revision

1. Create space for Indian Tribes, Native Hawaiians, African Americans, and Indigenous People
2. Provide more descriptive and action-oriented policy principles
3. Develop tasks to implement policy
4. Update and improve context and language
5. Align with current priorities (NAGPRA proposed rule, IK guidance, NR, FIBS, etc.)
Actions taken to update the policy

- Coordinated with National NAGPRA, NRHP, WHCNA, etc.
- Drafted new principles
- Created space for Indian Tribes, Native Hawaiians, African Americans, and Indigenous Peoples
- Updated existing principles; removed inconsistent principles
- Developed sections on implementation, agency authority, policy review
- Integrated: UN DRIP, EO 13007, Indigenous Knowledge, & climate change
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 agencies methods to improve the effectiveness, coordination, and consistency of their policies and programs with the national historic preservation program.

54 U.S.C. §§ 304102 and 304108
This policy statement recognizes the unique legal and political relationship between the federal government and federally recognized Indian Tribes...and acknowledges that 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.

Part of the ACHP's trust responsibility is to ensure that the regulations implementing Section 106 incorporate the procedural requirement that federal agencies consult with Indian Tribes and NHOs...In general, the trust responsibility establishes fiduciary obligations on the part of federal agencies to Tribes, including a duty to protect Tribal lands and cultural and natural resources for the benefit of Tribes and individual Tribal members.

The ACHP views its trust responsibility as encompassing all aspects of historic resources including intangible values. As part of that trust responsibility, the ACHP offers this policy statement to inform how the Section 106 consultation process should consider human remains, burial sites, and funerary objects.

ACHP’s Statement on its Trust Responsibility; ACHP’s Policy Statement on Indian Tribes; Seminole Nation v. United States, 316 U.S. 286 (1942)
Policy Principles

1. Respect
2. Disturbance as a last resort
3. Consultation
4. Deference in decision making
5. Indigenous Knowledge
6. Significance
7. Sensitive information
8. Federal Indian Boarding School
9. Education
10. Repatriation
11. Integrity
12. Climate change
Burial sites, human remains, and funerary objects should always be 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.
Policy Principle #2

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 consultation with descendants or other legally associated individuals or groups and fully considered avoidance of impact and preservation in place.
Policy Principle #3

Only through consultation, which includes the early and meaningful exchange of information and a concerted effort to reach consensus, can informed decisions be made about the identification, documentation, National Register eligibility, and treatment of burial sites, human remains, and funerary objects.
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, and in accordance with applicable law, 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.
Policy Principle #5

The Indigenous Knowledge held by an Indian Tribe, NHO, or 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.
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.
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.
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.
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.
Access to and/or repatriation of burial sites, human remains, and funerary objects should be enabled through fair, transparent, and effective mechanisms developed in conjunction with descendant communities to the fullest extent of the law.
Policy Principle #11

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.
Policy Principle #12

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, climate plans should support the advanced identification and protection of these locations.
Policy Principles

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A. Train ACHP staff regarding the implementation of this policy statement.

B. Development of informational resources that address the NHPA, Section 106, and the following:
   i. The Federal Indian Boarding School Initiative
   ii. The intersection with NAGPRA
   iii. Acquiring and managing sensitive information
   iv. Climate change
   v. Best practices

C. Implement into Section 106 agreement documents and program alternatives

D. Development of historic preservation protocols

E. Encourage federal agencies and other relevant parties to give full and meaningful consideration to this policy statement.
ACHP Policy Statement onBurial Sites, Human Remains, and Funerary Objects

Comments accepted through February 24, 2023

Submit comments to native@achp.gov

Questions? Contact Mr. Ira L. Matt, Director, Office of Native American Affairs at imatt@achp.gov