



**Advisory Council on Historic Preservation  
Policy Interpretation Memorandum 89-1  
Treatment of Human Remains and Grave Goods**

Issued: December 1, 1988

The purpose of this memorandum is to provide guidance on how to implement the policy statement regarding treatment of human remains and grave goods, adopted by the Council on September 27, 1988 ([Attachment A](#)), primarily in the context of Section 106 review.

**Definitions**

Before beginning this discussion, we need to provide operational definitions of some of the key terms used in the policy statement. For purposes of this memorandum:

- \* The term "human remains" is taken to mean the remains of deceased human beings, including but not limited to bone, teeth, mummified flesh, burials, and cremations.
- \* The term "grave" is taken to mean the pit, tomb, or other facility in which human remains have been interred.
- \* The term "grave goods" is taken to mean artifacts of other material remains that can plausibly be interpreted as having been intentionally included in a grave as some part of the interment process.
- \* The term "descendants of the dead" is taken to mean any group, community, or organization that may be related culturally or by descent to the deceased persons represented by human remains, for example, a Native Hawaiian group that may be descended from individuals interred during Hawaiian prehistory, or a Chinese-American community that may be related to individuals interred in an early historic mining town.
- \* The term "scientific research value" is taken to mean the value of human remains or grave goods to the study of specific research topics of importance to such scientific disciplines as archeology, physical anthropology, human biology, or medicine.

**Discussion**

The policy statement articulates six interrelated points, each of which will be discussed below with specific reference to the Section 106 process.

- \* *Human remains and grave goods should not be disinterred unless required in advance of some kind of disturbance, such as construction.*

This statement indicates a clear preference for leaving graves undisturbed unless some change agent -- be it construction, changes in land use, pothunting, or erosion -- threatens them. It follows that in Section 106 review we should seek preservation in place of sites known or thought likely to contain graves wherever this is feasible and prudent. In some areas, where graves may occur in virtually any habitation site, this may mean seeking preservation in place as the treatment of choice as a matter of course. This, of course, has been standing Council policy for many years (cf. Treatment of Archeological Properties, Principle VII, 1980).

The policy statement undergirds the General Counsel's opinion that the exception to the Criteria of Adverse effect set forth as 36 CFR § 800.9(c)(1) should not be applied to the excavation of sites known or strongly suspected to contain graves (Attachment B). We should not readily concur in the excavation of graves if there are likely to be reasonable ways of preserving them in place, and when we do concur, it should be in the context of a Memorandum of Agreement that acknowledges the adverse effects that will result from excavation, and spells out mechanisms for minimizing or mitigating such effects.

In applying this policy, we need to be sure that its implementation will really lead to preservation. It will do no good to ensure that a logging road misses the cemetery if the road then serves as an access route for pothunters who loot the site. WOPR will recall our discussions with FHWA about the circumstances under which excavation of sites and areas outside the boundaries of a construction project are appropriate. Nothing in the Council's policy statement changes our position on this matter: as a matter of course we should consider both the direct and indirect effects of undertakings. Accordingly, it may be entirely appropriate to excavate a site or portion of a

site that is subject to indirect effect -- for example, subject to uncontrollable vandalism as the indirect effect of nearby road construction.

*\* Disinterment when necessary should be done carefully, respectfully, and completely, in accordance with proper archeological methods.*

"Careful" disinterment and disinterment "in accordance with proper archeological methods" can be taken to mean the same thing. When human remains and grave goods must be disinterred, those doing the work should have, or be supervised by people having, appropriate archeological credentials, and the work should be carried out in accordance with effective contemporary archeological techniques. Adherence to the policy statement does not preclude using different kinds of archeological methods, or applying different levels of rigor in different situations; it would not be unreasonable to apply cruder methods to a burial in imminent danger of destruction than might be applied to one whose loss was not imminent.

"Proper archeological methods" include field recordation of the remains unearthed, typically involving photography, field sketches, and the recording of such fundamental data about the deceased as age at death, sex, stature, and evidence of disease or trauma. In rare instances such recording, or some aspect of it (for example, taking photographs) may be so abhorrent to the descendants of the dead that it will be inappropriate to carry it out. Such alterations to standard procedure will need to be negotiated on a case-by-case basis.

"Proper archeological methods" should not automatically be assumed to include washing bones or treating them with preservatives, particularly where Native American remains are involved. Many Native American groups regard the earth surrounding the bones as part of the body itself, and many regard intervention in the process of decay as interrupting the spirit's return to the earth. If it is anticipated that washing or preservation treatments will be necessary, the descendants of the dead should be consulted beforehand to ensure that this will not be abhorrent to them.

The word "respectful" is self-explanatory; when working with human remains, one should maintain a decent respect for the dead. One should also maintain respect for the customs and beliefs of those who may be descended from the deceased, and try to avoid unnecessary conflict with them.

The statement that human remains and grave goods should be disinterred "completely" indicates both that in excavating an individual burial one should be careful not to leave pieces in the sidewalls or backdirt, and that in excavating a threatened cemetery one should excavate it in its entirety, rather than leaving human remains to be destroyed by whatever change agent prompted the excavation. There will be circumstances, of course, under which one cannot be sure that one has gotten all of a cemetery or other group of graves. For example, if graves are widely dispersed through a reservoir area, it may not be feasible, or even technically possible, to find them all. To the extent feasible, however, we should try to ensure that threatened human remains and grave goods are recovered in their entirety. Note that this principle applies regardless of the research interests being addressed by an excavation project. The fact that for research purposes one may need to recover only 10% of the burials in a site is not relevant to the need to remove 100% in order to avoid their violation by whatever change agent is involved.

On the other hand, the policy statement does not justify excavation of unthreatened burials. If a project will result in disturbing only 10% of the cemetery, it is that 10% that ought to be excavated; the policy statement does not encourage excavating the complete cemetery in such a case.

*\* In general, human remains and grave goods should be reburied, in consultation with the descendants of the dead.*

This statement articulates one half of the modal rule to be adhered to wherever feasible, prudent, and in accord with law. The Council clearly prefers reburial of human remains, in consultation with descendants. This policy is broad enough to embrace the delivery of human remains to descendants, or to third parties, for reburial as well. Logically, "reburial" must be taken to embrace the whole range of possible disposal modes that might be preferred by descendants -- for example, burial in caves (e.g., Hawaii) and cremation (e.g. Southern California) -- as well as simple reinterment of bones in the ground.

The policy statement does not define the word "descendants" but we have provided an operational definition above for staff use. Experience suggests that it is seldom fruitful to argue with someone's claim to be descended from a given group of deceased individuals; such arguments tend to degenerate into disputes about how much of various kinds of blood the person has, which is often irrelevant to membership in the cultural group that may be involved and often cannot be ascertained in any event. 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 is not to deny that people who really are unrelated to the deceased may on occasion claim spurious relationships in order to advance particular agendas of their own; it is only to say that practically speaking, in such a case it is probably more practical to let the putative descendant into consultation than to try to exclude him or her.

A question has been raised about whether veterans' groups should be regarded as "descendants of the dead" where the remains of battlefield casualties are involved (e.g., at Saratoga, Gettysburg, or Custer Battlefields). While we do not believe that the Council had such groups in mind when it issued the policy statement, in the absence of more direct descendants (e.g. actual family members), it would be reasonable to consult with such groups in deciding about the disposal of the remains of war dead.

*\* Prior to reburial, scientific studies should be performed as necessary to address justified research topics.*

This is the other half of the modal rule: the Council clearly favors analysis prior to reburial, provided the analysis addresses "justified

research topics."

This statement undergirds our standard practice of trying to ensure that agencies justify the research they intend to do as part of data recovery. It is consistent with the General Accounting Office's 1981 recommendation to the Council that it insist that Federal data recovery projects address justified research questions.

In reviewing data recovery proposals involving the treatment of human remains, we should examine plans for analysis of human remains and grave goods, especially critically. Analysis should not be done simply for the sake of analysis, or merely to compile a descriptive record. The potential analyst should have some definite set of defensible research problems that will be elucidated through conduct of the analysis proposed, and the connection between problem and analytic technique should be clearly laid out.

Logically, the rigor and thoroughness with which the justification for a given research topic should be set forth can vary with the intrusiveness of the analytic methods proposed. In other words, if one proposes only to make field observations to determine age, sex, stature, etc., one usually need not go into great detail about why this is necessary; such data are applicable to a wide range of research questions, and their collection is not widely regarded as objectionable. Conversely, if one proposes to retain human remains or grave goods for study in perpetuity, or to conduct destructive analyses on them, one will need to justify doing so in considerable detail, with reference to specific research questions that cannot be addressed in some other manner.

*\* Scientific studies and reburial should occur according to a definite, agreed-upon schedule.*

This policy is clear, and should be carefully addressed in consultation. Schedules should be spelled out in Memoranda or Agreement and other relevant documents. The length of time allowed for analysis depends, of course, on the nature of the remains, the kinds of analysis proposed, the number of bodies involved, and so on. In many cases one year has turned out to be a reasonable length of time, but this is by no means an invariable rule. Responsible agencies should, of course, provide sufficient funds to ensure that analysis can be and is done within the agreed upon schedule.

*\* Where scientific study is offensive to the descendants of the dead, and the need for such study does not outweigh the need to respect the concerns of such descendants, reburial should occur without prior study. Conversely, where the scientific research value of human remains or grave goods outweighs any objections that descendants may have to their study, they should not be reburied, but should be retained in perpetuity for study.*

In contrast with the modal rule of reburial after analysis, this final statement permits us to enter into agreements providing for either end of the spectrum -- reburial without analysis, and analysis without reburial -- and hence into agreements providing for any permutation in between. The consultation process is obviously the context in which the consulting parties should decide on the precise permutation to employ in a given case.

There will of course be some interest groups that will maintain that analysis is always offensive, and never justified, while others will insist that analysis in perpetuity is always justified and claims of offensiveness are spurious or disingenuous. Experience suggests, however, that in most cases a meeting of the minds can be reached if the parties involved will deal with each other with open minds and mutual respect. Where one group or another is intractable, of course, it should still be possible for the core consulting parties -- the Federal agency, the SHPO, and the Council (where we participate) to reach a conclusion. The outcome of the one case of this kind that has thus far been litigated [1] suggests that in such a case, the Memorandum of Agreement reached by the consulting parties will be capable of withstanding legal challenge.

Approved for consistency with Council policy:

/s/

Robert D. Bush, Executive Director  
12/1/88

[1] Coastal Band of the Chumash Nation, et al. v. Ventura County, et al. (C.D. Cal. 1986; No. CV 86-7979 PAR).