



June 20, 2006

Archaeology Task Force  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue, NW, Suite 809  
Washington, DC 20004

Task Force Members:

The Register of Professional Archaeologists (Register) is pleased to submit the following comments on the Advisory Council on Historic Preservation's (ACHP) draft "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects." The Register represents approximately 2,000 professional archaeologists, who met specific educational requirements, have fulfilled the requisite field and laboratory experience, and have agreed to abide by an explicit code of conduct and standards of research performance. Sponsored by the Society for American Archaeology, the Society of Historical Archaeology, the American Anthropological Association, and the Archaeological Institute of America, the Register is the only archaeological organization with a grievance process by which the public and the profession can hold archaeologists accountable for their professional conduct.

As an organization focused on archaeological ethics and standards, we wish to offer comments in four areas on the draft statement. These are: (1) professional qualifications, (2) documentation, (3) identification, and (4) consulting parties.

#### Professional Qualifications

In the discussion of Principle 5, the draft statement reads,

"Careful" disinterment means that when human remains and grave goods must be disinterred, those doing the work should have, or be supervised by people having, appropriate expertise in disinterment techniques of human remains to ensure that in excavating a burial the material is kept as intact as possible and pieces are not left behind.

The Register agrees wholeheartedly with the statement, and suggests the ACHP go one step further. It is not only expertise that is required, but accountability. Federal agencies, Indian tribes, and the general public deserve the right to press claims against archaeologists whose actions fail to meet professional ethics and standards. The only mechanism available to meet this need in the United States is the Register's grievance process. We suggest you re-write the above sentence as:

"Careful" disinterment means that when human remains and grave goods must be disinterred, those doing the work should have, or be supervised by people having agreed to abide by the highest ethical and field standards as well as having the appropriate expertise in disinterment techniques of human remains to ensure that in excavating a burial the material is kept as intact as possible and pieces are not left behind. Such individuals should be subject to being held publicly accountable in a manner at least equivalent to that of individuals listed in the Register of Professional Archeologists.

## Documentation

Principle 5 states that, “When human remains or funerary objects must be disinterred, that they should be removed carefully, respectfully and in a manner developed in consultation.” The discussion goes on to say that disinterment “may or may not include field recordation.” The Register strongly disagrees with this statement. We believe all disinterment must be recorded. Failing to document field work violates the Register’s code of conduct and standards of research performance. But it is not only a matter of ethics; it is a matter of good public policy.

Archaeologists working on Section 106 or other state or locally-mandated projects have all too often been forced into situations where they must disinter remains without proper documentation. The lack of documentation means that there can be no scientifically based statements on cultural affiliation. Agency determination of tribal or ethnic affiliation will have to be made on other grounds, which if subject to challenge puts the agency in a largely undefendable position. The lack of documentation also means that relationships among and between the dead cannot be discernable. Men, women, and children will not be identified nor will family groups be discerned. Reburial, then, will proceed in manners inconsistent with cultural prescribed treatments of the dead.

The lack of documentation means any disagreement over field observations cannot be resolved. Unfortunately, it is not uncommon for there to be disagreements between the archaeologists and tribal representatives over the number of remains or the number and types of funerary objects. Without documentation, archaeologists are in an extremely tenuous position. They simply cannot demonstrate the accuracy of their statements. As importantly, the Federal agency is in the same position; they cannot account for every item which may leave them vulnerable to claims that they have failed to meet their legal obligations.

The ACHP states that “respectfully” is self-explanatory. We agree. Archaeologists are performing a valuable service when they use their professional skills to recover burials which would otherwise be damaged or destroyed during construction of development projects. As part of a respectful relationship, archaeologists should be allowed to be accountable for their behavior: to demonstrate that they properly excavated and returned all items of concern.

We urge the ACHP to change the statement “may or may not include field recordation” to “must include field recordation,” and to strike the next sentence, “In some instances, such recordation may be so abhorrent to the descendants of the dead that it may be inappropriate to carry it out.” We believe the latter cases are rare, limited to direct lineal descent of one or two generations, and are best dealt with during consultation on an ad hoc basis.

## Identification

In the discussion of Principle 6, the draft policy states:

For purposes of Section 106, identification efforts should result in an assessment that can be independently evaluated and used to make informed judgments about whether there are properties within the Area of Potential Effect that are listed in or eligible for listing in the National Register of Historic Places. This would typically include basic information on the history and historical importance of the property, its horizontal and vertical boundaries, and its basic nature, condition, and what qualifies it for the National Register. Hopefully, only a very small sample of the site will require investigation to make such determinations. While it is impossible to define a point applicable in all instances at which testing ends and archeological data

recovery begins, a rule of thumb is that adequate testing has been done when a decision about National Register eligibility can be made.

We believe that the ACHP's statement is in keeping with current practice of federal agencies complying with the National Historic Preservation Act. It is the very reason that so many burials are being found late in the process, after decisions have been made about what to do and when there is no option left but to excavate burials. It is also the reason that so many federal agencies find the costs of data recovery to escalate well beyond initial projections and that project schedules can be greatly impacted by cultural resource mitigation.

By defining testing as investigation sufficient to make a determination of National Register eligibility, the ACHP is sanctioning the practice by which the primary information being sought by test excavation is whether intact cultural deposits exist. This information is generally obtained with a very small number of trenches, test pits, or shovel probes. To know that the site is eligible for listing in the National Register, however, does not provide federal agencies with adequate information to determine how to treat these resources. All too often, the lack of data results in a decision to proceed with data recovery as opposed to project redesign to avoid the resource. Additionally, the inadvertent discovery of burials is commonplace. After all, if one does not adequately search for burials, how one can have any confidence that burials will not be found?

This is exactly the problem that plagued the Hood Canal Project in Port Angeles, Washington. In response to concerns expressed by the Lower Elwha Klallam tribe, archaeologists designed a limited testing program at a recorded ethnohistoric village that would limit the chance of encountering human remains. Based on the testing results, a treatment plan was devised on the assumption that human remains would not be found. More than 300 burials later, the project was stopped at great expense to the state and the tribe.

We believe more testing, not less, is needed. We urge the ACHP to re-write the above paragraph as:

For purposes of Section 106, identification efforts should result in an assessment that can be independently evaluated and used to make informed judgments about whether there are properties within the Area of Potential Effect that are listed in or eligible for listing in the National Register of Historic Places. This would typically include basic information on the history and historical importance of the property, its horizontal and vertical boundaries, and its basic nature, condition, and what qualifies it for the National Register. Minimally, these identification efforts should be adequate to infer whether burials are likely to be present, where on the site burials might be found, and in what numbers.

#### Consulting Parties

In the discussion of Principal 2, the draft guidelines are quite clear, "Consultation is at the heart of the Section 106 process." The guidelines go on to add:

The regulations of the ACHP require that the Federal agency identify consulting parties early in the Section 106 process. Consulting parties include the State Historic Preservation Officer; the Tribal Historic Preservation Officer; Indian Tribes and Native Hawai'ian organizations; representatives of local governments; applicants for Federal assistance, permits, licenses, and other approvals; and/or any additional consulting parties, including individuals and organizations with a demonstrated interest in the undertaking due to the

nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

As members of the last category mentioned in the paragraph above, archaeologists and archaeological organizations have the affirmative responsibility to identify themselves to the agency and request consulting party status. The agency is required (800.3(f)(3)) to consider all such written request and may decide to invite these individuals or groups to participate or not at its own discretion. Recently, we have noted with some dismay, the actions of federal agencies to limit the participation by archaeologists in decisions about archaeological resources. For example, as part of the Missouri River Main Stem System project, the parties to the Programmatic Agreement discussed actions that would greatly affect archaeological studies that were being conducted as part of the undertaking. Both the Register and the Society for American Archaeology notified the lead federal agency, the U.S. Army Corps of Engineers, that we had an interest in the undertaking's effects on historic properties and requested that we be added as consulting parties. The Corps of Engineers, as is the agency's right, denied the requests.

We believe that the ACHP should strongly encourage federal agencies to include archaeologists and archaeological organizations in decisions about archaeological resources. Archaeologists are best equipped by training and experience to represent the public's inherent interest in and concern for archeological resources, including those associated with human remains. With the ACHP's emphasis on consultation and making decisions about human remains and other archaeological resources early on in the 106 process, we strongly urge that archaeological expertise be an integral part of any consultation involving archaeological materials and that the ACHP should advise federal agencies to invite and encourage participation by archaeologists and archaeological organizations that may have an interest in and/or information concerning archaeological resources identified as part of a specific undertaking.

On behalf of the Register, I want to thank the Task Force for allowing us to comment. If we can be of any assistance in finalizing the guidelines, please feel free to contact me at [jhaltschul@sricrm.com](mailto:jhaltschul@sricrm.com).

Sincerely,

A handwritten signature in black ink, reading "Jeffrey H. Altschul". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jeffrey H. Altschul, Ph.D., RPA  
President