Maryland State Highway Administration, Project Planning Division, Cultural Resources Group
5/1/06 Comments on Potential Revisions:

ACHP Draft Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects (March 14, 2006)

1. Regarding the process laid out in the Policy Statement, we agree that early consultation between the Federal agency and other identified consulting parties will help to foster the most judicious approach to the handling of human remains and funerary objects.

2. The comments on the September 1, 2005 draft posted on the Advisory Council (ACHP) Web site are of interest, and illustrate the serious disconnect that still exists between cultural resource managers and Native American tribes concerning treatment of human remains. The philosophical divide between scientific rights versus human rights is unlikely to be resolved by the ACHP policies, which lean towards the human rights side of the issue (although less so than the 2005 draft).

3. One of the questions raised often in the prior comments and never adequately addressed in the March 14, 2006 draft is: "Why is there a need for this Policy Statement?" Existing Federal law supersedes the 1988 Policy Statement, and the proposed Policy Statement mostly reiterates that law.

4. The background discussion acknowledges (barely) "the public interest in the past" and says that the Policy Statement is not meant to "recommend a specific outcome," yet the body of the Policy Statement fails to address the scientific value of the study of human remains, and is strongly biases towards avoiding all disturbance to burial sites. We strongly recommend that the list of "Principles" include a definitive statement that "Burial sites, human remains and funerary objects may have singular importance in answering important scientific research questions, and in accordance with the provisions of the Native American Graves Repatriation Act (NAGPRA), the research value of the burial site, remains or objects must be considered." Certain burial sites, such as those of great antiquity, cannot be demonstrated to have cultural affiliation with either extant tribes, or tribes in existence at the time of contact. There is considerable debate in the archeological community on how such sites should appropriately be treated, and there is considerable legal uncertainty as to how federal laws such as NAGPRA apply in such cases.

5. If, as stated, the ACHP proposes to be a "leader" in resolving how to treat human remains, it would be more fruitful to serve as a channel for meaningful discussion and debate than to publish a Policy Statement that supports one side of the debate without strongly acknowledging that this is what is being done.

6. The regulatory tone of the language used in parts of the document ("**shall** treat all burial sites;" "official **must** comply") contradicts the title of the document as a "Policy Statement."

7. One question not addressed by the March 14, 2006 draft Policy Statement is: how do we deal with a burial site (an African-American or unmarked family plot, for instance) not considered a historic property (and thus, not applicable under Section 106)?

8. NAGPRA does not apply when an undertaking is not located on federal lands. The Policy Statement indicates that it "provides guidance to Federal agencies in situations where Federal or State law does not prescribe how burial sites, human remains, and funerary objects are to be handled". Given the apparent bias of the Policy Statement, the lack of attention paid to the value of scientific inquiry or "the public interest in the past," and the lack of response to objections that the policy statement is unnecessary, we question the utility of the guidance provided