Draft
Working Principles for Revising ACHP's
"Policy Statement Regarding Treatment of Human Remains and Grave Goods"

OVERVIEW

The Advisory Council on Historic Preservation (ACHP) is preparing to update its "*Policy Statement Regarding Treatment of Human Remains and Grave Goods*" (adopted 1988). In April 2004 the ACHP formed a Task Force on archeology, and sought comments on suggested modifications and additions to existing ACHP policy guidance regarding how archeology is carried out pursuant to Section 106 of the National Historic Preservation Act. The comments of Federal and State Historic Preservation Officers, major professional archeological organizations, all Federally-recognized Indian tribes and their designated Tribal Historic Preservation Officers, and Native Hawaiian Organizations were solicited in this effort.

From these comments, the Task Force identified several key issues requiring attention. One of the priority issues was revision of the human remains policy statement. At its Spring 2005 meeting, the ACHP membership voted unanimously to direct its Archeology Task Force to revise and update the 1988 policy statement. The Task Force has drafted a set of *Working Principles*, which are presented below, to guide revision of the 1988 policy.

We invite your views and observations on these principles, below—and the Task Force will use your comments to draft a first revision of the 1988 policy statement. This first revision will then be subject to face-to-face meetings with the full range of interested parties. The Task Force recognizes the unique legal relationship that exists between the Federal government and Federally-recognized Indian tribes, and the ACHP's consultation with Indian Tribes will be held on a Government-to-Government basis. Following consultation, the Task Force will present a revised policy statement to the full ACHP membership for adoption.

Additional background information, including a copy of the 1988 human remains policy statement, is provided following the principles.

WORKING PRINCIPLES

The ACHP's revised and updated policy will:

- address treatment of all human remains and funerary objects in the context of compliance with Section 106 of the National Historic Preservation Act (Section 106);
- encourage Federal agencies to initiate the Section 106 process early in their planning processes;
- address human remains and funerary objects of all people;
- be consistent, and work in concert, with other Federal, State, tribal, and local laws;

Principle 1: The policy statement should recognize that human remains must be treated with respect and dignity.

Principle 2: The policy statement should clarify the intersection between Section 106 and other legal authorities.

- The policy statement needs to clarify the intersection between the requirements of Section 106 and the Native American Graves Protection and Repatriation Act (NAGPRA).

- The policy statement needs to clarify the intersection between the requirements of Section 106, State burial laws and other applicable laws.

- The policy statement needs to recognize that a Federal agency official under Section 106 has a duty for the care of human remains and funerary objects.

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.

- Federal undertakings should disturb human remains and funerary objects only if absolutely necessary, and then only after exploring other alternatives early in project planning.

- In order to realistically consider avoidance and preservation in place, Federal agencies need to initiate the Section 106 process early in planning.

- Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site's long-term preservation.

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.

- 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, and being informed, by the consultation process. However, it is recognized that Federal or state law may prescribe a certain outcome.

- Agency decisions regarding treatment and ultimate disposition must be based on a careful consideration of all views.

- The legal Government-to-Government obligations of Federal agencies to Indian tribes emanating from various statutes, Executive orders, treaties or court decisions should have a bearing on Federal agency decisions regarding the treatment and disposition of Native American human remains and funerary objects.

- Planning for the disposition of human remains should occur early in the process.

Principle 5: The policy statement should guide the Federal agency official in decision making.

- The policy statement should clarify the roles of different groups concerned with the effects of the undertaking on historic properties in making decisions.

- The policy statement should clarify how the Federal agency weighs the views presented by the different parties in arriving at a final decision, recognizing that Federal or state law may prescribe a certain outcome.

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.

- The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects when they are inadvertently discovered.

- The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects where they may be anticipated to be encountered as part of National Register eligibility investigations and data recovery investigations.

- The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects exposed during natural disasters or encountered during emergency responses to such disasters.

- The policy should encourage Federal agencies to develop these procedures in consultation with all interested parties consistent with Principle 4.

- If a site is avoided, Federal agencies should have a procedure in place to provide the 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 archeological properties, including burial sites.

BACKGROUND INFORMATION

The Section 106 process and purpose of the 1988 human remains policy statement:
Section 106 of the National Historic Preservation Act seeks to accommodate historic preservation concerns through a process of consultation between the Federal agency official and other parties having an interest in the effects of undertakings on all kinds of historic properties. In some cases, these properties contain cemeteries or other burial grounds with human remains and funerary objects. Although final decisions in the Section 106 review process are the responsibility of the Federal agency official with approval authority over the undertaking, and Federal or state law may prescribe a certain outcome, the Section 106 process requires that the official consult with other parties, and then make an informed and reasoned decision about what should be done in each case. It is in reaching these decisions that Federal agencies look to the ACHP's "*Policy Statement Regarding Treatment of Human Remains and Grave Goods*" for guidance.

The current ACHP policy is a formal statement, endorsed by the full ACHP membership in 1988, representing the membership's collective thinking about what to consider in reaching decisions about human remains and funerary objects encountered in undertakings on Federal, tribal, state, or private lands (the term "*funerary objects*" will be used in the revised policy statement to replace the term "grave

goods." As NAGPRA defines them they are "items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains"). Unlike Federal and State laws that may circumscribe how human remains and funerary objects are treated on Federal, tribal, and state lands, the policy statement does not proscribe a specific outcome, but rather serves to focus thinking about what needs to be considered in reaching a decision.

Nature of the current debate:
Most people would agree that human remains and the items buried with them should not be disturbed. Initiated early enough, the Section 106 process should allow for alternatives to disturbance of locations known to contain human remains, including avoidance and preservation in place, to be thoroughly explored. However, during consultation about what to do when disturbance of human remains is unavoidable, the parties' viewpoints tend to fall somewhere into one of two broad camps. Some believe that the information human remains and funerary objects can provide about the past when studied by archeologists and other specialists requires that the remains, which usually are removed from the ground at public expense, be subject to scientific analysis. Others argue that human remains and their associated funerary objects possess cultural significance and spiritual value to living communities, and should be immediately and respectfully reburied or repatriated for reburial without study.

Objectives of an updated policy:
In updating and revising the 1988 policy statement, the ACHP wishes to assert its leadership in historic preservation for the Federal government and for parties affected by the Section 106 process. While the revised policy applies to decisions made in the context of the Section 106 review process, the ACHP hopes that its policy will provide an important model for other organizations, agencies, or governments seeking to develop their own policies on the treatment of all human remains, burial sites, and associated funerary objects.

The broad objective of the new policy is to offer leadership in resolving how to balance the public interest in the desire to treat human remains in a respectful and sensitive manner, while recognizing the public interest in knowing its collective past. Specifically, this policy will guide decision-making under Section 106 when questions involving the treatment of human remains and funerary object must be resolved in the absence of Federal or state law circumscribing how human remains and funerary objects are treated. The revised policy statement is not bound by geography, ethnicity or nationality; it applies to treatment of all human remains encountered in Section 106 review.

The Section 106 consultation process does not mandate a particular outcome. Accordingly, this policy does not direct Federal agencies to make specific decisions. Rather, as a statement of the collective thinking of the ACHP membership, it should guide Federal agencies in resolving the difficult question of what to do with human remains when Federal or state law do not already prescribe a certain outcome.

Attachment: ACHP current "*Policy Statement Regarding Treatment of Human Remains and Grave Goods.*"

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