Richard P. Narcia
Governor

Mary V. Thomas
Lieutenant Governor

Gila River Indian Community

Executive Office of the Governor & Lieutenant Governor

November 3, 2005

Julia King, chair and ACHP expert member
The Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue
NW, Suite 809
Washington, DC 20004

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

Dear Ms. King:

The purpose of this letter is to provide comments on the "Working Principles for Revising the Advisory Council on Historic Preservation's ''Policy Statement Regarding Treatment of Human Remains and Grave Goods.'' In 1989 four federally recognized tribes, the Gila River Indian Community (GRIC), Salt River Pima-Maricopa Indian Community (SRP-MIC), Ak-Chin Indian Community (ACIN) and the Tohono O'Odham Nation (TON), developed an organization called the Four Tribes Cultural Resource Working Group which is recognized by each Community's respective Community Council Resolutions. The Four Tribes cooperate in matters on issues affecting cultural resource preservation, cultural resource management, traditional cultural property evaluations, repatriation and other issues of cultural concern that encompasses protection, preservation and revitalization of our shared histories, language, and culture. The Four Southern Tribes, through coordination and in consensus, responds to all matters regarding all of the aforementioned matters.

On Friday, October 28, 2005, the Four Southern Tribes Cultural Resource Working Group (The Four Tribes) met to discuss comments related to the principles in order to produce an entirely new policy to replace the current ''Policy Statement Regarding Treatment of Human Remains and Grave Goods.'' The Four Tribes agree that the term "grave goods" should be replaced with the term "funerary objects." The following changes are strongly recommended:

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Principle 1: Avoidance of burial disturbance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects. Federal undertakings should disturb human remains and funerary objects only if absolutely necessary. The term "absolutely necessary" needs to be concretely defined in consultation with tribes. Monetary loss is not a justifiable motivation for burial disturbance because monetary loss can be avoided if federal agencies initiate the Section 106 process at the earliest point of project inception, before pecuniary commitment takes place. Federal agencies must ensure that tribes are adequately consulted to provide input in order to realistically consider avoidance and preservation in place. Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site's long-term protection and preservation.

Principle 2: Human remains must be treated with respect and dignity as defined in consultation with the culturally affiliated tribes. Dignity and respect are concepts subjective to different cultures.

Principle 3: Federal agencies are responsible for meaningful consultation and closure as defined by culturally affiliated tribes as a means to achieve compliance with the law. A single letter does not constitute consultation, and is not a bona fide effort to meaningful consultation. Agencies must realize federal trust responsibilities predate government-to-government consultation as "the federal government has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealing with the Indians, should therefore be judged by the most exacting fiduciary standards." The United States has a general fiduciary obligation to ensure the dignified and respectful treatment and disposition of human remains under the terms of authorizing documents (e.g., the Native American Graves Protection and Repatriation Act (NAGPRA), the requirements of Section 106 of the National Historic Preservation Act, State burial laws and other applicable statutes and executive orders) as stated in *Navajo Tribe of Indians v. United States*, 624 F.2d 981, 988 (Ct. Cl. 1980).

In accordance with the NHPA, the Federal agency official with jurisdiction over the undertaking has the responsibility to make the final decisions in Section 106 review after completing the consultation process, however it must be recognized that tribes are sovereign nations, and as such should be given higher priority in the consultation process given the federal government's fiduciary obligations to the tribes. There is a tendency to give more consideration to groups who launch letter writing campaigns because there is a greater quantity of comments on a given project, and no consideration to the fact that one letter from a tribal leader represents an entire nation. The policy statement should clarify how the Federal agency weighs the views presented by the different parties in arriving at a final decision.

Principle 4: Federal agencies must develop procedures for the preservation and treatment of human remains discovered intentionally or inadvertently, as well as procedures for treatment of human remains and funerary objects exposed during natural disasters or encountered during emergency responses to such disasters in consultation consistent with Principle 3. If a site is avoided, Federal agencies must have a procedure in place to provide the land owners with guidance developed by the Secretary of the Interior under Section 112(b) of the NHPA and supplemental guidance that encourages protection of important archaeological properties, including burial sites.

Principle 5- Prior to reburial, scientific studies performed for justified research topics must be non-destructive and must be approved by the culturally affiliated tribe. If the scientific study is offensive to the descendants of the dead, reburial should occur without prior study. Scientific studies and reburial should occur according to a definite, agreed-upon schedule.

The Four Southern Tribes Cultural Resource Working Group appreciates the opportunity to voice our concerns and anticipates continued and meaningful consultation to address this critical issue. Please call the GRIC Cultural Resource Specialist Office at 1-520-562-3570 should you have any questions or require further information.

Sincerely,

Mary V. Thomas for
Richard B. Narcia, Governor 11-3-05

cc: Four Southern Tribes of Arizona