Preserving America's Heritage

May 28, 2004

Dr. Lynne Sebastian
President
Society for American Archaeology
900 Second St. NE
Suite 12
Washington, DC 20002

Dear Dr. Sebastian:

As you know, in 2003, Dr. Julia King was appointed by President Bush to the Advisory Council on Historic Preservation (ACHP). Soon after her appointment, Chairman John Nau invited Dr. King to identify archaeology issues that should receive priority consideration and action by the ACHP. Working with the ACHP staff archaeologists, Dr. King identified three broad issues in need of attention: 1) specific archaeological guidance on a variety of topics to assist users of the Section 106 process; 2) revisions to the ACHP's 1988 *"Policy Statement Regarding Treatment of Human Remains and Grave Goods;"* and 3) strategies to better capitalize on the rich potential of archaeological resources for heritage tourism and public educational opportunities. These are described in more detail in the attached paper.

At the May meeting in Washington DC the ACHP members reviewed the issues and indicated their desire to explore them in more depth. To this end the Chairman appointed a task force of ACHP members to oversee this activity. ACHP members on this task force include the following:

- Dr. Julia King, Chair
- Mr. Mark Rey, representing the Secretary of Agriculture
- Mr. Phil Grone, representing the Secretary of Defense
- Ms. Fran Mainella, representing the Secretary of the Interior
- Mr. Emil Frankel, representing the Secretary of Transportation
- Mr. Edward Sanderson, representing the National Conference of State Historic Preservation Officers
- Dr. Alan Downer, Chairman of the National Association of Tribal Historic Preservation Officers (observer status)

During discussion on this major new initiative, the ACHP members were clear that this be carried out in close consultation with the major professional organizations, with other key stakeholders involved as this initiative moves forward. Accordingly, I am seeking your help and guidance. We would welcome the views of your organization on both our direction and the priorities we have identified. Do you agree that these issues are in need of attention by the ACHP? Are there other issues that could benefit from ACHP guidance?

We encourage your organization to provide us with a preliminary response to the attached paper by mid-June. As a follow-up, we intend to hold a meeting among the professional archaeological organizations and the Task Force members in July in the Washington, DC area to discuss these issues and future directions in more detail.

The staff point of contact for this initiative is Dr. Tom McCulloch, who can be reached at 202-606-8554 or via email to: tmcculloch@achp.gov. We look forward to working with you.

Sincerely

John M. Fowler
Executive Director

Attachment

ACHP Spring meeting 2004 briefing book item:

ARCHEOLOGICAL ISSUES

Background. Among the many national historic preservation issues that fall within the ACHP's broad agenda are those involving the extraordinary diversity of our nation's archeological heritage. Archeological resources, their identification, analysis and treatment, have always been a mainstay of the Section 106 process, and indeed, some of Section 106's most noteworthy achievements over the years have been in addressing the vital research needs of both prehistoric and historic archeological properties threatened by Federal undertakings.

Likewise, the Federal Government, under the requirements of the National Historic Preservation Act and a host of subsequent Federal laws and executive orders, is charged with careful stewardship of archeological resources in its ownership or control. The unique nature of these archeological properties resulting from both their scientific value and often their cultural value to Native Americans, pose a host of complex and essential policy issues for the ACHP. Some of these we have confronted over the years; others remain to be addressed, and yet other issues, such as the heritage tourism potential of archeological properties, are now taking on an added sense of urgency for the ACHP.

Soon after her appointment as the first archeologist on the ACHP, Dr. Julia King was asked by Chairman Nau to identify archeology issues that might merit ACHP consideration and action. Chairman Nau welcomed her suggestions and directed the ACHP staff to review Dr. King's suggestions, and discuss how these might be approached. Following discussions between Dr. King and the ACHP's staff archeologists, consensus emerged that the following issues should be regarded as priorities.

Issue 1: Relevant and more accessible archeological guidance on several specific topics is needed by Section 106 practitioners.

Background. Since its creation the ACHP has promulgated several guidance documents on archeology. Only two such documents are currently used by Section 106 participants: the 1980 publication *Treatment of Archeological Properties: A Handbook* and the 1999 *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* that provides guidance on changes to the ACHP's regulations when an undertaking affects certain kinds of archeological properties.

Treatment of Archeological Properties handbook was the product of a formal ACHP task force, and was endorsed by the full ACHP membership in 1980. It set forth principles to guide how archeological sites should be considered and treated in Section 106 review. For the most part, these principles have withstood the test of time and were incorporated into later guidance, including the *Recommended Approach for Consultation.* The remainder of the *Treatment of Archeological Properties* handbook focuses on data recovery.

Preferred preservation treatments and mitigation have now evolved, and the *Treatment of Archeological Properties* does not discuss several topics that are relevant today such as:

- tribal consultation and consideration of site values other than research in Section 106 consultation;
- what constitutes a "reasonable and good-faith effort" to identify archeological properties;
- curation of recovered materials and records and accessibility to professional researchers;
- avoidance and preservation in place as preferred treatments.

Issue 2*: *The ACHP's current "Policy Statement Regarding Treatment of Human Remains and Grave Goods" (attached), which dates to 1988, should be updated to comport with current Federal law and regulation.

Background. Human remains, associated grave goods, and the sites where they are found often possess values beyond the information they contain. They represent deceased human beings, often having powerful emotional importance for their descendants. Human remains and their burial sites are often those to which an Indian tribe and Native Hawaiian organization will ascribe religious and cultural significance. In addition, they are very significant important sources of information about the past when studied by archeologists and other specialists.

Most would agree that human remains should be treated respectfully. However, Section 106 stakeholders often disagree about what this means in Section 106 consultation and occasionally these disputes affect other aspects of the Section 106 consultation process. Some groups want no removal of human remains at all, while others prefer immediate repatriation and reburial of the remains. Some archeologists suggest that such remains, containing specialized information removed from the ground at public expense, should first be subject to intensive and invasive investigation.

In the course of Section 106 review it is the responsibility of the Federal agency official, based on consideration of the views of all consulting parties, to make a reasoned, defensible decision about how to treat human remains. Premature conclusions, or those that have not fully considered the views of others, can significantly delay projects or lead to litigation.

The current ACHP human remains policy is no longer adequate to guide Federal agency officials to make informed public interest decisions in the Section 106 consultation process.

Issue 3: The important opportunity for heritage tourism presented by archeological resources needs to be emphasized.

Background. With its wide public interest and most of its products the result of publicly funded projects, archeology has an important and legitimate role to play in heritage tourism and education. Estimates are that over 90% of archeological excavations in America are conducted pursuant to Section106 of the NHPA. The ACHP should take a more active role promoting the heritage and tourism value of archeological properties.

Preserve America and Executive Order 13287, which call for Federal leadership in the preservation and use of our heritage, provide the vehicles for this promotion of archeological information to the public. Further, given current budgetary constraints, this can be used in a message (coordinated with other Federal agencies and professional organizations) to Congress and policy makers about the importance of archeological resources. The ACHP could help craft and deliver this message that archeology is important to all citizens, and that it has underused heritage tourism potential.

Action Needed. The Federal Agency Programs (FAP) Committee needs to consider these initiatives proposed above and determine if these are the top priority issues in this area or whether there are other archeology topics not discussed here that need to be advanced. The FAP Committee needs to further deliberate on what role it should play in the implementation of these initiatives, and how that involvement should be structured. The FAP Committee will also need to consider what the implication of pursuing these issues will be for the approved ACHP Work Plan and what, if any, changes are warranted.

Attachment: *Policy Statement Regarding Treatment of Human Remains and Grave Goods*

Advisory
Council On
Historic
Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

POLICY STATEMENT REGARDING TREATMENT OF HUMAN REMAINS AND GRAVE GOODS

Adopted by the Advisory Council on Historic Preservation

September 27, 1988

Gallup, New Mexico

When human remains or grave goods are likely to be exhumed in connection with an undertaking subject to review under Section 106 of the National Historic Preservation Act, the consulting parties under the Council's regulations should agree upon arrangements for their disposition that, to the extent allowed by law, adhere to the following principles:

o Human remains and grave goods should not be disinterred unless required in advance of some kind of disturbance, such as construction;

o Disinterment when necessary should be done carefully, respectfully, and completely, in accordance with proper archeological methods;

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

o Prior to reburial, scientific studies should be performed as necessary to address justified research topics;

o Scientific studies and reburial should occur according to a definite, agreed-upon schedule; and

o 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