



SOCIETY FOR AMERICAN ARCHAEOLOGY

26 January 2007

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

Attention: Dr. Tom McCulloch

Dear Mr. Fowler:

The Society for American Archaeology (SAA) welcomes this opportunity to further comment on the final draft of the Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects (dated 12/20/2006). SAA commends the ACHP's Archaeology Task Force for its hard work on these guidelines as well as on its other tasks. As everyone by now no doubt knows, 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 more than 7,000 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

In your cover letter, you ask four questions. I will first answer those questions and then comment on this most recent draft.

1. Yes, ACHP should have a policy. Not formulating an updated policy would abrogate the ACHP's responsibilities in this area. The earlier policy is now 16 years old. The legal, regulatory, professional, and cultural environments in which Section 106 related activities occur have all evolved markedly since the original policy and a new policy is needed. As this draft stands, however, the earlier policy is the better one in that it better balances the broader public and scientific interests in the past with the more specific interests of Native American and other potential interest groups than does this draft. SAA urges that that balance be restored in the new policy.
2. Yes, there should be a single policy. That policy should be flexible enough to meet a range of circumstances (which the current draft does not). To develop

separate policies would increase and confound the complexities of an already complicated matter.

3. Yes. The policy as it stands does not at all address the importance and necessity of documentation when burials, human remains, or funerary objects are removed from the ground.
4. No and yes. SAA believes that the discussion rightly emphasizes the decision making role of the Federal agency after consultation. However, the discussion text mistakenly states that agencies should seek agreement through consultation. In Section 106 consultation, agencies are required to take consultation “into consideration” in decision making, not agreement. Furthermore, the discussion text is framed as though consultation will only be with Native American or Native Hawaiians. As SAA urged in its previous comments and again below, the policy must be broader to reflect the full diversity of potential descendants as well as the public more generally. This policy as written is too narrow.

Turning to the draft policy, these comments are of necessity short.

- The current draft, like its predecessor, does not address the value and importance of scientific study nor does it adequately address the necessity of documentation. SAA again urges the inclusion of a Principle 9: **The policy acknowledges that the preservation of irreplaceable heritage is in the public interest. The Federal agency should consider the importance of preserving heritage and associated knowledge in its implementation of Section 106 activities, consistent with the purposes of the National Historic Preservation Act. Any decision-making should take into account the balance of interests of all stakeholders affected by the undertaking.**
- SAA is deeply concerned that the draft policy remains very weak, even negative, in its language (and its omissions) about adequate documentation if disinterment of human remains or funerary objects is to occur. Draft language under Principle 5 describing the qualifications of those supervising disinterment is sufficiently vague that even an undertaker would meet the standard given. Further, archaeologists cannot ethically or legally disinter without doing documentation. By implication then, the policy advocates potential outcomes conflicting with ARPA and other relevant laws. SAA agrees that beyond obtaining necessary forensic information and basic archaeological documentation, the level of further scientific study or analysis (including any consumptive analysis) is an appropriate subject of consultation, once appropriate parties have been identified and especially depending on identification of a culturally affiliated tribe.
- The policy claims to not advocate outcomes. However, it does so by implication. The absence of support for scientific study and the weak language under Principle 5 is advocacy by omission. The tone of the policy advocates that human remains

and associated grave goods need not be documented or studied. SAA believes that many agencies will opt for this because it is less expensive and easier.

- Given the previous points, SAA believes the language of this policy can easily be used to preclude any archaeological excavations, including grant-funded research excavations (e.g., NSF), that might have the potential of encountering human remains.
- Although acknowledging the potential for there to be multiple descendants, the draft is written as though only the remains of Native Americans or Native Hawaiians are the subjects of this policy. The policy needs to more adequately and broadly define descendents and provide sufficiently clear guidance on identification and consultation.
- This draft does not adequately address unmarked graves or human remains for which there are not identifiable descendents. While much of the discussion rests upon NAGPRA, it does not include NAGPRA's recognition of such remains.

There are changes in this draft that SAA does applaud: strengthening the distinction between consultation and decision making, the stress on advanced and early planning, and the necessity to have adequate information upon which to make early decisions among them.

Again, SAA very much appreciates the opportunity to contribute to this very important effort and looks forward to reviewing further drafts of this policy and of other guidance being developed by the Task Force.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Kenneth M. Ames", written in a cursive style.

Kenneth M. Ames  
President,  
Society for American Archaeology