SAA

SOCIETY FOR AMERICAN ARCHAEOLOGY

October 24, 2005

John Fowler
Executive Director
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue #809
Washington, DC 20004

RE: Archaeology Task Force's Draft Working Principles for revisiting ACHP's "Policy Regarding Treatment of Human Remains and Grave Goods."

Dear John,

On behalf of the Society for American Archaeology (SAA), I would like to thank the ACHP for this opportunity to comment on the draft Working Principles developed by the Archaeology Task Force to guide possible revision of the ACHP's 1988 Human Remains Policy. In my testimony for SAA at the May meeting of the Advisory Council, I stated that SAA strongly supports the importance of the task force's efforts and of the task force itself. Writing this letter provides an opportune moment to reiterate that support.

As you know, the SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With almost 7,000 members, the Society represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. The SAA has members in all 50 states as well as many other nations around the world.

The Federal Register request asks for comments on the Working Principles. I discuss each in turn. While some issues may be more appropriately addressed in reviewing the draft of the Policy itself, it seems worthwhile to raise them here.

Principle 1: SAA supports this statement.

Principle 2: SAA believes the bulleted points under this Principle need to be both more explicit and broader.

- The first bullet calls for clarification of the intersection between Section 106 and the Native American Graves Protection and Repatriation Act (NAGPRA). This bullet should also include at least the Archaeological Resources Protection Act (ARPA). A great many archaeological activities are governed under permits issued under the authority of ARPA.

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- Because the policy is intended to give guidance in the Section 106 process, it is larger than NAGPRA. Native Americans do have a special place in this policy and in Section 106 issues pertaining to human remains. This role is framed by NAGPRA and other statutes, including ARPA, and the government-to-government relationships between the Federal government and the tribes. However, it is essential that this policy be broad and flexible enough to accommodate the interests, needs, and requirements of other descendent groups while also attending to the public interest. Thus the policy should also minimally intersect with National Register Bulletin 41 (Guidelines for Evaluating and Registering Cemeteries and Burial Places). Although this Bulletin specifically treats cemeteries, rather than human remains, it is germane.
- While SAA agrees with the second bullet point, "The policy statement needs to clarify the intersection between the requirements of Section 106, State burial laws and other applicable laws," we note that in the last analysis Federal law will have precedence where it applies.
- The treatment of burials and human remains in the 106 process is inconsistent from agency to agency and area to area within the country. SAA recommends that the relevant sections of NAGPRA be used as guides to developing a consistent process for the treatment of human remains under Section 106. This would, for example, ensure the taking of necessary steps to establish cultural affiliation.

Principle 3: SAA recommends clarification and amplification of some of the terminology in the bulleted points.

- It is not at all clear what "preservation in place" means in practice. For example, "place" could refer to individual burials (with adjacent areas available for excavation) or to whole sections of sites or to entire sites. "Preservation" is equally vague. This vagueness is likely to contribute significantly to confusion in planning and data recovery situations rather than to clarify. SAA strongly recommends the Principle simply be: "The policy statement should emphasize that avoidance is the preferred alternative to disturbance of human remains and funerary objects." Regardless of the terminology, the policy should make clear that 1) decisions to avoid or preserve in place need to be based on the demonstrated presence of burials, and 2) avoidance should not be implemented in ways that compromise the proper excavation of areas that must be excavated.
- The policy should be clear that if burials must be exposed or excavated, thorough documentation of the remains by specialists is necessary whether they are to be removed or left in place. This documentation minimally should follow the Secretary of the Interior's Standards for Archaeological Documentation or, for example, those in *Standards for Data Collection from Human Skeletal Remains*, (Buikstra, J. and D.H. Ubelaker 1994, Arkansas Archaeological Survey Research Series No. 44, Fayetteville).
- Other questions include:
    - The circumstances under which excavation/removal are appropriate?
    - Do human remains (including cemeteries) have to be found eligible to the National Register to warrant excavation? Are there circumstances in

which remains can be excavated by archaeologists in the absence of eligibility?
    - Are there circumstances in which non-archaeological forms of excavation (e.g., the "undertaker method") are appropriate? We would obviously and strongly say not. This can be an issue with the removal of human remains from historic cemeteries.
- Neither this Principle, nor any of the Principles for that matter, affirms the value of the scientific study of human remains or the public interest in such studies and their significant contribution to the national heritage. This is discussed as part of the **Background Information** under the heading "*Nature of the Debate*" as a point of view. This value should be affirmed and explained as part of these Principles, particularly since one of the primary purposes of the NHPA is to preserve information when there is an unavoidable loss of physical sites and structures. Such studies contribute not only to our knowledge of the biological history of the United States but also can contribute to medicine, historical demography, etc. SAA strongly supports the language and balance in this matter explicit in the 1988 burial policy. It is important to stress here that the scientific study of human remains is not inherently disrespectful of either the dead or of the living, nor is it a rejection of the spiritual, religious, cultural, or emotional values and the importance that remains have for the living cultural and biological descendants of the dead and for the broader community that takes an interest in them.
- The language of some of the bullet points under this Principle could be construed in ways that could be used to prohibit investigator-initiated research excavations on Federal land or that use Federal funds (e.g., NSF grants). While it is clear these are "undertakings" within the scope of 106, scientific excavations are legitimate and important uses of the archaeological record. The pursuit of knowledge about the past is socially a strongly valued activity. However, pragmatically, the success of the 106 process itself depends heavily on the knowledge gained by research projects, often accomplished over many years. As in any undertaking, prior consultation and planning for the potential of human remains is both ethically and legally required. This is often part of the permit process.

Principles 4 and 5: The Principles should emphasize that federal decision makers need to consult broadly, but that 1) decision making is their responsibility, once consultation is concluded, and 2) the decision needs to balance the views of the culturally or lineally related groups or individuals and the scientific importance of the remains. The final bullet point in Principle 4 stresses the need for planning for the disposition of human remains early in the process. SAA supports this. Lack of advanced or timely planning is a serious issue in any 106 process. However, planning for the disposition of human remains should not prejudge questions of cultural affiliation nor preclude the gathering of essential information such as the forensic information that is an essential part of determining cultural affiliation.

Principle 6: While the SAA appreciates the ACHP's recognition that federal agencies each have their own missions and goals and need to develop their own operational

procedures, SAA would prefer to see more specific policy direction regarding the inadvertent discovery of human remains and the guidance that should be given landowners when sites are avoided. Finally, the terms "descendent" and "descendent community" need to be clearly defined throughout for the purposes of the policy.

Thank you for this opportunity to comment on the draft Principles. We look forward to continuing to work with the Task Force.

Yours truly,

Kenneth M. Ames Ph.D. RPA
President

CC: Dr. Julia King
Dr. Tom McCulloch
Dr. Dan Roberts