United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

W48 (2253)

NOV - 4 2005

Memorandum

To: Archaeology Task Force, Advisory Council on Historic Preservation

From: Director

Subject: Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Graves Goods"

I write to provide comment on the Archaeology Task Force's Working Principles for Revising the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods."

The original ACHP policy statement was written in 1988, at the same time that Congress was considering legislation regarding the disposition of Native American human remains and funerary objects. The Native American Graves Protection and Repatriation Act (NAGPRA) was subsequently enacted in 1990 with responsibility for implementation delegated to the Secretary of the Interior. NAGPRA includes separate provisions for: 1) the disposition of Native American human remains and funerary objects excavated or removed from Federal or tribal lands after the enactment of the Act; and 2) the repatriation of Native American human remains and associated funerary objects in the possession or control of Federal agencies and institutions that receive Federal funds. It is important that these provisions are considered in considering any revision of the ACHP policy statement.

Under the excavation and discovery provisions of NAGPRA, the discovery of Native American human remains or funerary objects on Federal lands triggers an automatic cessation of activity in the area of the discovery, unless there is a binding agreement in place between the Federal agency with jurisdiction over the land and the appropriate lineal descendants, Indian tribes, and Native Hawaiian organizations. During the cessation of activity, the Federal land manager must consult with all appropriate lineal descendants, Indian tribes, and Native Hawaiian organizations to determine if the human remains and funerary objects must be excavated or removed and, if so, their ownership. On state or private land, state law generally defines the jurisdictional authority for the excavation or removal of human remains or funerary objects.

The collection provisions of NAGPRA apply to all Federal agencies, except the Smithsonian Institution, and all institutions that receive Federal funds, including state and local governments. NAGPRA requires Federal agencies and institutions that receive Federal funds to prepare inventories of Native American human remains and associated funerary objects and summaries of unassociated funerary objects in their possession or control; consult with lineal descendants, Indian tribes, and Native Hawaiian organizations; and, upon receipt of a valid claim, repatriate the cultural items to the lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization. Human remains and funerary objects that are removed or excavated from Federal or tribal land after the date of NAGPRA's enactment are not subject to the collection provisions. Human remains and funerary objects that are removed or excavated from state land come under state jurisdiction, and are thus subject to NAGPRA collection provisions as well as

the applicable state laws. Applicability of NAGPRA's collection provisions to human remains and funerary objects excavated or removed from private lands depends upon whether the state assumes control of the items.

The core principle underlying both sets of provisions is that only the lineal descendant or affiliated Indian tribe or Native Hawaiian organization can decide on the ultimate disposition of Native American human remains or funerary objects. Some have chosen to rebury affiliated human remains and associated funerary objects; others have reburied the affiliated human remains and left the funerary objects in the possession of museums; and still others have left both the affiliated human remains and funerary objects in museum possession. This principle is consistent with both the common law regarding disposition of the dead and applicable Federal law regarding disposition of the remains of individuals under Federal custody. I believe that recognizing the rights of descendants and affiliated communities should be paramount to any revision of the ACHP Policy Statement Regarding Treatment of Human Remains and Grave Goods.

In reviewing the ACHP's 1988 policy statement, the first two principles are completely consistent with NAGPRA's provisions. Human remains and funerary objects should not be excavated or removed unless required in advance of some kind of activity such as construction, mining, logging, or agriculture. When necessary, excavation or removal of human remains or funerary objects should be done carefully, respectfully, and completely, in accordance with standard archeological methods such as those required by the Archaeological Resources Protection Act. The remaining principles have been largely superseded by NAGPRA's goal of identifying the individual or community with legitimate authority to make such decisions under the common law. I strongly recommend that the Archeology Task Force adopt a similar approach in revising the policy statement.

Please contact Sherry Hutt, Manager, National NAGPRA Program, if you have any questions regarding my comments. She can be reached at (202) 354-1479.