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June 22, 2006

**VIA FACSIMILE (202) 606-8672 and E-MAIL [archaeology@achp.gov](mailto:archaeology@achp.gov)**

Archaeology Task Force  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue, NW Suite 809  
Washington, D.C. 2004

Re: Comments on Advisory Council on Historic Preservation's Draft "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects."

The following comments on submitted on behalf of the Lytton Band of Pomo Indians ("Lytton Band"). In general, the Lytton Band agrees in principle with the proposed Policy Statement, however it has one suggestion for modification, as well as some questions regarding the practical implementation which the Tribe feels should be answered.

Initially, the Lytton Band believes that Principle 5 should be amended as follows:

When human remains or funerary objects must be disinterred, they should be removed carefully, respectfully and in a manner developed in consultation with the appropriate affiliated tribe.

It is important for the policy to be clear that the consultation in question should occur only with the appropriately affiliated tribe or tribes in order to eliminate undue delay and confusion on the part of the agency. Further, the Tribe believes that it is important for the ACHP to develop guidelines for agencies for instances wherein more than one tribe is claiming affiliation with the site, cultural resource, or artifact. This will assist agencies which find themselves in such situations and could assist in avoiding possible undue delay or dissention.

Further, with respect to Principle 1, the Lytton Band is not clear on how "absolutely necessary" will be defined and implemented. Would it mean that remains can be disturbed only if the project could not go forward and be completed without doing so? Or would it mean something less such as the project would merely cost more to complete, or that the agency or applicant prefers not to go to the expense of redesigning the project? As far as the Tribe is concerned, with respect to disturbance of human remains, they believe that the remains and

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funerary objects should be avoided unless the project is unable to be completed without disturbing the remains in some fashion.

Finally, as the Council is aware, for those projects in which the agency is merely issuing a permit or some other form of approval, most agencies delegate the Section 106 responsibilities to the applicants who in turn delegate that responsibility to a consultant. The Lytton Band wishes to remind the Council that maintaining a government-to-government relationship with respect to consultation on important issues such as the treatment of burial sites, human remains and funerary objects is crucial to compliance with the various Executive Orders and consultation policies in place for the Federal government, as well as continuing the Federal government's obligations as a fiduciary for tribes and individual Indians. To that extent, the Tribe would urge the ACHP to develop guidelines for appropriate delegation by agencies to applicants and appropriate use of consultants during the Section 106 and consultation processes.

Thank you for the opportunity to comment on this important policy statement and the Lytton Band looks forward to continued work with the ACHP in its development of such policy statements and guidelines.

Should you have any questions or concerns, please do not hesitate to contact me at (858) 554-0550, ext. 4.

Very Truly Yours,

TOMARAS & OGAS, LLP



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cc:  
Margie Mejia, Chairwoman, Lytton Band