

An ACHP Perspective on the Artifact Curation Crisis

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The ACHP was invited to participate on this panel because, although we do not manage archaeological collections, we oversee the Section 106 review process, and it is this process that has led to the proliferation of data recovery and artifact collections that are overstuffing existing facilities. I would therefore like to discuss the requirements of Section 106 of the National Historic Preservation Act (NHPA)(16 USC 470f) and the Council's regulations (36 CFR Part 800) and the flexibility this process allows in the treatment of archaeological properties, especially on federal projects carried out on non-federal land.

What do the NHPA and the Council's regulations require regarding artifact curation? There are no specific requirements in Section 106 of the NHPA or the Council's regulations regarding the curation of artifacts acquired during data recovery. Section 106 is curation neutral. Section 112(a)(2) of the NHPA requires that each federal agency shall ensure that...*“records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary [of the Interior] shall promulgate.”* But this section is really about curation of records and reports and the need to maintain such information in databases and make it available to other professional archaeologists. Section 112(b) requires the Secretary to promulgate guidelines to ensure that federal agencies' preservation programs include plans to *“encourage owners who are undertaking archaeological excavations to...donate or lend artifacts of research significance to an appropriate research institution”* and *“allow access to artifacts for research purposes.”* That's it for the NHPA.

In 1999, the ACHP issued revised regulations and a *Recommended Approach for consultation on recovery of significant information from Archaeological Sites*¹. The

¹ The recommended approach states that: “The Federal Agency Official should have prepared a data recovery plan with a research design in consultation with the SHPO/THPO* and other stakeholders that is consistent with the *Secretary of the*

recommended approach advises 106 practitioners to prepare data recovery plans that include, among other things, “*the curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR part 79 (except in the case of unexpected discoveries that may need to be considered for repatriation pursuant to NAGPRA)*”. The guidance in the *Recommended Approach* is not binding, but it does encourage agencies to permanently curate artifacts collected as part of Section 106 compliance in appropriate facilities that meet federal guidelines.

Although the ACHP has encouraged long term curation of collections resulting from Section 106 consultation, there is a lot of flexibility built into the regulations, including how archaeological properties are treated and what ultimately happens with the items recovered during archaeological investigations. Federal curation regulations (36 CFR Part 79) are binding only in Section 106 when collections are recovered from federal or tribal lands, because artifacts excavated or removed from public lands are federal property and such resources and associated records should be preserved in a suitable museum or institution as recommended in the NPS regulations at Part 79. But most of the work associated with transportation projects takes place on non-federal lands.

States may have their own laws and regulations for artifacts recovered from state lands, but artifacts recovered from private lands during archaeological survey and excavation are the property of the landowner, unless a state or local ordinance specifically says otherwise. Human remains, and in many cases, funerary objects, are generally covered under specific laws designed to protect them, or set forth how they may be removed, whether they are found in formal cemeteries or are lying in unmarked graves.

The issue of concern to many archaeologists, State Historic Preservation Officers (SHPOs), and Indian tribes is not that of strict ownership, but of what happens to the

Interior's Standards for the Treatment of Historic Properties, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and the *Advisory Council on Historic Preservation's Treatment of Archeological Properties: A Handbook*. The plan should specify: (a) The results of previous research relevant to the project; (b) research problems or questions to be addressed with an explanation of their relevance and importance; (c) the field and laboratory analysis methods to be used with a justification of their cost-effectiveness and how they apply to this particular property and these research needs; (d) the methods to be used in artifact, data, and other records management; (e) explicit provisions for disseminating the research findings to professional peers in a timely manner; (f) arrangements for presenting what has been found and learned to the public, focusing particularly on the community or communities that may have interests in the results; (g) the curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR part 79 (except in the case of unexpected discoveries that may need to be considered for repatriation pursuant to NAGPRA); and (h) procedures for evaluating and treating discoveries of unexpected remains or newly identified historic properties during the course of the project, including necessary consultation with other parties.”

artifacts. The ACHP recommends that Federal agencies consult with landowners and other parties, prior to the initiation of field work, regarding the curation of artifacts that will be recovered. The federal government cannot normally require a private landowner to turn artifacts over to a museum for curation just because a Federal-aid transportation project crosses their lands. Decisions made in consultation with the private landowner are negotiated, and should be documented in the Memorandum of Agreement (MOA) or Programmatic Agreement (PA) developed for the project. The MOA should address questions of where artifacts and records will end up, who pays for any curation costs, Think about what is the public benefit of collecting and storing archaeological materials over the long run, and realize that the private landowner is generally in a very strong bargaining position.

Collections from tribal lands are the property of the tribe, who determines their fate. Human remains, wherever they are recovered, are a whole other story – subject to NAGPRA, various state laws, and the Council’s recently revised policy statement on the treatment of burial sites, human remains, and funerary objects. Consult our website (www.achp.gov/archaeology) for information on this.

Flexibility in the Section 106 process and creative mitigation. There is nothing in the ACHP’s regulations that requires federal agencies to curate all recovered materials/artifacts from archaeological data recovery efforts from state or private lands in repositories meeting the standards established in 36 CFR Part 79. There is also no requirement to collect all artifacts during archaeological investigations, or even to conduct data recovery at archaeological properties that will be affected by federal actions. If an archaeological property will be adversely affected, Federal agencies are responsible for consultation to resolve the adverse effects, and there are a wide range of options for doing so. Archaeological data recovery continues to be a standard approach in Section 106. Our “recommended approach” encourages data recovery, etc, if one wants to avoid having the ACHP become involved in consultation. However, the ACHP has agreed to a variety of alternative approaches to resolving adverse effects to archaeological sites: including non-collection surveys; intentional site burial without data recovery; reburial of artifacts after analysis in a place close to where they came from; turning collections over to descendant communities; and destruction of archaeological properties without data recovery. Parties can agree, as part of S.106 consultation, to selectively retain only specific kinds or categories of artifacts – e.g. exclude fire cracked rock or soil samples. Mitigation measures may include funding for construction of a facility to house artifacts recovered in a Federal-aid project. The current technology, such as digitization of data, leads me to question whether we really need to keep all recovered artifacts in boxes in a museum. We really need to think through the research value of many of these collections and the public benefit of our current curation strategy.

The ACHP is very supportive of creative solutions to adverse effects, especially where Federal agency officials and Indian tribes agree to an alternative to data recovery that has a greater benefit to the public. Agencies need to weigh and balance the concerns of all affected parties; and while the views of the professional archaeological community will certainly continue to carry weight; other parties, including private landowners,

descendants, and Indian tribes that ascribe traditional cultural and religious value to archaeological sites have equally valuable perspectives on the treatment of archaeological properties and artifacts in the Section 106 process.

These alternative approaches to mitigation (that is, alternatives to data recovery and long-term curation) help to ease the curation crisis by reducing the amount of material that must be stored and managed in perpetuity.