



**SOCIETY *for*
HISTORICAL
ARCHAEOLOGY**

John Nau III, Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Old Post Office Building
Washington, DC 20004

June 26, 2006

Dear Mr. Nau:

The Society for Historical Archaeology is grateful for the opportunity to comment on the draft *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* as published in the **Federal Register** Volume 71, No. 49, dated March 14, 2006. We wish to congratulate the ACHP for a well crafted document that is clear and to the point.

We fully support the intent of the principles as set forth in the draft policy statement, underscoring that any human remains or burial site should not be disturbed unless absolutely necessary and then only with proper planning, appropriate consultation, involvement of appropriate qualified expertise, and the involvement of descendent communities, or actual descendents.

We noted that the Preamble uses the term “human rights” in a rather cavalier manner. The use of this term in the sentence is not consistent with definition of human rights as used in current international law and practice. We suggest it be removed.

Principle 3 sets forth appropriate consultation processes, but appears to emphasize consulting with Native American and Native Alaskan, and Native Hawaiian organizations. While the principles encourage compliance with state or local laws, the emphasis appears to focus on NAGPRA related remains. Today there as many or perhaps more Euro-American, African American, and other immigrant community human remains being disinterred than ever before. SHA believes that the policy should acknowledge these historic period remains and encourage, should disturbance be necessary, that all appropriate state and local laws be followed to deal with these more recent remains. We also believe that a clear statement that many of these remains are now over 100 years in age and fall under the aegis of the Archaeological Resources Protection Act, if found on Federal lands, should be included in the policy statement. It should also be recognized that some human remains are inadvertently discovered despite all possible planning and this situation needs to be clearly identified and discussed. It should be made clear that halting an entire excavation or mitigation program based on the discovery of human remains is usually inappropriate, and the only area where a halt to further excavation is required is in the immediate vicinity of the burial.

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We also recommend that the policy strongly state and acknowledge that there are diverse interests in human remains from a variety of constituencies that may come into conflict. All decisions made by appropriate land managers should be balanced among those with demonstrated interests.

Principle 5 appears to have the potential to limit the amount and type of documentation that may be carried out on a burial site or its associated funerary objects. The policy should also acknowledge that adequate documentation of the site and remains are part of standard archeological methods and procedures and are recommended as part of the Archeological Resources Protection Act. The level of analysis and study may be developed in consultation with descendants or descendent communities, if they can be reasonably identified and reasonably contacted.

SHA is also concerned that the draft policy gives the appearance that managers or decision makers must give more weight to human remains issues than required under other preservation and environmental law. The policy should clearly state that the issue of human remains is a delicate one in making any decision, but it is only one of many competing issues that a manager or decision maker will deal with in any given situation. The policy should be clear that managers and decision makers need to consult with the appropriate parties (the policy as written focuses too heavily on NAGPRA and Native American consultation to the exclusion of other communities) in order to make an informed decision. The policy as written appears to usurp the authority of public officials in their role as decision makers who must balance multiple points of view and data.

The council should also recognize when human remains are discovered that prove to be recent then local or federal law enforcement will have full jurisdiction and their laws and regulations will be in full force and effect.

SHA realizes that some elements of our comments are addressed in Principle 6 and in Principle 8, but we believe that more emphasis should be placed on recognizing the rights and concerns of "other descendent communities." In law, families of the deceased, if known, retain the right to decide the disposition of their forbearers. In many historic period burials identity is known and descendants can be found. SHA recommends that a statement be added to the draft policy acknowledging this issue with historic and known burials when they must be disturbed.

If you require further information or clarification from SHA, please contact me at the above address. Thank you, again, for the opportunity to comment on the draft policy statement.

Sincerely,



Douglas D. Scott, PhD, RPA
President