



November 27, 2002

Dr. Robert L. Kelly
President
Society for American Archaeology
900 Second St. NE #12
Washington DC 20002-3557

REF: Proposed Treatment Plan for the Buckeye Knoll Site, 41VT98

Dear Dr. Kelly:

I would like to respond to the three concerns raised in your letter to the ACHP dated October 21, 2002, regarding our review of the referenced data recovery plan. As you know, the Buckeye Knoll site is a multicomponent site located in eastern Texas that contains an apparently intact Early Archaic period cemetery. It is certainly a significant and important archaeological site that warrants careful and thorough investigation.

The proposed treatment plan for site excavation was developed pursuant to a 1990 Programmatic Agreement (PA) for the enlargement of Victoria Channel. The Galveston District of the U.S. Army Corps of Engineers (Corps), the Texas State Historic Preservation Officer (SHPO), and the ACHP were signatories to the PA. Under the terms of the PA we were to review and comment on any treatment plans to guide archaeological data recovery. Once the significance of the site became known several federally recognized Indian tribes and archaeological organizations (including the SAA) asked the Corps for formal involvement in the Section 106 consultation process.

The primary issue that the Indian tribes and archaeological organizations disagree over is the proposed treatment of human remains and grave goods from the Early Archaic cemetery. Treatment considerations here are guided by the provision of the PA that calls for the Corps to ensure that *“any human remains and grave-associated artifacts encountered during any activity associated with the implementation of the Programmatic Agreement are treated in a manner consistent with applicable Federal and State laws and regulations and the Council’s ‘Policy Statement Regarding Treatment of Human Remains and Grave Goods.’* I would like to address your three concerns in order.

First, you state that the Corps *“may not have given [the ACHP] a clear statement of the nature of the ‘treatment plan’ document. ...*, and that what was actually provided to the ACHP for comment was a *“brief, nontechnical statement about what kinds of analyses could be performed on the human remains from this extraordinary site and what could be learned from each kind of analysis.”* While this would explain our concern about the lack of specificity in the plan (dated May 3, 2002), we reviewed what the Federal agency provided to us. What we reviewed and commented on was called a *“draft proposal for*

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the treatment of human remains and materials” in the Corps’ August 1, 2002 transmittal letter to us, and the term “*Draft Proposal*” is contained in the title of the document itself. This document also was that provided to the other consulting parties for review, according to the Corps’ letter.

If a more comprehensive plan for study of the human remains exists, it has not been provided to the ACHP.

The SAA’s second concern is how the Council’s policy statement is being interpreted in this case. You note that the policy statement (“*Treatment of Human Remains and Grave Goods*” dated September 27, 1988) is

quite clear that within the Section 106 process, decisions about treatment of human remains should be made ‘in consultation with the descendants of the dead’. In the interpretation memorandum for this policy, ‘descendants’ is defined to mean lineal descent or a cultural relationship. As far as we are aware, no evidence has been brought forward to indicate that any of the tribes listed above meet the Council’s definition of ‘descendants’.”

The ACHP has intentionally not looked to the validity of the consulting Indian tribes status as “*descendants*” for a couple of reasons. First, we continue to believe, as recommended in the Council’s Policy Interpretive Memorandum, that

“It is seldom fruitful to argue with someone’s claim to be descended from a given group of deceased individuals...,” and that “*it is recommended that if someone claims to be descended from the person represented by a set of human remains, this claim should be honored to the extent of consulting the putative descendant about how the remains should be disposed of, however little evidence the individual may show of genetic relationship to the deceased.*”

This approach is further supported by the 1992 amendments to the National Historic Preservation Act (NHPA). Section 106 consultation is guided in part by the requirements of Section 101(d)(6)(B) of the NHPA which states that

“In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to [historic] properties.”

This language requires Federal agencies to consult with any Federally recognized Tribe or Native Hawaiian Organization that ascribes such significance to the historic property. It is important to note that this requires consultation among the parties; that is, the Federal agency considers the views of all the consulting parties, and then makes a reasoned decision about what should be done in the case. What a Federal agency should avoid is making premature decisions based on one consulting party’s views, without fully considering all comments provided.

The third concern raised in your letter to us is the “*ACHP’s opposition to destructive analyses.*” This is not a correct interpretation of the ACHP’s position. Our letter to the Corps stated that “*the ACHP clearly favors analysis prior to reburial, provided the analysis addresses ‘justified research topics.’*” The Policy Interpretation memorandum was then quoted again in our response: “*If one proposed to retain human remains or grave goods for study in perpetuity, or to conduct destructive analyses on them, one needs to justify doing so in considerable detail, with reference to specific research questions that cannot be addressed in some other manner.*” We reviewed what was presented to us as the Treatment Plan and

concluded that the treatment plan was weak in structure and in explaining the relevance of the proposed research questions and the studies intended to address those questions.

In summary, the ACHP is not opposed to invasive or destructive testing, but our guiding policy statement does require that reasons for such analyses be explained clearly and justified. In the present case, our letter to the Corps of Engineers stated only that the ACHP did not believe the proposed Treatment Plan had yet fully made this case. If this can be achieved, then we believe such work may go forward.

We hope this clarifies our comments provided to the Corps of Engineers. It is our understanding that the Corps is currently revising the Treatment Plan to address our concerns, and that the revised Plan will be provided to all the consulting parties for review and comment. If you would like to discuss this matter further, do not hesitate to call Ms. Carol Gleichman at 303-969-5110.

Sincerely,

A handwritten signature in black ink, appearing to read "Don L. Klima", written over a horizontal line.

Don L. Klima
Director

Office of Federal Agency Programs

cc: Corps
TX SHPO