

December 1, 2005

John M. Fowler  
Archaeology Task Force  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue NW, Suite 809  
Washington, D.C. 20004

Re: Working Principles for Revising the Advisory Council for Historic Preservation's  
"Policy Statement Regarding Treatment of Human Remains and Grave Goods" (Federal  
Register Vol. 70, No. 169, September 1, 2005)

Dear Mr. Fowler

The Ohio Archaeological Council (OAC) wishes to offer comments on the above Working Principles developed by the Archaeology Task Force. The Ohio Archaeological Council is a private, non-profit corporation registered with the State of Ohio in 1975 as a charitable scientific and educational organization promoting the advancement of archaeology in Ohio. The Ohio Archaeological Council consists of professional archaeologists, avocational archaeologists, and interested students of Ohio archaeology.

Background Information:

Although the term "funerary objects" is defined, the term "human remains" is not. We believe the term "human remains" should be defined for use in the Working Principles.

The definition of "funerary objects" should be rewritten as follows: *"Based on archaeological and/or ethnographic evidence, "funerary objects" are objects that have been intentionally placed with human remains as part of a death rite or ceremony."*

In discussing the nature of the current debate, the statement that "most people would agree that human remains and the items buried with them should not be disturbed" is not necessarily supported by empirical data. Please either delete this clause or cite empirical evidence that "most" people support this view. It is our contention, that there is a clear divergence of viewpoints resulting in extreme positions ranging from one that views all archaeological remains as legitimate objects for scientific study and preservation, one that views human remains and funerary objects as absolutely inviolable objects, and others that find common ground between these extremes.

The definition of "funerary objects" refers to those objects being "placed intentionally...with" human remains. The first sentence characterizing the nature of the current debate, where it states, in part, that "human remains and the items buried with them..." should be revised to be consistent with the definition of "funerary objects." This would reflect the intentional placement of these objects with human remains regardless of whether the objects or the human remains were buried because human

remains and funerary objects are sometimes found where one or neither is buried (e.g., in rockshelters, caves, caverns, and sinkholes).

Because the Working Principles deal with both human remains and grave goods, which, for the sake of consistency, should always be referred to as funerary objects, all statements should refer to both of these items. There are places in the Background Information section and the Working Principles where only human remains are referred. These should be revised to include both human remains and funerary objects.

#### Working Principles:

The updated policy should not only “encourage Federal agencies to initiate the Section 106 process early in their planning processes,” but also encourage those entities acting on the Federal agency’s behalf, and applicants for Federal assistance, as urged in Section 106.

**Principle 1: The Policy Statement Should Recognize that Human Remains must be Treated with Respect and Dignity**

This Principle should be revised to include funerary objects. The phrase “respect and dignity” is not defined, and thus is problematic. It should be defined, or else the principles constituting “respect and dignity” should be clearly stated by the ACHP.

**Principle 3: The Policy Statement should Emphasize that Avoidance, Followed by Preservation in Place, is the Preferred Alternative to Disturbance of Human Remains and Funerary Objects**

This Principle fails to recognize that each instance of the discovery of human remains and funerary objects is unique and should be handled on a case-by-case basis. Guidance on when it is “absolutely necessary” to disturb human remains and funerary objects should be given. Further guidance on how the “long-term preservation” (please define this term) of a site (add “containing human remains and/or funerary objects”) is not ensured by “simple avoidance” should be given. It is our contention that “simple avoidance” is not always the most practical form of site preservation. Often, “simple avoidance” is used to obtain no effect determinations on sites, and then later, these sites are disturbed or destroyed by non-federal undertakings, in some instances made possible or viable by the initial improvement. In such instances, “simple avoidance” only postpones the destruction of these resources. Perhaps examples of alternatives to “simple avoidance” should be given.

**Principle 4: The Policy Statement should Recognize that Federal Agencies are Responsible for Meaningful Consultation with All Interested Parties as a Means to Achieve Compliance with the Law.**

Please define the terms “ultimate disposition” and “disposition.” How do the two differ?

Principle 5: The Policy Statement should Guide the Federal Agency Official in Decision Making

This Principle seems to indicate that all sites containing human remains and funerary objects are "historic properties." Please clarify. When clarifying "how the Federal agency weighs the views presented by the different parties in arriving at a final decision", this Principle should indicate how the religious beliefs of "different groups" or "different parties" (are these the same?) "concerned with the effects of the undertaking" are to be weighed so that the Federal agency does not engage in an excessive entanglement of government and religion. Such an entanglement could possibly violate the First Amendment of the U.S. Constitution.

Principle 6: The Policy Statement should Call for Federal Agencies to Develop Procedures for the Preservation and Treatment of Human Remains Discovered Inadvertently, or When there is the Potential for an Undertaking to Discover Human Remains

Please define "preservation and treatment."

Thank you for providing the OAC the opportunity to comment on the draft Working Principles. We recognize that there are many viewpoints on the disposition of human remains and funerary objects. And, in order to be effective principles, the final Working Principles should recognize this diversity. It is our hope that our comments will assist you in the final document.

Respectfully submitted

Elliot Abrams  
President