VIA FACSIMILE & U.S. MAIL

Secretary Ken Detzner
Secretary of State
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250

Re: July 15, 2013 letter rejecting 1A-32 Research Permit

Dear Secretary Detzner:

Your letter of July 15, 2013 regarding the 1A-32 Research Permit requested by University of South Florida ("USF") faculty members Dr. Erin Kimmerle and Dr. Christian Wells was forwarded to this office for response. The purpose of this letter is to request that you reconsider your conclusion that your agency does not have the authority to issue archeological permits to exhume human remains "under the circumstances."¹

There are two threshold issues. First, you state: "[u]nder Florida law, human bodies are not objects to be dug up for research purposes." USF agrees with you. The purpose of USF’s work at Dozier is not to excavate bodies for research as an academic end in itself; but rather it is engaged research intended to locate unmarked human burials and identify any human remains so that those remains can be returned to their families. Put another way, USF researchers are not at Dozier to get ideas for a journal article, but to return lost human remains to their families. To the extent next of kin of those believed to be buried at Dozier could be located and contacted, none object to USF’s research, including the excavation and identification of human remains.

Second, please clarify under what circumstances your agency can authorize the excavation of human remains; that is, is the authorization only possible when there is a danger that an unmarked human burial will be damaged or destroyed? This clarification is needed because archaeologists in Florida often excavate and relocate human remains under the authority of the Division of Historical Resources of the Department of State ("Division"). Archeologists do much more than examine artifacts and grave goods, but also conduct human skeletal analysis for the purposes of identification. Scientifically sound human skeletal analysis is done in the lab

¹ Throughout this response the term excavation is used as opposed to the term exhumation. The excavation of human remains by an archeologist, as recognized by §872.05 F.S., is the removal of human remains with careful attention to the preservation of the historical and archeological context of the discovery. Exhumation is the digging up of remains without regard to any historical or archeological concepts or standards.
and not in the field, which requires excavation of human skeletal remains. The Dozier matter aside, your answer to this question is informative for further archaeological work in Florida as well as any future building or real property development projects that require the excavation and relocation of human remains.

Absent clarification on the circumstances when your agency does have jurisdiction to permit the excavation of human remains, this letter focuses on the circumstances where your letter indicates the Division does not have such authority. Specifically, you state that USF’s requested permit diverged from “original objectives” when USF researchers sought a permit with the “purpose of actually exhuming human bodies from their grave sites.” You go on to say that the Division’s existing statutory authority is restricted to the recovery of objects of historical or archaeological value, not human remains, absent a danger to the grave site that actually threatens the loss or damage of the remains.” In so far as these are the circumstances you are referring to, it appears that you have misunderstood: (1) the nature of the Dozier burial grounds; (2) the discoveries made by USF researchers at the Dozier burial grounds; and (3) The Division’s jurisdiction under Florida law in light of those discoveries.

1. **The Areas Subject To Research At Dozier Are Unmarked Human Burials, Not Gravesites.**

The references to gravesites in your July 15, 2013 letter implies that the area USF is focused upon is a cemetery with identified grave markers. The closest thing to that at Dozier is an area with a number of rusting crosses erected in it known as Boot Hill. There are few reliable records about who is actually buried there and where exactly the remains lie within the boundaries of Boot Hill. In fact, USF’s researchers identified unmarked human burials in the Boot Hill area in excess of the number of graves State records say are supposed to be present at Boot Hill. Moreover, USF’s work at Dozier is not confined to Boot Hill, but also includes unmarked human burials outside of Boot Hill at the Dozier site. Under Florida law, an unmarked human burial is:

> any human skeletal remains or associated burial artifacts or any location, including any burial mound or earthen or shell monument, where human skeletal remains or associated burial artifacts are discovered or believed to exist on the basis of archaeological or historical evidence, excluding any burial marked or previously marked by a tomb, monument, gravestone, or other structure or thing placed or designed as a memorial of the dead.” §872.05 (1) (f), F.S. (emphasis supplied).

USF’s work under the first two permits granted by the Division shows that there is compelling archaeological and historical evidence for as many as nineteen unmarked human burials outside the commonly accepted boundary of Boot Hill. As such, any remains discovered at Dozier by USF should not be understood as disturbing established gravesites, but rather as the discovery of unmarked human burials as defined under Florida law. A number of these unmarked human burials are scattered in woods, under a road and in or adjacent to a garbage dump.
2. **USF Researchers Have Discovered Unmarked Human Burials And Human Skeletal Remains Outside Of Any Established Cemetery.**

In January of 2013 USF Researchers unexpectedly discovered human skeletal remains at the Dozier site outside of the commonly accepted boundaries of Boot Hill. These human skeletal remains were in shallow ground much closer to the surface than would normally be encountered in a human burial. As required by §872. 05 (5), F.S., USF researchers notified Division staff of the discovery. The district medical examiner was also notified.\(^2\) USF researchers observed the remains without further disturbance to the area. The discovery of unmarked human burials and human skeletal remains changes the nature of USF’s research under Florida law.

3. **The Division Has The Authority To Exhume Human Remains Under Established Florida Law.**

The legislative intent of §872.05, F.S is:

[T]hat all human burials and human skeletal remains be accorded equal treatment and respect based upon common human dignity without reference to ethnic origin, cultural background, or religious affiliation. This section applies to all human burials, human skeletal remains, and associated burial artifacts not otherwise protected under chapter 497 or other state law and found upon or within any public or private land in the state, including submerged lands.

This legislative intent is given effect in §872.02, F.S., which makes it a third degree felony for a person to remove human skeletal remains from a grave or burial site. §872.02 (1), F.S. However, this section does not apply to anyone “acting under the direction or authority of the Division of Historical Resources of the Department of State....” §872.02 (1), F.S. (emphasis supplied). Based on the plain language of §872.02 (1), F.S., the Florida Legislature has given the Division the power to authorize or direct an individual to disturb a burial and remove its contents (i.e. excavate human remains). *E.A.R. v. State*, 4 So.3d 614, 629 (Fla. 2009) (recognizing that courts should interpret the plain meaning of the statutory language so long as it is “clear and unambiguous and conveys a definite meaning.”) The Division’s legislatively created authorization to remove the contents of a burial may presumably be delegated through permits or similar authorization; otherwise, the Legislative authorization contained in section §872.02 (1), F.S. would make no sense. *Dadeland Depot, Inc. v. St. Paul Fire and Marine Ins. Co.*, 945 So.2d 1216, 1233 (Fla. 2005) (citing *State v. Goode*, 830 So.2d 817, 824 (Fla. 2002)) (“it is an accepted principle of statutory construction that the Legislature does not intend to enact useless provisions and courts should avoid readings that would render part of a statute meaningless”).

\(^2\) To date the district medical examiner has not assumed jurisdiction of the Dozier burial ground nor is there any legal investigation under way. The 30 days during which the district medical examiner may take jurisdiction have expired pursuant to §872.05 (3) (a), F.S.
In addition to granting the authority to remove the contents of a burial, §872 creates obligations on archeologists and the Division when an unmarked human burial is discovered during an archaeological excavation. §872.05(5), F.S. (applying to archeologists); §872.05(6) (applying to the Division), F.S. USF researchers discharged their obligations under law by notifying Division staff of the discovery and detailing the historical and archaeological significance of the burials in their permit applications. The most recent permit application further conformed to §872.05(5), F.S. in that Dr. Kimmerle and Dr. Wells presented a course of action for unidentified human remains prior to final disposition. Dr. Kimmerle and Dr. Wells propose that the remains should be protected, identified and, wherever possible, returned to next of kin. To be done properly this requires excavation so that skeletal analysis for identification can be completed under laboratory conditions.

Once on notice of the discovery of an unmarked human burial, the Division may take “jurisdiction over and responsibility for an unmarked human burial in order to initiate efforts for the proper protection of the burial and the human skeletal remains and associated artifacts.” §872.05 (6), F.S. (emphasis supplied). The Division is not required to take jurisdiction, but should the Division elect to do so, §872.05(6), F.S., provides that the State Archaeologist shall: (a) determine the historical, archaeological, or scientific significance of the burial, and based on that determination delay reinterring the remains to permit human skeletal analysis by a human skeletal analyst designated by the State Archeologist; (b) make reasonable efforts to identify the remains and locate next of kin; and (c) where a familial, cultural or tribal identification cannot be made, determine the appropriate disposition of the remains in consultations with scientific, historical or tribal experts, as applicable. §872.05 (6) (a)-(c), F.S. (summarized with emphasis supplied). If the Division were to take jurisdiction of the site, provisions (a) and (b) would require the temporary excavation of remains for human skeletal analysis. Likewise, provision (c) contemplates the return of the remains to next of kin. This obviously requires excavation and relocation of remains. Here again, it is evident that the Division has the authority should it chose to exercise it to excavate human remains whether it delegates that authority via a permit or takes jurisdiction and responsibility for the excavation itself.

In your letter you state that the Division’s authority is limited to the recovery of historical artifacts, absent a danger to the gravesite that actually threatens the loss or damage of human remains. Assuming for the purposes of this letter only that the event authorizing excavation by the Division is danger to the site, that condition is satisfied at Dozier. The human skeletal remains USF Researchers discovered were in shallow ground and vulnerable to being lost or scattered. Other unmarked human burials are in wooded areas with trees growing through them, under a travelled roadway and adjacent to a garbage dump. The State of Florida has also accepted bids to sell and redevelop the Dozier site, which could easily result in the loss and destruction of unmarked human burials during re-development or construction. In sum, unless prompt action is taken, it will become impossible to tell the “Dozier Story” you refer to in your letter.
Based on the foregoing, USF respectfully requests:

1. Reconsideration of your rejection of USF’s 1A-32 Research Permit;
2. Approval of USF’s 1A-32 Research Permit or like authorization to allow excavation and identification of human remains in the unidentified human burials at Dozier;
3. If you continue to deny USF’s permit request upon reconsideration, provide USF with a Final Agency Order stating the basis for denial, as required by Florida law;
4. If you deny USF’s permit request upon reconsideration, indicate whether the Division is taking jurisdiction and responsibility of the Dozier unmarked burials grounds, as authorized by Florida law;
5. If you contend that your Division does not have the authority to grant USF’s permit as presented, indicate the state agency that does have the authority; and
6. If you deny USF’s permit request upon reconsideration, identify the circumstances under which the Division can grant permits containing a request to excavate human remains.

Thank you for your consideration of this correspondence and USF’s requests. Please contact the undersigned with questions or to discuss.

Sincerely,

[Signature]

Gerard D. Solis
Deputy General Counsel

GDS/lgm
cc: J. Andrew Atkinson
    Nicholas B. Cox
    Dr. Erin Kimmerle
    Dr. Christian Wells