

U. S. Department of Justice

Criminal Division

General Litigation and Legal Advice Section
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DATE: 8/24/93
FROM: Ezra H. Friedman

TO:

FAX NO.

PAGES INCLUDING COVERSHEET: 2

SUBJECT: Acoma Prayer Sticks

COMMENT: In the absence of Ms. Sorokin and Mr. Fromstein, I have looked into the question of whether one can be punished under 18 U.S.C. 1170 for trafficking in cultural items obtained before passage of the Native American Graves Protection and Repatriation Act (NAGPRA). You indicated that you believed that an affirmative answer would violate the Ex Post Facto Clause and would, in any event, be contrary to congressional intent.

As I understand it, Acoma Pueblo prayer sticks were purchased by an undercover agent from a dealer who had obtained them from the defendant. It appears that the prayer sticks, which are less than 100 years old, and therefore not entitled to ARPA protection, were obtained by the defendant's father long before enactment of the NAGPRA. This places them outside the literal coverage of 18 U.S.C. 1170(b), which penalizes trafficking in cultural items "obtained in violation of the Native American Graves Protection and Repatriation Act."

It is also significant, I think, that this provision was added to title 18 by section 4 of the Act. The preceding section "Ownership," provides for priority of ownership of cultural items which are excavated or discovered on Federal or tribal lands "after the date of enactment of this Act." Only the provisions of the Act dealing with "repatriation" of items by museums deal with objects found before enactment.

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The legislative history of the Act, P.L. 101-601, H.Rep. 101-877, reprinted at 1990 U.S.C.C.A.N. 4367, supports giving the literal language of section 4(b) effect and limiting the criminal provisions to prospective application. The House Report reflects that Department of Justice was concerned that a provision of the bill as drafted providing that all cultural objects found on federal or tribal land "shall be deemed to be owned by the tribe," might obligate the United States under the Takings Clause to pay the current owners. The Department therefore recommended that the bill be amended to provide that the section should "apply only to objects 'found after the date this Act becomes law.'" 1990 U.S.C.C.A.N. at 4387. The bill apparently was amended to meet the Department's objection. 1990 U.S.C.C.A.N. at 4376-4377. In other words, there is a clear indication that existing ownership rights were to be left undisturbed.

It is not clear to me that the defendant's father owned the prayer sticks. You indicated that the prayer sticks were considered inalienable by the Acoma people but that it had been decided that 18 U.S.C. 1163 (theft of tribal property) could not be invoked. I would like to hear the views of your Office on why the improper transfer of these items was not a wrongful conversion.

FOR VERIFICATION, CALL: EHF

TELEPHONE: (202) 514-1026

**OFFICE OF NAVAJO AND HOPI INDIAN
RELOCATION**
25 CFR Part 700**Protection of Archaeological
Resources**

AGENCY: Office of Navajo and Hopi
Indian Relocation.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for implementing provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470-aa-11) for the lands which are administered by the O.N.H.I.R. which have been acquired pursuant to Pub. L. 96-305 (25 U.S.C. 640-d(h)). The rule is necessary and its intended effect is to allow the Federal Land Manager to protect archaeological resources on lands being developed for resettlement purposes.

EFFECTIVE DATE: June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Tessler (Legal Counsel), Office of Navajo and Hopi Indian Relocation at 520-779-8953.

SUPPLEMENTARY INFORMATION: On July 8, 1996, the O.N.H.I.R. published its Interim Final Rule with comment period for establishing procedures for implementing provisions of the Archaeological Resources Protection Act of 1979, (16 U.S.C. 470-aa-11) for lands which are administered by the O.N.H.I.R. The O.N.H.I.R. received written comments on the Interim Final Rule from the President of the Navajo National and the Historic Preservation

Department of the Navajo Nation. In reviewing the comments received, the O.N.H.I.R. considered both comments to be those of the Navajo Nation. The O.N.H.I.R. has considered all comments received and responds to these comments as stated below:

Section 700.805(a)(3)(i). Comment was received that this section should be changed to include shrines and offering sites. This comment was not accepted because this section is considered to already include shrines and offering sites.

Section 700.805(a)(5). Comment was received that this section should be amended to include a provision that requires notification of the Navajo Nation and an opportunity to object, before the Federal Lands Manager makes a determination allowing materials to be excluded from protection. This section was amended to require that the Federal Land Manager consult with the Navajo Nation to obtain concurrence before making a determination allowing material remains to be excluded from protection. Comment was also received that this section specifies that material remains otherwise meeting the definition of archaeological resources can be determined not be archaeological resources "under special circumstances." The comment further indicated that these special circumstances are not delineated in the regulation. This comment was adopted by adding § 700.841, *Determination of Loss or Absence of Archaeological Interest.*

Section 805(e). Comment was received that the definition of "New Lands" and "public lands" are inconsistent. This comment was adopted and in all instances the "New Lands" have been defined consistently. The O.N.H.I.R. also made it clear that the consent of the Navajo is required for all permits.

Section 700.815. Comment was received, without citing a specific section, suggesting that the Navajo Nation should be informed of all requests for permits and be allowed to deny these permits. This comment was already covered in § 700.815(a)(5) which requires the consent of the Navajo Nation prior to issuance of a permit.

Section 700.827(a). Comment was received, without citing a specific section, from the Navajo Nation that the regulations should require all archaeological resources removed from the New Lands be properly stored and safe guarded and that such resources be returned to the Navajo Nation upon request, once the Navajo Nation has established its own museum or

repository. This comment is already covered by § 700.827, and an agreement for curation with the Museum of Northern Arizona under which the Navajo Nation can ask for return of the archaeological resources.

Section 700.829(7). Comment was received that this section be changed to include the Navajo Nation as a potential "affected person" and be afforded appropriate administrative recourse if for example, the O.N.H.I.R. issued a permit without written tribal consent or denied a permit to non-tribal entities supported by the Navajo Nation. This comment was adopted. Section 700.821 to spell the appeal process. Additionally, since permits cannot be issued without the written consent of the Navajo Nation, it is not possible for O.N.H.I.R. to issue permits without such consent.

Comment was also received suggesting that this section was also inconsistent with the provisions of the Native American Graves Protection and Repatriation Act (the NAGPRA, Pub. L. 101-601, Nov. 16, 1990). This comment was adopted to ensure the reinterment of human remains in accordance with the Native American Graves Protection and Repatriation Act.

Section 700.835. Comment was received from the Navajo Nation that this section should be deleted because it allows for governors of the states of Arizona and New Mexico to request information about archaeological sites on the New Lands because the New Lands are part of the Navajo Nation. The comment further states that if either state wants to receive information about archaeological sites on tribal lands, they should ask the Navajo Nation. This section was changed to require the concurrence of the Navajo Nation before making information available when the governor of any state has submitted a written request for information concerning archaeological resources within the requesting governor's state.

Preamble

The primary author of this document is Paul Tessler, Legal Counsel, Office of Navajo and Hopi Indian Relocation, Flagstaff, Arizona.

It has been determined that this final rule is not a major rule as that term is defined in Executive Order 12291, because it will have as limited economic impact on a small number of people and does not require regulatory analysis. It has been determined that the final rule will not have a significant impact on a substantial number of small entities within the meaning of Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in CFR Part 700

Administrative practice and procedure, Conflict of Interest, Freedom of Information, Grant program—Indians, Indian claims, Privacy, Protection of Archaeological Resources, Real property acquisition, Relocation Assistance and New Lands Administration.

Accordingly, 25 CFR Part 700 is amended as follows:

PART 700—[AMENDED]

1. Authority citation for part 700 continues to read as follows:

Authority: Pub. L. 99-590; Pub. L. 93-531; 88 Stat. 1712, as amended by Pub. L. 96-305, 94 Stat. 929; Pub. L. 100-666, 102 Stat. 3929 (25 U.S.C. 640d).

2. By revising Subpart R, Protection of Archaeological Resources, to read as follows:

Subpart R—Protection of Archaeological Resources

- 700.801 Purpose.
- 700.803 Authority.
- 700.805 Definitions.
- 700.807 Prohibited Acts.
- 700.809 Permit requirements and exceptions.
- 700.811 Application for permits and information collection.
- 700.813 Notification of Indian Tribes of possible harm to, or destruction of, sites on the New Lands having religious or cultural importance.
- 700.815 Issuance of permits.
- 700.817 Terms and conditions of permits.
- 700.819 Suspension and revocation of permits.
- 700.821 Appeals relating to permits.
- 700.823 Permit reviews and disputes.
- 700.825 Relationship to section 106 of the National Historic Preservation Act.
- 700.827 Custody of Archaeological resources.
- 700.829 Determination of archaeological or commercial value and cost of restoration and repair.
- 700.831 Assessment of civil penalties.
- 700.833 Civil penalty amounts.
- 700.835 Other penalties and rewards.
- 700.837 Confidentiality of archaeological resource information.
- 700.839 Report.
- 700.841 Determination of loss or absence of archaeological interest.
- 700.843 Permitting procedures for Navajo nation Lands.

Subpart R—Protection of Archaeological Resources

§ 700.801 Purpose

(a) The regulations in this subpart implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11) by establishing the uniform definitions, standards, and procedures to be followed by the O.N.H.I.R. New Lands Manager in providing protection for archaeological resources, located on the New Lands. The regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 43 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 700.803 Authority.

The regulations in this part are promulgated pursuant to section 10(b) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii). Section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

§ 700.805 Definitions.

As used for purposes of this part:

(a) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470-aa-11).

(b) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section.

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars, or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits, or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons, and weapon projectiles, clothing, and ornaments (including, but not limited to pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked ground or pecked stone);

(iv) By products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios, and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains described in this paragraph (a);

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any material remains described in this paragraph (a).

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal Land Manager may determine that certain material remains, in specified areas under the Federal Land Manager's jurisdiction and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this paragraph (a)(5) shall be documented. Such determination shall in no way affect the Federal Land Manager's obligations under other applicable laws or regulations. Prior to making a determination that material remains are not or are no longer archaeological resources, the Federal Land Manager shall consult with the Navajo Nation to obtain their concurrences.

(c) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(d) *Commissioner* means the Commissioner of the Office of Navajo and Hopi Indian Relocation. Reference to approval of other action by the Commissioner will also include approval or other action by another Federal Officer under delegated authority from the Commissioner.

(e) *Federal Land Manager* means: With respect to the New Lands, the Commissioner of Navajo and Hopi Indian Relocation, having primary management authority over such lands, including persons to whom such management authority has been officially delegated.

(f) *Indian tribe* or *Tribe* means the Navajo Nation.

(g) *New Lands* means the land acquired for the use of relocatees under the authority of Pub. L. 96-305, 25 U.S.C., 640(d)-10. These lands include the 250,000 acres of land acquired by the Navajo and Hopi Indian Relocation Commission and added to the Navajo Reservation, 150,000 acres of private lands previously owned by the Navajo Nation in fee and taken in trust by the United States pursuant to 25 U.S.C. 640d-10 and up to 35,000 acres of land in the State of New Mexico to be acquired and added to the Navajo Reservation.

(h) *Office* means the Office of Navajo and Hopi Indian Relocation.

(i) *Person* means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(j) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(k) *Tribe* means the Navajo Nation.

§ 700.807 Prohibited Acts.

(a) No person may excavate, remove, damage or otherwise alter or deface any archaeological resource located on the New Lands unless such activity is pursuant to a permit issued under § 700.815 or exempted by § 700.809(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 700.809 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from the New Lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal Land Manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal Land Manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 700.815(a) of this part.

(b) *Exceptions:*

(1) No permit shall be required under this part for any person conducting activities on the New Lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal Land Manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for

private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by the Navajo Nation or member thereof of any archaeological resource located on the New Lands, except that in the absence of tribal law regulating the excavation or removal of archaeological resources, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal Land Manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 700.811. However, the Federal Land Manager shall insure that provisions of §§ 700.815 and 700.817 have been met by other documented means and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal Land Manager, have been the subject of consideration.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal Land Manager with the concurrence of the Navajo Nation, shall issue a permit, subject to the provisions of §§ 700.809(b)(5), 700.815(a) (3), (4), (5), (6), and (7), 700.817; 700.819, 700.823, 700.825(a), to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating, and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal Land Manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of the New Lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on the New Lands any activity related to but believed to fall outside the scope of this part should consult with the Federal Land Manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 700.811 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal Land Manager for a permit to excavate and/or remove archaeological resources from the New Lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, location maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training and experience in accord with the minimal qualifications listed in § 700.815(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on the New Lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other

documents derived from the proposed work.

(c) The Federal Land Manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) Paperwork Reduction Act. The purpose of the information collection under § 700.811 is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the New Lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 700.813 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 700.817.

(4) When the Federal land manager determines that a permit applied for under this part must be issued immediately because of an imminent threat or loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Federal Land Manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 700.815 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by

timely completion of these, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of the permit; and

(v) Applicants proposing to engage in historical archaeology should have at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the New Lands;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the New Lands, and the proposed work has been agreed to in writing by the Federal Land Manager, pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (a)(3) of this section shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on the New Lands, from the Indian land owner and the Navajo Nation which is the Indian Tribe having jurisdiction.

(6) Evidence is submitted to the Federal Land Manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal Land Manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit;

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of applications and the issuance of permits.

§ 700.817 Terms and conditions of permits.

(a) In all permits issued, the Federal Land Manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institution in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal Land Manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal Land Manager shall include in permits issued for archaeological work on the New Lands such terms and conditions as may be requested by the Indian landowner and the Navajo Nation.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal Land Manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal Land Manager, at least annually.

§ 700.819 Suspension and Revocation of Permits.

(a) *Suspension or revocation for cause.* (1) The Federal Land Manager

may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or § 700.807. The Federal Land Manager shall provide written notice to the permittee of suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal Land Manager may revoke a permit upon assessment of a civil penalty under § 700.831 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal Land Manager may suspend or revoke a permit without liability to the United States, its agents, or employees when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal Land Manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

§ 700.821 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal Land Manager pursuant to section 10(b) of the Act and this part.

§ 700.823 Permit reviews and disputes.

(a) Any affected person disputing the decision of the Federal Land Manager with respect to the issuance or denial of a permit, the inclusion of specific terms and conditions in a permit, or the modification, suspension, or revocation of a permit may request the Federal Land Manager to review the disputed decision and may request a conference to discuss the decision and its basis.

(b) Any disputant unsatisfied with the higher level review, and desiring to appeal the decision, pursuant to § 700.821 of this part, should consult with the Federal Land Manager regarding the existence of published appeal procedures. In the absence of published appeal procedures, the review by the head of the Office will constitute the final decision.

(c) Any affected person may request a review by the Department of Interior Consulting Archaeologist of any professional issues involved in a permitting decision, such as

professional qualifications, research design, or other professional archaeological matters. The Departmental Consulting Archaeologist shall make a final professional recommendation to the head of the Office. The head of the Office will consider the recommendation, but may reject it, in whole or in part, for good cause. This request should be in writing and should state the reasons for the request.

§ 700.825 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1996 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal Land Manager from compliance with section 106 where otherwise required.

§ 700.827 Custody of Archaeological resources.

(a) Archaeological resources excavated or removed from the New Lands remain the property of the Navajo Nation.

(b) [Reserved]

§ 700.829 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtained prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be for its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of

restoration and repair of archaeological resources damages as a result of a violation or prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

- (1) Reconstruction of the archaeological resource;
- (2) Stabilization of the archaeological resource;
- (3) Ground contour reconstruction and surface stabilization;
- (4) Research necessary to carry out reconstruction or stabilization;
- (5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;
- (6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;
- (7) Reinterment of human remains in accordance with Pub. L. 101-601, the Native American Grave Protection and Repatriation Act.
- (8) Preparation of reports relating to any of the above activities.

§ 700.831 Assessment of civil penalties.

(a) The Federal Land Manager may assess a civil penalty against any person who has violated any prohibition contained in § 700.807 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Federal Land Manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include in the notice:

- (1) A concise statement of the facts believed to show a violation;
- (2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;
- (3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of the proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;
- (4) Notification of the right to file a petition for relief pursuant to paragraph

(d) of this section, or to await the Federal Land Manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

- (1) Seek informal discussions with the Federal Land Manager;
- (2) File a petition for relief in accordance with paragraph (d) of this section;
- (3) Take no action and await the Federal Land Manager's notice of assessment;
- (4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal Land Manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later.) The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Federal Land Manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion or informal discussions, whichever is later.

(2) The Federal Land Manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal Land Manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal Land Manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal Land Manager

shall determine a penalty amount in accordance with § 700.831.

(f) *Notice of assessment.* The Federal Land Manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include the following in the notice of assessment.

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 700.831 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request, as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal Land Manager under paragraph (f) of this section of any offer of mitigation or remission made by the Federal Land Manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for hearing pursuant to

paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a U.S. District Court, as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal Land Manager may request the Attorney General to institute a civil action to collect the penalty in a U.S. District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal Land Manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal Land Manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 700.833 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal Land Manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors.

(i) Agreement by the person being assessed a civil penalty to return to the Federal Land Manager and ultimately to the Navajo Nation archaeological resources removed from the New Lands.

(ii) Agreement by the person being assessed a civil penalty to assist the Federal Land Manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on the New Lands.

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation.

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances.

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) The Federal Land Manager shall consult with and consider the interests of the Navajo Nation prior to proposing to mitigate or remit the penalty.

§ 700.835 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal Land Manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or tribal government who furnish information or render services in the performance of their official duties, and persons who have provided information under § 700.833(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) All civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the Navajo Nation.

§ 700.837 Confidentiality of archaeological resource information.

The Federal Land Manager shall not make available to the public under subchapter II of chapter 5 of title 5 of the United States Code or any other provisions of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(a) The Federal Land Manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c) without risking harm to the archaeological resource or to the site in which it is located.

(b) With the concurrence of the Navajo Nation, the Federal Land Manager shall make information available, when the Governor of any State has submitted to the Federal Land Manager a written request for information concerning the archaeological resources within the requesting Governor's state; provided that the request includes:

(1) The specific archaeological resource or area about which information is sought.

(2) The purpose for which the information is sought; and

(3) The Governor's written commitment to adequately protect the confidentiality of the information.

§ 700.839 Report.

Each Federal Land Manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

§ 700.841 Determination of loss or absence of archaeological interest.

(a) Under certain circumstances, a Federal land manager may determine, pursuant to § 700.805(a)(5) of this part, that certain material remains are not or are no longer of archaeological interest, and therefore not to be considered archaeological resources under this part.

(b) The Federal land manager may make such a determination if he/she finds that the material remains are not capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics.

(c) Prior to making a determination that material remains are not or are no longer archaeological resources, the Federal land manager shall ensure that the following procedures are completed.

(1) A professional archaeological evaluation of material remains and similar materials within the area under consideration shall be completed,

consistent with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation and with the 36 CFR Parts 60, 63, and 65.

(2) The principal Office archaeologist or, in the absence of a principal Office archaeologist, the Office Consulting Archaeologist, shall establish whether the material remains under consideration contribute to scientific or humanistic understandings of past human behavior, cultural adaptation and related topics. The principal Office archaeologist or the Office Consulting Archaeologist, as appropriate, shall make a recommendation to the Federal land manager concerning these material remains.

(d) The Federal land manager shall make the determination based upon the facts established by and the recommendation of the principal Office archaeologist or the Office Consulting Archaeologist, as appropriate, and shall fully document the basis therefor, including consultation with Indian tribes for determinations regarding sites of religious or cultural importance.

(e) The Federal land manager shall make public notice of the determination and its limitations, including any permitting requirements, for activities associated with the materials determined not to be archaeological resources for the purposes of this part.

(f) Any interested individual may request in writing that the Office Consulting Archaeologist review any final determination by the Federal land manager that certain remains are not, or are no longer, archaeological resources. Two (2) copies of the request should be sent to the Office Consulting Archaeologist, care of Land Use Manager, Office of Navajo and Hopi Indian Relocation, PO Box KK, Flagstaff, AZ 86002, and should document why the requestor disagrees with the determination of the Federal land manager. The Office Consulting Archaeologist shall review the request, and, if appropriate, shall review the Federal land manager's determination and its supporting documentation. Based upon this review, the Departmental Consulting Archaeologist shall prepare a final professional recommendation, and shall transmit the recommendation and the basis therefor to the head of the bureau for further consideration within 60 days of the receipt of the request.

(g) Any determination made pursuant to this section shall in no way affect the Federal land manager's obligation under other applicable laws or regulations.

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§ 700.843 Permitting procedures for Navajo Nation Lands.

(a) Pursuant to the Act and this Subpart, the written consent of the Navajo Nation is required. Written consent shall consist of a Navajo Nation permit issued in accordance with the Navajo Nation Code or a resolution of the Navajo Nation Council or delegated committee of that Council.

(b) When Indian tribal lands are involved in an application for a permit or a request for extension or modification of a permit, the consent of the Indian tribal government must be obtained. For Indian allotted lands outside reservation boundaries, consent from only the individual landowner is needed. When multiple-owner allotted lands are involved, consent by more than 50 percent of the ownership interest is sufficient. For Indian allotted lands within reservation boundaries, consent must be obtained from the Navajo Nation and the individual landowner(s).

(c) The applicant should consult with the Office concerning procedures for obtaining consent from the appropriate Indian tribal authorities and submit the permit application to the Office. The Office shall ensure that consultation with the Navajo Nation or individual Indian landowner regarding terms and conditions of the permit occurs prior to detailed evaluation of the application. Permits shall include terms and conditions requested by the Navajo Nation or Indian landowner pursuant to § 700.817 of this part.

(d) The issuance of a permit under this part does not remove the requirement for any other permit by Indian tribal law.

Dated: June 23, 1997.

Christopher J. Bavasi,

Executive Director, Office of Navajo and Hopi Indian Relocation.

[FR Doc. 97-16857 Filed 6-27-97; 8:45 am]

BILLING CODE 7560-01-M

000278

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of guidance.

SUMMARY: In accordance with §§ 800.5 and 800.6 of its revised regulations (36 CFR part 800, "Protection of Historic Properties," published today) implementing Section 106 of the National Historic Preservation Act of 1966, the Advisory Council on Historic Preservation is publishing a recommended approach for consultation by Federal agencies, State Historic Preservation Officers, Tribal Historic Preservation Officers, and others on the effects of Federal, federally-assisted, and federally-licensed or -permitted undertakings on archaeological sites. The Council has determined that issuance of this guidance is consistent with the Council's revised regulations. The full text of the guidance is reproduced under the SUPPLEMENTARY INFORMATION section of this notice.

DATES: This guidance is effective on June 17, 1999.

ADDRESSES: Those wishing to comment on this guidance should direct such comments to: Executive Director, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Ave., NW., # 809, Washington, DC 20004; FAX (202) 606-8647; e-mail achp@achp.gov.

FOR FURTHER INFORMATION CONTACT: Ronald D. Anzalone, Assistant to the Executive Director, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Ave., NW., # 809, Washington, DC 20004, (202) 606-8523.

SUPPLEMENTARY INFORMATION: The full text of the guidance, with the model Memorandum of Agreement, is reproduced below.

Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites

Background

Sections 800.5 and 800.6 of the Council's revised regulations, "Protection of Historic Properties" (36 CFR part 800) detail the process by which Federal agencies determine whether their undertakings will adversely affect historic properties, and if they will, how they are to consult to avoid, minimize, or mitigate the adverse

effects in order to meet the requirements of Section 106 to "take into account" the effects of their undertakings on historic properties.

One such category of historic properties is comprised of prehistoric or historic archaeological resources. The National Register of Historic Places defines an archaeological site as "the place or places where the remnants of a past culture survive in a physical context that allows for the interpretation of these remains" (National Register Bulletin 36, "Guidelines for Evaluating and Registering Historical Archaeological Sites and Districts," 1993, p. 2). Such properties may meet criteria for inclusion in the National Register of Historic Places for a variety of reasons, not the least of which may be because "they have yielded, or may be likely to yield, information important to prehistory or history" (National Register Criteria for Evaluation, 36 CFR 60.4).

In the context of taking into account the effects of a proposed Federal or federally-assisted undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register, potential impacts to archaeological sites often need to be considered.

Appropriate treatments for affected archaeological sites, or portions of archaeological sites, may include active preservation in place for future study or other use, recovery or partial recovery of archaeological data, public interpretive display, or any combination of these and other measures.

Archaeological Sites and Their Treatment

The nature and scope of treatments for such properties should be determined in consultation with other parties, but in the Council's experience they generally need to be guided by certain basic principles:

- The pursuit of knowledge about the past is in the public interest.
- An archaeological site may have important values for living communities and cultural descendants in addition to its significance as a resource for learning about the past; its appropriate treatment depends on its research significance, weighed against these other public values.
- Not all information about the past is equally important; therefore, not all archaeological sites are equally important for research purposes.
- Methods for recovering information from archaeological sites, particularly large-scale excavation, are by their nature destructive. The site is destroyed as it is excavated. Therefore

management of archaeological sites should be conducted in a spirit of stewardship for future generations, with full recognition of their non-renewable nature and their potential multiple uses and public values.

- Given the non-renewable nature of archaeological sites, it follows that if an archaeological site can be practically preserved in place for future study or other use, it usually should be (although there are exceptions). However, simple avoidance of a site is not the same as preservation.

- Recovery of significant archaeological information through controlled excavation and other scientific recording methods, as well as destruction without data recovery, may both be appropriate treatments for certain archaeological sites.

- Once a decision has been made to recover archaeological information through the naturally destructive methods of excavation, a research design and data recovery plan based on firm background data, sound planning, and accepted archaeological methods should be formulated and implemented. Data recovery and analysis should be accomplished in a thorough, efficient manner, using the most cost-effective techniques practicable. A responsible archaeological data recovery plan should provide for reporting and dissemination of results, as well as interpretation of what has been learned so that it is understandable and accessible to the public. Appropriate arrangements for curation of archaeological materials and records should be made. Adequate time and funds should be budgeted for fulfillment of the overall plan.

- Archaeological data recovery plans and their research designs should be grounded in and related to the priorities established in regional, state, and local historic preservation plans, the needs of land and resource managers, academic research interests, and other legitimate public interests.

- Human remains and funerary objects deserve respect and should be treated appropriately. The presence of human remains in an archaeological site usually gives the site an added importance as a burial site or cemetery, and the values associated with burial sites need to be fully considered in the consultation process.

- Large-scale, long-term archaeological identification and management programs require careful consideration of management needs, appreciation for the range of archaeological values represented, periodic synthesis of research and other

program results, and professional peer review and oversight.

Resolving Adverse Effects Through Recovery of Significant Information From Archaeological Sites

Under 36 CFR 800.5, archaeological sites may be "adversely affected" when they are threatened with unavoidable physical destruction or damage. Based on the principles articulated above, the Council recommends that the following issues be considered and addressed when archaeological sites are so affected, and recovery of significant information from them through excavation and other scientific means is the most appropriate preservation outcome.

If this guidance is followed, it is highly unlikely that the Council would decide to enter the consultation process under 36 CFR 800.6 or raise objections to the proposed resolution of adverse effects in a given case, unless it is informed of serious problems by a consulting party or a member of the public.

1. The archaeological site should be significant and of value chiefly for the information on prehistory or history they are likely to yield through archaeological, historical, and scientific methods of information recovery, including archaeological excavation.

2. The archaeological site should not contain or be likely to contain human remains, associated or unassociated funerary objects, sacred objects, or items of cultural patrimony as those terms are defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

3. The archaeological site should not have long-term preservation value, such as traditional cultural and religious importance to an Indian tribe or a Native Hawaiian organization.

4. The archaeological site should not possess special significance to another ethnic group or community that historically ascribes cultural or symbolic value to the site and would object to the site's excavation and removal of its contents.

5. The archaeological site should not be valuable for potential permanent in-situ display or public interpretation, although temporary public display and interpretation during the course of any excavations may be highly appropriate.

6. 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 Interior's Standards for the Treatment of Historic Properties, the Secretary of the Interior's Standards and

Guidelines for Archaeology and Historic Preservation, and the Advisory Council on Historic Preservation's Treatment of Archaeological 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.

7. The Federal Agency Official should ensure that the data recovery plan is developed and will be implemented by or under the direct supervision of a person, or persons, meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739).

8. The Federal Agency Official should ensure that adequate time and money to carry out all aspects of the plan are provided, and should ensure that all parties consulted in the development of the plan are kept informed of the status of its implementation.

9. The Federal Agency Official should ensure that a final archaeological report resulting from the data recovery will be provided to the SHPO/THPO. The Federal Agency Official should ensure that the final report is responsive to professional standards, and to the Department of the Interior's Format Standards for Final Reports of Data Recovery Programs (42 FR 5377-79).

10. Large, unusual, or complex projects should provide for special oversight, including professional peer review.

11. The Federal Agency Official should determine that there are no unresolved issues concerning the recovery of significant information with

any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to the affected property.

12. Federal Agency Officials should incorporate the terms and conditions of this recommended approach into a Memorandum of Agreement or Programmatic Agreement, file a copy with the Council per § 800.6(b)(iv), and implement the agreed plan. The agency should retain a copy of the agreement and supporting documentation in the project files.

Model Memorandum of Agreement

[See Attached Form]

MEMORANDUM OF AGREEMENT FOR RECOVERY OF SIGNIFICANT INFORMATION

FROM ARCHAEOLOGICAL SITE(S) _____
(list) _____

UNDERTAKING: _____

STATE: _____

AGENCY: _____

Whereas, in accordance with 36 CFR Part 800, the [Federal Agency] acknowledges and accepts the advice and conditions outlined in the Council's "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites," published in the Federal Register on [date of publication]; and

Whereas, the consulting parties agree that recovery of significant information from the archaeological site(s) listed above may be done in accordance with the published guidance; and

Whereas, the consulting parties agree that it is in the public interest to expand funds to implement this project through the recovery of significant information from archaeological sites to mitigate the adverse effects of the project; and

Whereas, the consulting parties agree that Indian Tribes or Native Hawaiian organizations that may attach religious or cultural importance to the affected property(ies) have been consulted and have raised no objection to the work proposed; and

Whereas, to the best of our knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered in the archaeological work;

Now, therefore, the [Federal Agency] shall ensure that the following terms and conditions, including the appended Archaeological Data Recovery Plan, will be implemented in a timely manner and with adequate resources in compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470).

OTHER TERMS AND CONDITIONS:

• Modification, amendment, or termination of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement.

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- Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of the Council to assist in resolving the dispute.
- This agreement shall be null and void if its terms are not carried out within 5 (five) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Agency Official: _____
date: _____
State Historic Preservation Officer: _____
date: _____
Tribal Historic Preservation Officer: Official:
date: _____
Other Public or Private Entity: _____
date: _____
(as applicable)

[Attach Archaeological Data Recovery Plan here]
[End of Form]
Dated: May 7, 1999.
John M. Fowler,
Executive Director.
[FR Doc. 99-12055 Filed 5-17-99; 8:45 am]
BILLING CODE 4310-10-M

Presidential Documents

Executive Order 13007 of May 24, 1996

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States; in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. Procedures. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

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Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

William Clinton

THE WHITE HOUSE,
May 24, 1996.

[FR Doc. 96-13597
Filed 5-27-96; 8:45 am]
Billing code 3195-01-P

000283

Presidential Documents

Title 3—

Executive Order 13175 of November 6, 2000

The President

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian-tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

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(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policy-making criteria in Section 3.

Sec. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the

need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. *Accountability.*

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

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Sec. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

William J. Clinton

THE WHITE HOUSE,
November 6, 2000.

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UPDATE OF COMPILATION OF STATE REPATRIATION, REBURIAL AND GRAVE PROTECTION LAWS (July 1997)

Prepared for the Natural Resources Conservation Service under order number 40-3A75-7-102

Prepared by Kathleen Schamel for CEHP Incorporated P.O. Box 56462 Washington, DC 20040-6462 TEL: (202) 293-1774 FAX: (202) 722-1129

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Overview

The Natural Resources Conservation Service (NRCS), formerly the Soil Conservation Service, is a federal agency that provides technical assistance on practices to promote sound soil and water conservation measures on private lands. Some of these practices have effects on cultural resources which are dealt with under agency policy or federal or state statutes.

In response to increasing concerns over the looting of cultural resources, including sites containing human remains, many states have enacted legislation to protect unmarked burial sites. These state laws often require special treatment of burial sites and associated resources and may carry penalties for failure to comply. This report is a compilation and comparative analysis of all existing state cultural resource reburial/repatriation laws. It was prepared to assist NRCS technical staff who work daily under applicable state and federal laws. This report originally was prepared for the Natural Resources Conservation Service under order number 40-3A75-1-638 by CEHP Incorporated, Washington, D.C. in 1993. The principle authors were Kathleen Schamel, Jill Schaefer and Loretta Neumann. Since its original printing, many states that did not have burial protection laws have enacted them. Other laws have been amended. NRCS contracted with CEHP Incorporated to review the original report and update it.

This year, 38 state laws specifically addressing reburial of human skeletal remains, repatriation of human skeletal remains and grave goods and/or unmarked grave protection statutes were examined. This

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includes six new laws enacted since our first report. Each law was analyzed and a detailed summary of the major provisions was prepared. The categories of information include the following:

(1) who has jurisdiction for implementing the law; (2) statute of limitation in which a violator can be prosecuted; (3) types of geographical areas protected or exempted, such as mounds or designated cemeteries; (4) whether a consultation process was established; (5) if a review or consultation committee was appointed; (6) who has ultimate ownership for archaeological remains; (7) who may be held liable for prosecution for violations of the law; (8) what penalties are established; (9) whether there are exemptions to the law; and (10) if permits are required and who is responsible for issue them.

The terms "reburial" and "repatriation" mean very different things. In this report reburial means the legal requirement or physical act of placing or interring human remains in a designated area such as a cemetery. Repatriation means the legal process of turning ownership and responsibility for human remains and graves goods over to another entity. In addition, in this report, the term "graves protection" means legal statutes established to prevent the damage, destruction or disturbance of places where dead human bodies have been placed.

In addition to the 38 states which have enacted reburial or repatriation laws, others which have not enacted laws specifically addressing human remains in archaeological context may use state archaeological and historic preservation laws or a combination of public decency, cemeteries protection and abuse of corpse statutes for these purposes. These laws were summarized for this report.

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Native American Graves Protection and Repatriation Act

[View full text of Act](#)

In addition to understanding the individual state laws, federal agency representatives should be familiar with the Native American Graves Protection and Repatriation Act (NAGPRA), P.L. 101-601, and its implementing regulations. This is the primary federal legislation pertaining to graves and human remains in archaeological contexts.

NAGPRA deals with three broad areas – definitions, inventory of collections and archaeological excavations. It covers human remains, funerary objects, sacred objects, and materials of cultural patrimony. A process is established which will assist federal agencies and museums in determining the appropriate Native American group responsible for disposition of various human remains, funerary objects, sacred objects, and materials of cultural patrimony. Unclaimed Native American cultural items will be handled by regulations developed by the Secretary of the Interior in consultation with a review committee.

Every federal agency and museum that has possession or control of Native American human remains and associated funerary objects is required to prepare an inventory of such items and if possible, to identify the geographical and cultural affiliation. The inventories were to be completed within 5 years of enactment, November 1995. Consultation with tribal government and Hawaiian organization officials and traditional religious leaders is required. Upon request from a tribe or Native Hawaiian group, a museum or federal agency will provide documentation and repatriate materials if appropriate. A seven member review committee was established to assist in the implementation of the Act. The Act also provides for grants to be available for tribes and museums in order to implement the Act.

Native American human remains, graves and objects located on federal and tribal land are encouraged to be protected in situ. In cases where in place preservation is not possible, or if archaeological excavation is necessary for planning or research, or if the remains are inadvertently discovered, then consultation is necessary prior to excavation under an Archaeological Resources Protection Act permit. If remains covered by the law are discovered, the

project will be stopped for 30 days while the review and consultation process proceeds.

Each federal and state employee is urged to review individual agency policy and be familiar with NAGPRA provisions. Information on NRCS's cultural resources policies is available in GM 420, Part 401 (policies) and GM 420, Part 601 (procedures). Additional information is available from the Federal Preservation Officer in the National Headquarters (202) 720-4912. The National Park Service's Archeology and Ethnography Division has been delegated the responsibility of implementing NAGPRA. For information on implementing NAGPRA or its regulations, contact Dr. C. Timothy McKeown, National Park Service, P.O. Box 37127, Washington DC 20013-7217 (202) 343-4101.

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ALABAMA

Citation: Aboriginal Mounds, Earthworks and Other Antiquities (Alabama Code §41-3-1 to §41-3-6); Alabama Cemetery and Human Remains Protection Act (93-905); Burials (Alabama Historical Commission Chapter 460-x-10).

Date Enacted: 1915, amended 1993

Summary: The Aboriginal Mounds, Earthworks and Other Antiquities Act claims state ownership of all antiquities in the state including mounds, prehistoric burials; prehistoric and historic forts and earthworks; and the materials contained within these resources. Non-state residents are prohibited from excavating these resources although private land owners may allow a non-resident to excavate mounds and burials on private lands so long as the artifacts remain in the state. Further, the law specifically states that excavation should not damage crops or houses on private lands. Alabama places responsibility for implementing its preservation laws in the Alabama Historical Commission (AHC), which is responsible for the issuing of permits for the excavation, relocation, and/or restoration of cemeteries and human remains. All permits are issued by the Director of the AHC after consultation and coordination between interested or concerned parties including, where appropriate, the Indian Affairs Commission and other groups representing significant cultural or ethnic affiliations. If burials to be disturbed for any reason have been interred for 75 years or longer, or the date of interment is undetermined, the permittee shall consult with the AHC. Any person who knows of the discovery of human remains and/or funerary objects on state or private land ceases any and all land-disturbing activity and notifies the AHC immediately. Any person who willfully or maliciously desecrates an American Indian place of burial or funerary objects on property not owned by that person, or injures, defaces, removes or destroys any tomb, monument or container of human remains, and invades or mutilates the human corpse or remains is guilty of a Class C felony.

Jurisdiction: All state and private lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Human remains and funerary objects.

Ownership: State ownership of all antiquities on state lands.

Review/Consultation Committee: Alabama Historical Commission consults with the Indian Affairs Commission.

Liabe: Anyone who illegally disturbs human burial sites.

Penalties: Violations of burial law is a class C felony; violations of archaeological sites is a misdemeanor with fines up to \$1000, or up to one year in jail, or both.

Exemptions: Not specified.

Permitting: The Alabama Historical Commission issues excavation permits.

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ALASKA

Citation: Alaska Historic Preservation Act (Alaska Stat. §41.35.010 through §41.35.240).

Dates Enacted : 1971, amended 1988 and 1993

Summary: Alaska has no specific laws dealing with reburial or repatriation of prehistoric human remains or an unmarked graves law, §41.35.190(c) of the Alaska Historic Preservation Act does state that "No person may **unlawfully** destroy, mutilate, deface, injure, remove or excavate a gravesite or a tomb, monument, gravestone or other structure or object at a gravesite, even though the gravesite appears to be **abandoned**, lost or neglected." Native Alaskan consent is required for excavation of native sites and landowner **consent** is required for excavation on private lands. The Alaska Historical Commission has **responsibility** for managing and protecting all prehistoric and historic sites in the state and issues permits for **excavations**. Nothing may diminish cultural rights or responsibilities of persons of aboriginal decent or **infringe** upon their right of possession, and use of those resources and local cultural groups may obtain from the state resources of respective cultural if meet certain criteria. Violations of the Historic Preservation Act provisions are considered a class A misdemeanor and civil penalties may be assessed up to \$100,000 per violation and up to one year in jail.

Jurisdiction: All state lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: All structures, ruins, sites, buildings, graves, artifacts or other objects of antiquities.

Ownership: State owns all archaeological sites and resources on state lands. **Review/Consultation Committee:** The Historic Sites Advisory Committee includes 2 persons representing ethnic groups indigenous to Alaska.

Liable: Anyone who **excavates** without a permit or anyone who removes, injures, destroys, any historic, prehistoric or archaeological resources of the state.

Penalties: Violations **are** considered a Class A misdemeanor with fines up to \$5,000 and up to one year in jail. Civil penalties **may** be assessed up to \$100,000. **Exemptions:** Nothing may diminish cultural rights or responsibilities of persons of aboriginal decent or **infringe** upon their right of possession, and use of those resources **and** local cultural groups may obtain from the state resources of respective cultural if meet certain criteria. **Permitting:** The Alaska Historic Commission issues permits for archaeological and historical site excavation.

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ARIZONA

Citation: Discovery of Human Remains, Sacred Ceremonial Object, Object of National and Tribal Patrimony (Arizona Rev. Stat. §41-844); Disturbing Human Remains or Funerary Objects on Lands Other Than State Lands (Arizona Rev. Stat. §41-865).

Date Enacted: 1990

Summary: In 1990, Arizona passed two laws specifically dealing with the protection of human burials and associated grave goods on state and private lands. The Discovery of Human Remains, Sacred Ceremonial Object, Object of National and Tribal Patrimony Act addresses protection of sacred and ceremonial objects on state lands or in the possession of the state. Under this statute, upon discovery of human remains over 50 years old, the project supervisor has three days to notify the Arizona State Museum. The preferred option is to leave the remains undisturbed. If the remains must be excavated, the State Museum has six months for study and to convene a meeting to determine disposition. Reburial is required of human remains and associated objects from state lands. Objects that are scientifically important may be **retained** for study for up to one year. For sacred or ceremonial objects, the tribe's decision will be **respected**. The project supervisor responsible for the discovery is obligated to pay

repatriation and reburial costs. A process is established for dispute resolution under which native groups may petition for return of artifacts of importance held by state institutions.

The second statute, Disturbing Human Remains or Funerary Objects on Lands Other Than State Lands, requires the landowner to notify the Arizona State Museum of the discovery of human remains or of the intent to disturb a known burial site. The museum will encourage the landowner to protect the site from further disturbance but if this is not possible, the museum and landowner will attempt to reach agreement for recovery of the remains. If no agreement can be reached, the landowner must allow at least 10 days for the museum to notify the appropriate tribal groups. For remains removed from private lands, the museum has six months to notify native groups and researchers. If no claims are made, the museum will rebury the remains within one year or store them for later repatriation. The landowner is encouraged to assist in paying for excavation and reburial of material from private lands, but is not required to do so. In these cases, the museum will pay. The law further prohibits the sale of human remains or associated grave goods.

Jurisdiction: State lands, private lands and collections held in state institutions.

Statute of Limitations: Not specified.

Areas Covered Under Act: All human burials at least 50 years old and associated grave goods located on state or private lands and sacred objects held in state institutions.

Ownership: For state lands, the project supervisor is responsible for remains until disposition. For remains on private lands, the museum is responsible for excavation and reburial.

Review/Consultation Committee: Consultation is done a case by case basis.

Liable: Anyone who violates provisions of the law.

Penalties: Unauthorized excavation of sites is a felony with up to 5 years in jail and fines of up to \$150,000; Misdemeanor penalties include fines of \$2,500 and up to six months in jail.

Exemptions: Not specified.

Permitting: Permits are required for excavation of archaeological, historic, and paleontological resources, including burials, on state lands. Permits are issued by the Director of the Arizona State Museum.

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ARKANSAS

Citation: Archaeological Resources (Arkansas Stat. Ann. §13-6-201 through §13-6-216 and §13-6-401 through §13-6-409).

Date Enacted: 1991

Summary: The state law prohibits the desecration of human remains and associated artifacts in unmarked, unrecorded, abandoned or unregistered graves, burial grounds or cemeteries found on public or private land or water. It also prohibits trade or commercial display of remains or associated burial furniture. Anyone who knowingly or intentionally buys, sells, displays or desecrates burial remains is committing a Class A misdemeanor on the first offense and Class D felony on the second offense. Legally acquired artifacts and private collections are exempted for these provisions. When justified by "A State Plan for the Conservation of Archaeological Resources in Arkansas," the investigation, excavation, removal and analysis of human skeletal remains and burial furniture is permitted. If the remains are on private land, the landowner must consent prior to excavation.

Upon discovery of human remains the archaeologist must notify the SHPO, who assists in determining appropriate tribes to include in the consultation process. Scientific studies are permitted only after consultation. If a tribal group recognized by the U.S. Government is determined to be directly related to the uncovered remains, the remains will be returned upon request. If no direct relation is identified, the Arkansas Archaeological Survey or state supported museum may serve as a repository for the skeletal remains for scientific research, the remains will be disposed of in accordance with existing laws, rules,

and regulations for disposing of human remains.

Jurisdiction: All public and private land or water.

Statute of Limitations: Not specified.

Areas Covered Under Act: All human remains and burial furniture.

Ownership: Remains are to be returned to the appropriate tribe or church, or the Arkansas Archaeological Survey or a state supported museum will assume charge.

Review/Consultation Committee: No review committee is established, but the SHPO must assist in identifying appropriate tribal groups for consultation.

Liable: Anyone who knowingly or intentionally buys, sells, displays or desecrates burial remains.

Penalties: First offenses of buying or selling human remains or intentionally desecrates a burial ground are a Class A misdemeanor; all second offenses are a Class D felony. Displaying human remains for profit or aiding a commercial enterprise is a Class B misdemeanor, with each day of display a separate offense.

Exemptions: Legally acquired artifacts in private collections are exempt. Agricultural activities are exempt.

Permitting: The Arkansas Archaeological Survey issues permits to excavate.

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[Arkansas Archaeological Survey](#)

CALIFORNIA

Citation: California Native American Historical, Cultural and Sacred Sites Act (California Public Resource Code, §5097.9); Archaeological, Paleontological and Historic Sites (California Public Resource Code, §5097, et seq.); Health and Safety (California Public Resource Code, §7050.5)

Date Enacted: 1976; amended 1982

Summary: The California Native American Historical, Cultural and Sacred Sites Act applies to both state and private lands. Upon discovery of human remains, the activity ceases and the county coroner is notified. If the remains are of a Native American, the coroner notifies the Native American Heritage Commission (NAHC). NAHC then notifies those persons mostly likely to be descended from the Native American remains. The descendants may, with the permission of private landowners, inspect the site and recommend to the owner or the person responsible for the excavation means for treating or disposing of the remains and associated grave goods. The descendants must complete their inspection and make recommendations within 24 hours of their notification by the NAHC. The recommendation may include scientific removal and non-destructive analysis. When the NAHC is unable to identify a descendant or the identified descendant fails to make a recommendation, or the landowner objects to the descendants' recommendations and mediation was unsuccessful, the landowner shall reinter the human remains and associated items with appropriate dignity. The Commission is directed to prepare an inventory of Native American sacred places on public lands. It is illegal for anyone to knowingly or willfully possess or obtain any Native American artifacts or human remains from a Native American grave or cairn after January 1, 1988. Any person who removes, without authority of law, Native American artifacts or human remains from a Native American grave or cairn with the intent to sell or dissect is guilty of a felony punishable by imprisonment in the state prison.

Jurisdiction: Human remains and grave goods found on state and private lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: All burials and associated remains located on state and private lands.

Ownership: Not specified.

Review/Consultation Committee: The Native American Heritage Commission must be notified.

Liable: Anyone who knowingly or willfully possess or obtain any Native American artifacts or human remains which were taken from a Native American grave or cairn after January 1, 1988 except as otherwise provided by law.

Penalties: It is a felony for any person to remove, without authority of law, any Native American artifact

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or human remains is liable. Fines of up to \$10,000 may be assessed.

Exemptions: Not specified.

Permitting: Permission is required for archaeological excavation on public lands by the agency with jurisdiction.

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COLORADO

Citation: Historical, Prehistorical and Archaeological Resources (Colorado Rev. Stat. §24-80-401, et seq.).

Date Enacted: Repealed and reenacted in 1973, amended 1990, 1991, 1995.

Summary: Section 13 of the Historical, Prehistorical and Archaeological Resources Act establishes a procedure with regard to unmarked human graves. Upon discovery of human remains, the coroner and sheriff, police chief or land managing official are notified and have 48 hours to determine if forensic study is necessary. If not, the coroner contacts the state archaeologist who determines if the remains are over 100 years old and if they are Native American. The Indian Commission is notified if the remains are Native American. Excavation of remains takes place unless all parties agree unanimously to leave them in situ. The State Archaeologist has 10 days to complete the excavation and assumes custody of the remains. Analysis is allowed for up to one year. The State Archaeologist consults with the Indian Commission on reinterment and pays for the disinterment and analysis of remains from state lands and of remains from private lands, if no one else is willing. If human remains are discovered during an anthropological investigation, the archaeologist will determine the age and, if possible, cultural affiliation. If the remains are less than 100 years old, the coroner is notified; if the remains are over 100 years old, the State Archaeologists is notified. Anyone who knowingly disturbs an unmarked human burial commits a Class 1 misdemeanor; any person who has knowledge that an unmarked human burial is being unlawfully disturbed and fails to notify the local law enforcement official commits a Class 2 misdemeanor. Any person who discovers on any land suspected human skeletal remains or who knowingly disturbs such remains must immediately notify the coroner of the county wherein the remains are located and the sheriff, police chief, or land managing agency official.

Jurisdiction: Unmarked human graves on all state, local and private lands, including submerged lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: All burials and associated remains located on state and private lands.

Ownership: State owns resources on state lands.

Review/Consultation Committee: Commission of Indian Affairs must be consulted.

Liable: Anyone, including an individual, corporation, or government entity, who knowingly disturbs or has knowledge of an unmarked grave being disturbed is in violation of this Act is liable.

Penalties: Disturbing an unmarked burial is a Class 1 misdemeanor; failure to report a disturbance of an unmarked human is a Class 2 misdemeanor. Prison terms from three months to two years and fines of \$500 to \$5,000 may be assessed.

Exemptions: Not specified.

Permitting: Permits are required for excavation on state lands and are issued by the State Historic Society.

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CONNECTICUT

Citation: Implementing the Recommendations of the Task Force on Indian (Connecticut Public Act 89-368, codified into Connecticut General Statutes §10-382 through §10-388, et seq.).

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Date Enacted: 1989; codified 1993

Summary: All sites, objects and remains older than 50 years found on public and private land are covered by the statute. The Historical Commission is charged with identifying and inventorying sacred and archaeological sites and issuing permits for excavations on state lands and coordinates with the Native American Heritage Advisory Council (NAHAC). If the permit allows disturbance of a known burial, cemetery or sacred site, the NAHAC reviews the application. When human remains are discovered, the activity including construction, agriculture, archaeology or other actions, ceases and resumes with permission of the Medical Examiner and the State Archaeologist. The Chief Medical Examiner determines if the remains are the result of criminal action. If the remains are Native American or were buried of more than 50 years, the State Archaeologist is notified. The State Archaeologist consults with the Historical Commission, the NAHAC, the Commission of Environmental Protection and the landowner within 72 hours to determine if the remains can be preserved in situ. If in situ preservation is not possible, the State Archaeologist provides for removal and reburial or allows additional archaeological investigation and scientific analysis prior to reburial. Recovery of remains must be completed within five days of notification by the medical examiner unless land owner allows longer. The Commissioner of Environmental Protection has designated state lands for reburial and any human remains discovered after October 1, 1998 will be reburied. No person may sell, exchange, transport, receive or offer to sell any human remains or artifacts collected, excavate or otherwise removed from state lands. The law imposes fines up to \$5,000 or twice the value of the artifacts and the cost of restoration of the site. Prison terms up to five years are also mandated.

Jurisdiction: All sites on state, local or private lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: All unmarked human burials.

Ownership: The Connecticut Historical Commission.

Review/Consultation Committee: The Native American Heritage Council must be consulted.

Liable: Any person removing burials without a permit is liable.

Penalties: Fines up to \$5,000 or twice the value of the artifacts and the cost of restoration of the site. Prison terms up to five years and possible assessment of costs of restoring the site.

Exemptions: Agricultural practices that threaten burials shall cease until the Medical Examiner and State Archaeologist make a determination of disposition, within 5 days.

Permitting: The Connecticut Historical Commission issues permits.

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DELAWARE

Citation: Archaeological Excavation (Delaware Code Ann. Title 7 §5403, et seq.)

Date Enacted: 1987

Summary: The law deals specifically with treatment of unmarked human burials and human skeletal remains located anywhere in the state except federal lands. Its intent is to protect unmarked human remains from construction, agriculture and other ground disturbing activities. A review committee is established. Upon discovery of any unmarked human remains including from agricultural practices, the activity ceases and the medical examiner is notified. If the medical examiner decides the remains are not from criminal action, they are referred to the State Archaeologist. If the remains are Native American, the review committee is notified within five days. Within 60 days of notification, a written plan for treatment and disposition of the remains must be completed: treatment of shall be determined by the next of kin or the committee. Native American remains will be reinterred within 90 days unless an extension is granted by the committee. Human remains located as a result of archaeological investigation are reported to the Director of the Division of Historical and Cultural Affairs. Reinterment cost will be

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paid by the next of kin. It is illegal to acquire, sell or exhibit any human remains. Fines of not less than \$1,000 or more than \$10,000 and prison for up to two years or both will result if the law is violated.

Jurisdiction: All state and private lands excluding federal lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Unmarked burials and skeletal remains are covered; the law does not deal specifically with grave goods.

Ownership: Not specified.

Review/Consultation Committee: A review committee composed of the Chief of the Nanticoke Indian Tribe, two members appointed by the Chief, the Director of the Division of Historical and Cultural Affairs, 2 members appointed by the Director, and a member of the general public appointed by the Governor is established.

Liable: Any person who knowingly acquires, sells or exhibits human skeletal remains removed from unmarked burials in Delaware.

Penalties: Violations of the law will result in fines of \$1,000 to \$10,000 and/or up to two years in jail.

Exemptions: It is not illegal to possess human remains acquired through biological supply houses or medical schools; human remains within the jurisdiction of the medical examiner; or human remains acquired through archaeological excavations under the supervision of a professional archaeologists.

Permitting: Division of Historic and Cultural Affairs issues permits.

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DISTRICT OF COLUMBIA

Citation: Historic Landmarks (DC Code Ann. §5-1003 through §5-1010).

Date Enacted: 1978

Summary: The District of Columbia does not have specific archaeological or unmarked burial protection legislation but rather relies on all applicable federal laws to protect historic resources. Several local preservation statutes deal with protecting historic structures and establishing an preservation agency.

Jurisdiction: N/A

Statute of Limitations: N/A

Areas Covered Under Act: N/A

Ownership: N/A

Review/Consultation Committee: N/A

Liable: N/A

Penalties: N/A

Exemptions: N/A

Permitting: N/A

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FLORIDA

Citation: Offenses Concerning Dead Bodies and Graves (Florida Stat. Ann. §872.02 and §872.05); Historic Sites and Properties (Florida Stat. Ann. §266.001, et seq.).

Date Enacted: Amended 1984; Effective 1987; revised 1991, 1993

Summary: The Offenses Concerning Dead Bodies and Graves statute applies to unmarked human burials, human remains deceased at least 75 years and any associated grave goods on state, private and

submerged lands. If the remains are uncovered other than by archaeological excavation, all work ceases and the local law enforcement office and medical examiner are notified. The medical examiner has 30 days to determine jurisdiction. If there is no evidence of a crime, the State Archaeologist is given jurisdiction and has 15 days to determine cultural or biological characteristics and contact the nearest relation or ethnic group affiliated with the remains. If this is impossible, the archaeologist consults a skeletal analyst and, if Native American, two Native American members of the Governors' Council on Indian Affairs. Two representatives of a related community or group will be contacted if the remains are not Native American. If the State Archaeologist and the committee determine the remains are scientifically important, they will be analyzed prior to reburial or, in some cases, may become the property of the state. The state has developed rules regarding public display of human remains. If the remains are uncovered as part of archaeological excavation, work ceases and the Medical Examiner is contacted. If the remains are at least 75 years old, the State Archaeologist is notified and, within 15 days, the principle investigator must report the cultural or biological characteristics and recommend storage until disposition is decided. Any person who willfully and knowingly disturbs, destroys, removes, vandalizes, or damages unmarked human burials is guilty of a 3rd Degree felony; any person who has knowledge that an unmarked human burial is being disturbed and fails to report it is guilty of a 2nd Degree misdemeanor.

Jurisdiction: All state and private lands and submerged land.

Statute of Limitations: Not specified.

Areas Covered Under Act: All unmarked burials, human skeletal remains and associated burial artifacts.

Ownership: The State Archaeologist assumes responsibility of the remains until disposition.

Review/Consultation Committee: The Council on Indian Affairs, or other appropriate ethnic groups or communities, must be consulted.

Liable: Anyone who knowingly disturbs, destroys, removes, vandalizes or damages an unmarked human burial or anyone who knows that such activity is taking place and fails to report it.

Penalties: 3rd Degree felony carries fines of \$100.

Exemptions: Not specified.

Permitting: The Division of Historic Resources issues excavation permits.

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GEORGIA

Citation: Protection of American Indian Human Remains and Burial Objects (Georgia Code Ann. §44-12-260, et seq.); Historic Preservation Act (Official Code of Georgia Ann. §12-3-53 through §12-3-82; §31-21-6); Dead Bodies (Georgia Code Ann. §31-21-5-6, 45); Abandoned Cemeteries and Burial Grounds (Georgia Code Ann. §36-72-16); Research References (Georgia Code Ann. §12-3-52-54).

Date Enacted: 1969, amended 1981, 1985, 1992

Summary: Georgia's Protection of American Indian Human Remains and Burial Objects protects unmarked human burials. The Department of Historic Resources, through the office of the State Archaeologist, issues excavation permits for state lands. In general, the state discourages removal of sacred or cultural objects from Native American burials. In cases where a burial must be excavated, the excavation research plan or design must include a plan for identify and notifying lineal descendants, for permission to perform skeletal analysis, curation and disposition. If human remains are encountered accidentally, the action ceases and the appropriate law enforcement agency is notified. The law enforcement agent takes responsibility for alerting the coroner, who in turn, determines if the remains are forensic in nature. If the remains are not forensic, then the coroner or medical examiner notifies the local governing authority and the Division of Natural Resources, the latter has responsibility for contacting the Council of American Indian Concerns. The Division of Natural Resources, in consultation with the Council, decides if the remains should be excavated, and if so, obtains written permission if the remains are on private lands. It is unlawful for any person not operating under the provisions of §106 of

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the National Historic Preservation Act to willingly or knowingly disturb any archaeological, aboriginal, prehistoric or historic site. It is also unlawful to buy, sell, trade, import, or export American Indian burial, sacred, or cultural objects. Any person who has knowledge of, or has reason to believe that interred human remains have been disturbed, destroyed, defaced, removed, or altered without a permit must immediately notify the local law enforcement agency.

Museums in possession of human remains or burial objects must return such objects to the relevant tribe if a request is made. Failure to comply with this law is subject to a civil penalty imposed by the Secretary of State, which in no event shall exceed \$5,000. It is a felony to publicly display dead human bodies of American Indians or American Indian human remains except in connection with funeral or burial services. Educational exhibits or displays are only permissible with the express written permission of the lineal descendants of the deceased or where there is no lineal descendent by the Council on American Indian Concerns.

Jurisdiction: All state and private lands including submerged lands.

Statute of Limitation: Not specified.

Areas Covered Under Act: All human skeletal remains and prehistoric and historic sites.

Ownership: State assumes ownership.

Review/Consultation Committee: The Council on American Indian Concerns must be consulted.

Liable: Anyone who knowingly disturbs, defaces, removes or exposes human remains, without a permit is liable.

Penalties: Displaying human remains without the express written consent of may result in a penalty not to exceed \$5,000.

Exemptions: Educational exhibits or displays are allowed with the express written permission of the deceased lineal descendants or the Council on American Indian Concerns, if not.

Permitting: Not specified for Native American burials but general archaeological permits issued through State Archaeologist.

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HAWAII

Citation: Historic Preservation Program (Hawaii Rev. Stat. §6E).

Date Enacted: 1988, amended 1990

Summary: This historic preservation law does not deal with grave goods but does have a provision for discovery and reburial of human remains. It takes into account Native Hawaiian concerns, and requires reburial of Native Hawaiian remains. For any known or discovered site with human remains that are over 50 years old, in situ preservation preferred. If excavation is required, the Department of Natural Resources must issue a permit. The ground disturbing activity ceases and the police and medical examiner are notified when human remains are inadvertently discovered. The law enforcement officials notifies the Department of Land and Natural Resources for human remains from significant historic or prehistoric burials. For single skeletons, the Department has two days to alert the appropriate Island Burial Council and the Office of Hawaiian Affairs if the remains are thought to be Native Hawaiians. In cases of multiple skeletons, the Department has three days to contact the Councils after gathering evidence and documenting the nature of the burial. The Island Burial Council has 45 days to decide appropriate action including preservation or relocation. Working with the Department and the Office of Hawaiian Affairs, the Island Burial Council develops criteria to be followed and oversees the removal. The landowner or developer may appeal the decision. Within 90 days of the final determination, the preservation or mitigation plan must be approved by the Department in consultation with the lineal descendants, Council, Office of Hawaiian Affairs, and affected landowner. The project resumes after implementation of the mitigation plan. Disposition will be done with traditional ceremonies and scientific analysis is usually allowed. If remains are removed, the Department in consultation with the Council and descendants determines the site of the relocation. For remains that are not Native Hawaiian,

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the Department of Land and Natural Resources has 30 days to determine if preservation or relocation is more appropriate and 90 to develop the action plan in consultation with lineal descendants and appropriate ethnic groups.

Jurisdiction: State or private lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Any burial in an unmarked location.

Ownership: Not specified but the state takes the lead in coordinating the ultimate disposition.

Review/Consultation Committee: The Office of Hawaiian Affairs and appropriate Island Burial Council must be consulted.

Liable: Anyone who knowingly disturbs or removes human burials without a permit or authorization.

Penalties: Violations are considered a misdemeanor under Hawaiian criminal code with fines up to \$10,000.

Exemptions: Not specified.

Permitting: Department of Land and Natural Resources issues excavation permits.

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IDAHO

Citation: Protection of Graves (Idaho Code §27-501) and State Historic Society (Idaho Code §67-4101, et seq.).

Date Enacted: 1984

Summary: The Idaho Protection of Graves law applies to all graves, cairns, human remains and artifacts on state and private lands. The law mandates reburial. No individual may willfully disturb any cairn or grave or remove artifacts or human remains. After January 1, 1984, no person may possess artifacts or human remains taken from a cairn or grave other than in authorized ways. The law prohibits public display or exhibition or the sale of human remains or artifacts taken from a cairn or grave. If a grave is going to be destroyed, the Idaho Historical Society and appropriate tribe are consulted. The site is excavated with the permission of the tribe; permission is assumed if no response is received within 60 days of notification. Reinterment of all human remains and artifacts after scientific study is assumed and takes place following scientific study and is done at the archaeologist's expense and under supervision of the tribe. Penalties are felonies and include up to \$10,000 in fines and five years in prison. Civil penalties may also be assessed.

Jurisdiction: All state and private lands in Idaho.

Statute of Limitations: Not specified.

Areas Covered Under Act: All Native American graves and cairns, human remains and associated artifacts are protected.

Ownership: Cost of reinterment partially born by Idaho State Historic Society.

Review/Consultation Committee: A consultation process is established and carried out by the State Historical Society.

Liable: Any person who willfully disturbs, possess or takes human remains or artifacts from a Native American cairn or grave; displays or exhibits any human remains; or sell human remains or artifacts taken from a cairn or grave is liable.

Penalties: Violations are considered a felony with fines up to \$10,000 and imprisonment up to five years.

Exemptions: Archaeological excavation is allowed.

Permitting: The Idaho State Historical Society issues permits for archaeological excavation.

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ILLINOIS

Citation: Human Skeletal Remains Protection Act (Illinois Comp. Stat. Ann. 20 ILCS 3440/0:01, et seq.).

Date Enacted: 1989

Summary: The Human Skeletal Remains Act protects unregistered graves on state and private lands which are over 100 years old not in a registered cemetery. The law also applies to grave goods and artifacts. Any person who discovers human skeletal remains must notify the coroner promptly. Failing to do so within 48 hours is a Class C misdemeanor, unless such person has reasonable cause to believe the coroner has already been notified. If the human skeletal remains appear to be from an unregistered grave, the coroner will notify the Historic Preservation Agency. A permit will be issued prior to their removal, and costs for excavation are paid by the permit applicant. The state owns all human remains and grave goods and reburial is not specified. Knowingly disturbing human skeletal remains and burial artifacts, the sale or exchange of such objects may result in fines of up to \$10,000 and prison for up to one year; civil penalties may also be assessed. Knowingly disturbing a grave marker is a Class E misdemeanor, which is punishable by up to \$500 in fines and not more than six months imprisonment. The Historic Preservation Agency is authorized to offer rewards up to \$2,000 for information leading to the arrest and conviction of violators.

Jurisdiction: All state and private lands in Illinois.

Statute of Limitations: Not specified.

Areas Covered Under Act: All unmarked graves, human skeletal remains and grave goods are protected.

Ownership: The state claims all human remains and grave goods from unregistered graves.

Review/Consultation Committee: There is no provision for a review committee or for consultation with Native Americans.

Liable: Any individual, firm, trust, estate, partnership, association, joint venture, etc. who knowingly disturbs, sells, exchanges or allows to be disturbed human graves.

Penalties: Penalties range from a Class B misdemeanor with imprisonment not to exceed six months and fines not to exceed \$500, to a Class A misdemeanor with imprisonment for not more than one year and a fine not to exceed \$10,000. Subsequent violations are viewed as a Class 4 felony. In addition, civil damages including forfeiture, reparation of costs for cleaning, restoring and analyzing may be assessed for disturbing graves or markers without a permit.

Exemptions: Not specified.

Permitting: The Historic Preservation Agency issues permits prior to removal of remains.

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INDIANA

Citation: Disturbance of Human Remains (Indiana Code Ann. §14-21-1-27, et seq.).

Date Enacted: 1989, amended 1995

Summary: The law applies to artifacts and human remains found on public and private lands. The statute specifically exempts coal mining, agriculture and surface collection. People disturbing the ground for the purpose of discovering artifacts or burial objects may only do so in accordance with an approved Department of Natural Resources (DNR) plan. Anyone disturbing a burial must notify the DNR and within two days treat or rebury the remains according to rules adopted by the Commission. Failure to do so is a Class A misdemeanor. If human remains are disturbed while trying to recover artifacts without an approved plan, it is a Class D felony. If human remains are encountered during ground disturbing activities other than those exempted, the activities must stop and the DNR must be notified within two days. After notification, the DNR may either authorize the project to continue or require that the activity

be conducted with an approved plan. There are no provisions for scientific study of the human remains prior to reinterment. There are also no provisions that associated artifacts must be reburied or any provision for consultation with Native American groups.

Jurisdiction: Public and private lands in Indiana.

Statute of Limitations: Not specified.

Areas Covered Under Act: Burial grounds, human skeletal remains and artifacts are protected.

Ownership: The Department of Natural Resources.

Review/Consultation Committee: No review committee is established.

Liable: Anyone who knowingly disturbs a burial without a permit or fails to report such an action is liable.

Penalties: Misdemeanor for failure to notify; Class D felony for disturbing without a permit.

Exemptions: Agriculture, coal mining and surface collecting are exempted from the law.

Permitting: The Division of Historic Preservation will issue permits under an approved plan.

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IOWA

Citation: Reintering ancient remains (Code of Iowa §263B.7 through §263B.9; and Iowa Administrative Code §685-11.1 and Iowa Administrative Code §70-11-1).

Date Enacted: 1976, amended most recently 1993

Summary: The Iowa law is implemented by the State Archaeologist who has the primary responsibility for investigating, preserving and reintering ancient human remains. Ancient human remains are those remains found within the state which are more than 150 years old. The State Archaeologist provides for a forensic osteologist to study and interpret ancient burials and may designate other qualified archaeologists to assist in recovering physical and cultural information about the burials. Permits for excavations are issued after consultation with the Office of the State Archaeologist and Indian Advisory Committee. The State Archaeologist files a report with the department of public health. The state has established cemeteries on state lands for the reburial of ancient human remains. The State Archaeologist has the authority to prohibit disinterment of human remains that have state or national significance. The law does not address grave goods; nor is it clear on whether the law deals with state lands only or state and private lands. It is interpreted by the Office of the State Archaeologist to apply the law to private and state lands, but not to federal property. Anyone who intentionally disinters human remains from a burial site without lawful authority or, disinters human remains that have state and national significance from an historical or scientific standpoint for the inspiration and benefit of the United States without the permission of the State Archaeologist, is guilty of criminal mischief in the third degree (aggravated misdemeanor).

Jurisdiction: All non-federal lands in Iowa.

Statute of Limitations: Coded in criminal code.

Areas Covered Under Act: Ancient human burials over 150 years.

Ownership: State of Iowa.

Review/Consultation Committee: No Native American consultation is required.

Liable: Anyone who deliberately disturbs ancient burials without a permit is liable.

Penalties: Criminal mischief in the 3rd degree (aggravated misdemeanor).

Exemptions: Not specified.

Permitting: Office of the State Archaeologist will issue permits.

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KANSAS

000301

Citation: Kansas Unmarked Burial Sites Preservation Act (Kansas Code §75-2741, et seq.).

Date Enacted: 1989

Summary: The law specifically relates to unmarked burial sites, human remains and artifacts on private and public lands. No one without a permit, may disturb an unmarked burial site or possess human remains or grave goods. Possession of grave goods obtained prior to January 1, 1990 is exempted. No one may display human remains or artifacts from burials or trade in such artifacts. Anyone with knowledge of such activities must report it or is guilty of a misdemeanor with a fine of not less than \$100 nor more than \$500. Anyone discovering human skeletal remains must immediately notify the local law enforcement agency, which notifies the coroner. The coroner determines if the remains are forensic, then notifies the State Historical Society. The Society consults with the Unmarked Burial Sites Preservation Board. After disinterment, the remains and goods may be studied for up to one year by the State Historical Society. Scientific study may be extended by six months. Upon completion of the analysis, the remains and goods will be under the direction of the Unmarked Burial Sites Preservation Board. The Secretary of the State Historical Society will establish, with Board approval, a cemetery on state land for reinterment of human skeletal remains and grave goods from unmarked burials.

Jurisdiction: All lands within Kansas.

Statute of Limitations: Not specified.

Areas Covered Under Act: Unmarked burial sites, skeletal remains and grave goods.

Ownership: State under the jurisdiction of the Historical Society.

Review/Consultation Committee: Consultation with the Unmarked Burial Sites Preservation Board, a division of the State Historical Society.

Liable: Any person without a permit who disturbs an unmarked burial site or possesses human remains or grave goods after January 1, 1990.

Penalties: Failure to give notice of an unmarked burial site to the local law enforcement agency is a misdemeanor and punishable by fines between \$100 and \$500. Other penalties include fines not more than \$20,000. Second and subsequent fines may be assessed up to \$100,000.

Exemptions: Remains or grave goods obtained prior to January 1, 1990 are exempted from this law.

Permitting: Permits are issued by the Unmarked Burial Sites Preservation Board.

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KENTUCKY

Citation: Archaeology (Kentucky Revised Stat. Ann. §164.705, et seq.).

Date Enacted: 1962

Summary: Kentucky uses its general public policy to preserve archaeological sites and objects of antiquity of public benefit and limits exploration, excavation, and collection of artifacts to qualified persons and educational institutions. The law does not specifically mention Native American burials, while it does deal with historic and Civil War burials. It defines an archaeological site as any place where articles of value scientific study of history or prehistoric human life and activities may be found such as mounds, earthwork, forts, burial grounds, caves or camp sites of Indian or any aboriginal group. The Kentucky Heritage Council has jurisdiction for protecting and managing sites and inadvertent discovery of sites must be reported to the Council.

Jurisdiction: State lands and private lands if the state has a contract with the landowner.

Statute of Limitations: Not specified.

Areas Covered Under Act: Historic and prehistoric archaeological sites including burial grounds.

Ownership: The state claim sites on state lands.

Review/Consultation Committee: Not specified.

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Liabile: Anyone who willfully destroys, damages or injures an archaeological site.

Penalties: Violations are misdemeanor with fines not to exceed \$500 or 90 days in jail.

Exemptions: Not specified.

Permitting: Excavation permit are issued through the Kentucky Heritage Council.

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LOUISIANA

Citation: Unmarked Human Burial Sites Preservation Act (Louisiana Revised Stat. Ann. Title 8, §671-681).

Date Enacted: 1991

Summary: The Louisiana Unmarked Human Burial Sites Preservation Act provides for the protection of unmarked burial sites, human skeletal remains and burial artifacts. The law establishes the Unmarked Burial Sites Board to implement and enforce the law; consult with all interested parties when an unmarked burial site is disturbed; and issue permits for the disinterment and/or for scientific study of human remains and burial artifacts. The law makes it illegal to disturb an unmarked burial site or any human skeletal remains or burial artifacts in such a site. To buy sell, barter, excavate, give, receive, posses, display, discard or destroy human skeletal remains from any unmarked burial site in the state, or allow anyone to do this, is a crime. Each violation is subject to a fine of not more than \$5,000 or imprisonment for not more than one year, or both for a first offense. For subsequent convictions, a fine of not more than \$10,000 or imprisonment for not more than two years, or both will be imposed. Civil penalties may also be assessed.

Whenever an unmarked burial site or human skeletal remains are discovered, the local law enforcement office must be notified within 24 hours. Anyone receiving what they belief are burial artifacts must notify the Division of Archaeology within 72 hours. Failure to notify is a misdemeanor with fines not less than \$100 or more than \$1,000. Upon discovery, all disturbing activity ceases and will not resume until the Board has issued a permit outlining the disposition of the remains. This will be done within 30 days. The law enforcement agency notifies the coroner of the discovery, who notifies the Board within two business days if the remains are not older than 50 years and not the result of criminal action. In this case the Board will have jurisdiction over the remains. The Board will take every reasonable action to restore the burial site and avoid disturbing the remains. If the remains are of scientific value, a permit may be issued for study. The Board will make a reasonable effort to identify and locate direct kin or where remains have a known ethnic affinity with a Native American tribe, the tribe will be contacted. If the remains must be removed, the direct relations, if known, will have control over the disposition. If there is no known relative, but an established ethnic affinity, then the tribe will have control over the disposition. If no direct relative or ethnic affinity are established, the Board will determine disposition. The cost of disinterment, reinterment or study shall be paid by the party requesting the permit if one is issued, otherwise the Board will bear the cost of reinterment. All burial artifacts found in an unmarked burial site become the property of the state and the Board will have control over their disposition.

Jurisdiction: State and private lands are protected.

Statute of Limitations: Not specified. Areas Covered Under Act: Unmarked burial sites, human skeletal remains and burial artifacts.

Ownership: The state lays claim to burial artifacts only.

Review/Consultation Committee: The Louisiana Unmarked Burial Sites Board is the primary enforcer, implementer and plays the key role in the consultation process.

Liabile: Anyone who disturbs an unmarked burial site, buy, sells, barter, excavates, posses, displays or destroys human skeletal remains; or allows such action to occur; or fails to notify the authorities that such activities have occurred.

Penalties: Violations of a first offense is punishable by a fine not exceeding \$5,000 or imprisonment for not more than one year or both. Second offenders will be punished by imprisonment for not more than

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two years or a fine of not more than \$10,000 dollars, or both.

Exemptions: Land used for farming, cattle, timber and other similar surface uses that will not disturb human skeletal remains through excavation.

Permitting: The board will issue or revoke permits as appropriate. Fees for permits will not exceed \$100.

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MAINE

Citation: Indian Bones (Maine Rev. Stat. Ann. Title 22, §4720) and Archaeology (Maine Rev. Stat. Ann. Title 27, §361).

Date Enacted: 1973, 1985

Summary: The statute on Indian Bones requires that all Indian skeletons, either publicly or privately owned, be transferred to the appropriate Maine tribe for reburial. Prior to reburial, the human remains may be scientifically studied for up to one year. The law makes no provisions for associated grave goods or dealing with human remains when affinity cannot be established. There are no provisions in the statute for violations. No review committee is mentioned and no process is laid out for inadvertent discovery of human remains. The Maine Historic Preservation Commission issues permits for archaeological excavations.

Jurisdiction: All lands in Maine.

Statute of Limitations: Not specified.

Areas Covered Under Act: All Indian skeletons will be reburied.

Ownership: Indian Tribes in Maine.

Review/Consultation Committee: No provisions are made for consultation.

Liable: Not specified.

Penalties: Penalties for violating the archaeological provisions include fines from \$50- \$1,000 per day.

Exemptions: Not specified.

Permitting: General archaeological permits issued through the Maine Historic Preservation Commission.

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MARYLAND

Citation: Historic and Cultural Programs (Maryland Ann. Code art. 27, §265, and 267; art. 83B, §5-627) Ownership and Deposit of Submerged or Terrestrial Archaeological Objects and Materials (Article 83B, §65-627).

Date Enacted: 1991, amended 1994

Summary: Maryland recently amended its preservation statutes to include provisions relating to human remains. The state claims jurisdiction over all sites on state lands. Article 83, §5-627(b) transfers human remains to the state under the jurisdiction of the Maryland Historical Trust. The Trust may transfer any human remains, including Native American, in its possession to an appropriate place of repose. If cultural affiliation can be established, the human remains and associated funerary objects will be transferred first to a lineal descendant and then to a culturally affiliated organization. The Trust must first consult with the Commission on Indian Affairs. Human remains not identified can be sent to a reputable museum or educational institution for one year of study. These remains are then returned to the Trust for disposition according to procedures on disposition of culturally unidentifiable materials developed with the Commission.

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Jurisdiction: Any sites on state lands or materials under the jurisdiction of the state.

Statute of Limitations: Not specified.

Areas Covered Under Act: Any unmarked skeletal remains.

Ownership: Maryland Historic Trust.

Review/Consultation Committee: Must consult with the Commission on Indian Affairs.

Liable: Anyone who knowingly violates the statute.

Penalties: Anyone who violates the act is guilty of a misdemeanor with penalties ranging between fines of \$100 and 30 days in jail and fines of \$10,000 and up to two years in jail.

Exemptions: Not specified.

Permitting: Excavation permits are issued through the Maryland Historic Trust.

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MASSACHUSETTS

Citation: Discovery of Unmarked Skeletal Remains (Mass. General Laws Ann. Ch. 38, §6B); Commission on Indian Affairs (Mass. Gen. Laws Ann. Ch.7, §38A); Violation of Sepulchre (Mass. Gen. Laws Ann. Ch. 272, §71); Injuring or Removing Tombs, Graves, Memorials, etc. (Mass. Gen. Laws Ann. Ch. 272, §73), Preservation of Ancient Burial Places (Mass. Gen. Laws Ann. Ch. 114, §17), Reports to State Archaeologist [Cessation of Activities at Unmarked Burial Grounds] (Mass. Gen. Laws Ann. Ch. 9, §27C).

Date Enacted: 1983, 1989

Summary: Any person in the Commonwealth who discovers unmarked skeletal remains or who knowingly disturbs such remains is required to immediately notify the medical examiner of the district or county where the remains are located. The medical examiner must then conduct an inquiry to determine whether the remains are suspected of being 100 years old or more, in which case he shall immediately notify the State Archaeologist. If the remains are determined to be of archaeological significance, the Commission on Indian Affairs is notified and a site evaluation is made to determine if the remains are Native American Indian. If so, the State Archaeologist, landowner and Commission on Indian Affairs will determine whether alternatives exist to avoid or minimize harm to the site. If there are no alternatives for in situ preservation, the State Archaeologist will excavate the site under the supervision of the commission. The State Archaeologist and commission determine if immediate disposition or skeletal analysis is appropriate. If immediate reinterment is the option, the Commission is responsible. Analysis may not exceed one year, unless an extension is granted by the Commission. After analysis, the commission is responsible for reinterment.

Jurisdiction: Unmarked prehistoric burials on state and private lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Any unmarked skeletal remains. **Ownership:** The Commission on Indian Affairs.

Review/Consultation Committee: The State Archaeologist must consult with the Commission on Indian Affairs and other interested parties will be consulted throughout the process.

Liable: Anyone who violates the law and removes remains without a permit.

Penalties: Anyone who, without lawful authority, willfully digs up, disinters; removes or conveys away a human body or the remains thereof or is an accessory to such an act is punishable by imprisonment in the state prison for not more than three years, or in jail for not more than two and one half years, or by a fine of not more than \$2,000. The willful destruction, mutilation, injury, or removal, or wanton disturbance of the contents of a tomb or grave is punishable by imprisonment ranging from not more than two and one-half years in jail up to five years in the state prison and by a fine not to exceed \$5,000.

Exemptions: Not specified.

Permitting: The State Archaeologist is responsible for issuing archaeological permits for all excavations.

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MICHIGAN

Citation: Aboriginal Records and Antiquities (Michigan Stat. Ann. §13.22, et seq.); Historical Commission (Michigan Stat. Ann. §15.1801, et seq.).

Date Enacted: Last amended 1989

Summary: The Aboriginal Records and Antiquities Act prohibits the exploration or excavation of aboriginal remains on state lands without a permit from the Director of Natural Resources. It also makes it illegal to remove relics or records of antiquity such as human bones without private land owners permission. More general preservation statutes establish the Historical Commission and outline the requirement to consult with the Indian Affairs Commission. The law does not have specific direction on repatriation of human remains or grave goods, nor does it outline steps to follow in cases of inadvertent discovery of unmarked human graves during authorized projects.

Jurisdiction: Unmarked aboriginal burials on state and private lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Any unmarked skeletal remains.

Ownership: State.

Review/Consultation Committee: Michigan's Indian Affairs Commission should be consulted.

Liable: Anyone violating the Aboriginal Records and Antiquities Act, with a permit, is liable.

Penalties: Anyone who, without lawful authority, is guilty of a felony with fines of up to \$5,000 or jail for up to two years, or both.

Exemptions: Not specified.

Permitting: The Director of Natural Resources has jurisdiction for issuing excavation permits.

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MINNESOTA

Citation: Private Cemeteries (Minnesota Stat. Ann. §307.08).

Date Enacted: Amended 1976, Effective 1983, Amended 1993, 1997

Summary: The Private Cemeteries Act offers protection to all human remains and human burials on state and private lands or waters. Anyone who intentionally, willfully or knowingly destroys, mutilates, injures, or removes human skeletal remains or human burial grounds is guilty of a felony. The State Archaeologist will appoint a qualified archaeologist to identify Indian burial grounds. All undiscovered human remains over 50 years old, outside of a plotted cemetery, are dealt with according to this Act. In cases where remains are discovered and the remains are not Native American, provisions developed by the State Archaeologist will be followed. If probable tribal identity can be determined, the State Archaeologist and the Indian Affairs Council will decide if they should be turned over to the contemporary tribal leaders for disposition. If the State Archaeologist and Indian Affairs Council decide it necessary the remains may be studied prior to return. When Indian burials are known or suspected to exist, on public lands or waters, the state or political subdivision controlling the lands or waters shall submit construction and development plans to the State Archaeologist and the Indian Affairs Council for review prior to the time bids are advertised.

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Jurisdiction: All state and private lands and waters.

Statute of Limitations: Not specified.

Areas Covered Under Act: All human remains and burials.

Ownership: The state of Minnesota or identified tribe.

Review/Consultation Committee: Consultation with the Indian Affairs Council.

Liable: Anyone who intentionally, willfully or knowingly destroys, mutilates, injures or removes human skeletal remains or burials is liable.

Penalties: Anyone who violates the burial laws is committing a gross misdemeanor with fines reaching as high as \$10,000 and prison terms up to five years.

Exemptions: Not specified.

Permitting: Permission to excavate issued by State Archaeologist in consultation with the Indian Affairs Council.

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MISSISSIPPI

Citation: Antiquities Law (Mississippi Code Ann. §39-5-1-27, et seq.).

Date Enacted: 1972, amended 1986

Summary: Mississippi does not have specific unmarked burial provisions but depends on its broad based antiquities laws. This statute preserves and protects sites, objects, buildings, shipwrecks, and locations of historic, archaeological and architectural significance in, on or under state lands. This includes prehistoric and historic American Indian or aboriginal campsites, dwellings, and habitation sites. The statutes further makes it illegal to deface any American Indian or aboriginal sites includes burial mounds. The Department of Archives and History is responsible for implementing the law and issuing excavation permits.

Jurisdiction: All state and other municipality lands and waters in Mississippi.

Statute of Limitations: Not specified.

Areas Covered Under Act: All archaeological sites including American Indian burial mounds and other sites.

Ownership: State.

Review/Consultation Committee: Not specified.

Liable: Anyone who violates provision of the Act without permit.

Penalties: Misdemeanor penalties with fines ranging from \$500 to \$5,000 and jail terms of 30 days. The state offers rewards of \$500 for information leading to arrest and conviction.

Exemptions: None.

Permitting: The Department of Archives and History issues general archaeological permits.

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MISSOURI

Citation: Unmarked Human Burial Sites (Missouri Rev. Stat. §194.400, et seq.).

Date Enacted: 1987

Summary: This statute establishes an Unmarked Human Burial Consultation Committee in the Department of Natural Resources. Upon discovery of unmarked human burials or human skeletal

remains during archaeological excavation, construction, agriculture or other ground disturbing activities on private lands and waters or state lands and waters, the activity must cease immediately and either the State Historic Preservation Officer (SHPO) or local law enforcement office is notified. Activity will not resume until specific authorization from either the SHPO or law enforcement office is received. The law enforcement officer determines if the remains are needed for criminal investigation; if not, the SHPO determines if the human remains must be removed for scientific analysis. An archaeological investigation will be done within 30 days to determine cultural and biological characteristics. The SHPO must try to identify and locate direct kin who will determine disposition; if no direct kin can be identified and ethnic affinity has been determined, the ethnic group determines disposition. If the SHPO determines the remains are scientifically important, analysis may take place prior to reinterment. Analysis must be completed within one year. If no affinity can be established, the Unmarked Human Burial Consultation Committee determines disposition. It is a Class D felony with five years imprisonment and \$10,000 fine to violates the law. It is unclear who pays for required archaeological excavation and study of remains. There is no mention of associated artifacts.

Jurisdiction: All state and private lands and waters in Missouri.

Statute of Limitations: Not specified.

Areas Covered Under Act: All human skeletal remains and unmarked human burials.

Ownership: The State Historic Preservation Officer is responsible.

Review/Consultation Committee: The Act establishes the Unmarked Human Burial Consultation Committee.

Liable: Anyone who disturbs burials without a permit.

Penalties: Class D felony with up to five years imprisonment and \$10,000 fine to violate the law.

Exemptions: None.

Permitting: The SHPO issues excavation permits.

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MONTANA

Citation: Human Skeletal Remains and Burial Site Protection Act (Montana Code Ann. §22-3-801 through §22-3-811).

Date Enacted: 1991

Summary: The Human Skeletal Remains and Burial Site Protection Act applies to all human skeletal remains and burial sites on state and private lands not protected as cemeteries. The law establishes the Burial Preservation Board. Upon discovery of human remains through ground disturbing activity including agriculture, the activity ceases and the coroner is contacted within two days. The coroner has two days to decide if remains are of a criminal act or of archaeological significance. If the remains are archaeologically significant, the coroner has 24 hours to contact the SHPO. Within 24 hours the SHPO must contact the land owner and the Burial Preservation Board or the nearest reservation representative. Within 36 hours of the Board being notified, a representative will preform an initial field review which must be completed within 36 hours to determine if the site can be preserved in situ, negotiate with the landowner, or recommend final disposition. If agreement with landowner cannot be reached within 40 days of notification, the remains must be removed and the Board is responsible for the ultimate disposition and descendants or a cultural group must be identified if possible. Scientific study is permissible for up to one year after application is obtained. A series of fines and prison sentences ranging from \$100 to \$50,000 and up to 20 years in jail are applicable.

Jurisdiction: All state and private lands in Montana.

Statute of Limitations: Not specified.

Areas Covered Under Act: Human skeletal remains, burial sites and burial material.

Ownership: Not specified.

Review/Consultation Committee: The Burial Preservation Board is established under this Act.

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Liabile: Anyone who purposely or knowingly disturbs, destroys or pilfers; allows such actions to occur to an unmarked grave or burial; knowingly possesses, buys, sells, transports or displays human skeletal remains or burial materials; or purposely or knowingly discloses information that leads to disturbing remains or a burial site.

Penalties: Fines range from \$100 to \$50,000 and prison sentences up to 20 years.

Exemptions: Not specified.

Permitting: Permits are issued by the Board and fees are not to exceed \$50.00.

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NEBRASKA

Citation: Unmarked Human Burial Sites and Skeletal Remains Protection Act (Nebraska Rev. Stat. §12-1201 through §12-1212).

Date Enacted: 1989

Summary: The Unmarked Human Burial Sites law pertains to human remains and grave goods found on private and public land in the state. When human remains or burial goods are discovered, the activity ceases and within 48 hours the local law enforcement office must be notified. Failure to do so is a Class III misdemeanor. Civil penalties may also be assessed. If human remains and grave goods are discovered as part of a state road project, the activity ceases and within 48 hours the law enforcement office is notified and the remains will be excavated and removed. The law enforcement officer notifies the land owner, county attorney and State Historical Society. If the remains are archaeological, non-Native American and relatives are identifiable, they will pay for reinterment. Otherwise, the county pays after one year of study. If the remains are scientifically important, they may be retained by the Society. If the remains are Native American, the Commission on Indian Affairs is notified in writing and seeks associated tribes or kin. Reburial takes place at the request and expense of the affiliated tribe. If the Native American remains are unclaimed, they will be reburied by the county. Institutions with Native American remains and grave goods which are reasonably identifiable should return the remains upon request. The Act outlines dispute resolution steps and appoints a 3rd party reviewer.

Jurisdiction: All private and public land in Nebraska.

Statute of Limitations: The case must be brought to trial within two years of discovery or within two years of August 25, 1989, whichever is later.

Areas Covered Under Act: Human remains and grave goods are covered under this law.

Ownership: The remains must be returned to the closest relative or affiliated Indian tribe.

Review/Consultation Committee: The Commission on Indian Affairs is notified and will seek associated tribes or kin.

Liabile: Anyone who fails to cease disturbing activities or who fails to notify the proper authorities is liable.

Penalties: Failure to cease disturbing activities and notify the law enforcement agent is a Class III misdemeanor. Civil penalties may also be assessed.

Exemptions: Remains encountered as part of state road projects are to be excavated without assessment and consultation.

Permitting: Permits for excavation are issued through the State Historical Society.

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NEVADA

Citation: Protection of Indian Burial Sites (Nev. Rev. Stat. Ann. §383.160).

Date Enacted: 1989, amended 1993

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Summary: This law covers human remains and artifacts located on private and state lands which date from the mid-18th century. Any person who inadvertently disturbs the cairn or grave of a native Indian that has not been previously reported to the Historic Preservation Division (HPD) must report the discovery and location of the site to the Division. The HPD then consults with the Nevada Indian Commission and notifies the appropriate tribe. Tribes may inspect the site with permission and make recommendations on disposition of human remains and artifacts. If the Indian burial site is on private land and the tribe fails to make a recommendation within 48 hours or the landowner rejects the recommendation and mediation fails, the landowner will, at his expense, reinter the artifacts and remains. If the Indian burial is on public land, archaeological excavation and analysis may take place under the supervision of the tribe. All human remains and artifacts must be reinterred under the supervision of the Indian tribe, unless the tribe explicitly consents to public display of a particular artifact. Anyone who willfully removes, mutilates, defaces, injures or destroys a cairn or grave is guilty of a misdemeanor and shall be punished by a fine of \$500 for the first offense, or by a fine of not more than \$3,000 for a second or subsequent offense, and may be further punished by not more than a years imprisonment. Anyone who possesses, publicly displays or sells artifacts or human remains from a cairn or grave of a Native Indian shall be punished by a fine of \$1,000 for the first offense, or by a fine of not less than \$5,000 nor more than \$10,000 for a second or subsequent offense, and may be further punished by imprisonment in the state prison for not less than 1, but no more than 5 years. In addition to the imposition of any criminal penalty, an Indian tribe or an enrolled member of an Indian tribe may bring a civil action to secure an injunction, damages, and other appropriate relief against a person who fails to follow this law.

Jurisdiction: Private and state lands in Nevada.

Statute of Limitations: Action must be brought within two years after the discovery. Areas Covered Under Act: Human remains and artifacts on which date from the mid-18th century.

Ownership: Not specified.

Review/Consultation Committee: Upon discovery the Historic Preservation Division is notified which contacts the Nevada Indian Commission and appropriate tribe.

Liable: Anyone who willfully removes, mutilates, defaces, injures, destroys a cairn or grave; possesses, publicly displays or sells artifacts or human remains from a cairn or grave of a Native Indian is liable.

Penalties: Willfully removing, mutilating, etc. a cairn or grave is guilty of a misdemeanor with fines of \$500 for the first offense and up to \$3,000 for a second or subsequent offense, and prison of not more than a year. Possession, display or sale of artifacts or human remains from a cairn or grave carries a fine of \$1,000 for the first offense, and not less than \$5,000 or more than \$10,000 for a second or subsequent offense, and prison of not less than one year, or more than five years. An Indian tribe or an enrolled member of an Indian tribe may bring a civil action to secure an injunction, damages, and other appropriate relief against a person who fails to follow this law.

Exemptions: Possession or sale of an artifact prior to October 1, 1989; discovered in or taken from a location other than a grave or cairn; removed from grave or cairn of a Native Indian by other than human action; or action taken by a peace officer in performance of his duties.

Permitting: The Nevada State Historic Preservation Office issues permits.

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NEW HAMPSHIRE

Citation: Discovery of Human Remains (NH Rev. Stat. Ann. §227-C:8 a-g); Historic Preservation (NH Rev. Sta. Ann. §227-C 1); Cemeteries (NH Rev. Stat. Ann. §289:1); Burials and Disinterments (NH Rev. Stat. Ann. §.290:1).

Date Enacted: Human remains provisions passed in 1986; amended 1987, 1996

Summary: If human remains and associated artifacts are uncovered as part of a long term archaeological project, the State Archaeologist must be notified within five days. Any known living

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descendent or affinity group must also be notified and consulted. The remains may be excavated and curated prior to final disposition. Non-destructive analysis also may be done without the State Archaeologist's permission and completed within four years. For remains discovered outside of archaeological research including construction and agricultural activities, the action stops immediately and the medical examiner is notified to determine if it is a crime scene. If not, the medical examiner notifies the State Archaeologist who has 48 hours to make arrangements with landowner for protection or removal. If landowner agrees to excavation, a staff archaeologist will assess the biological or cultural characteristics within two days or longer if the land owner agrees. If the remains are Native American, the State Archaeologist notifies the affiliated tribe or individual to determine treatment. The tribe has four weeks to communicate in writing its wishes. Within 90 days, a written agreement will be developed including type of analysis, timetable and a plan for disposition. If no agreement is reached in 90 days, the State Historic Preservation Officer and Commissioner of Indian Affairs will determine the terms of agreement. If the remains are other than Native American, the professional archaeologist will publish notice of excavation in local paper for four weeks. If kin relations are identified, they will have 90 days to develop an agreement. If no determination of kin is made, the State Archaeologist takes control of the remains for curation after analysis.

Jurisdiction: All state and private lands in New Hampshire.

Statute of Limitations: Not specified.

Areas Covered Under Act: All human remains in unmarked graves.

Ownership: State Archaeologist has jurisdiction.

Review/Consultation Committee: The closest associated Native American tribe or group and the State Archaeologist.

Liable: Anyone who knowingly acquires human remains from an unmarked burial, exhibits, sells, or retains human remains beyond the approved analysis time frame.

Penalties: Violations of the statute are a misdemeanor with fines up to \$1,000 and or up to six months in jail. Forfeiture of equipment and restitution to state may also be mandated.

Exemptions: Not specified.

Permitting: Permits for archaeological excavations issued through the Division of Historic Resources.

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NEW JERSEY

Citation: New Jersey Register of Historic Places Act (West's NJ Stat. Ann. §13:1b-15.128, et seq.).

Date Enacted: 1970

Summary: New Jersey has not enacted specific unmarked human remains protection legislation. The state's historic preservation authorities are found in different parts of the Code. The state is more specific regarding protection of submerged vessels and permits required for archaeological and historical excavation. Authority is placed with the State Historic Preservation Office. No reference is made to consultation with Native American groups or other ethnic entities. Penalties are referenced under general theft of state resources.

Jurisdiction: Not specified.

Statute of Limitations: Not specified.

Areas Covered Under Act: Not specified.

Review/Consultation Committee: Not specified.

Liable: Not specified.

Penalties: Not specified.

Exemptions: Not specified.

Permitting: Not specified.

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NEW MEXICO

Citation: Permits Required for Excavation of Unmarked Burials (NM Stat. Ann. §18-6-11.2); Endowed Care Cemetery Act (NM Stat. Ann. §30-12-12 Criminal Codes, NM Stat. Ann. §58-17-1).

Date Enacted: 1989

Summary: The law protects unmarked human burials including artifacts and human remains. Permit requirement for excavation of unmarked burials and penalties were added to the statute in 1989. Upon discovery human remains, the disturbing activity ceases and the local law enforcement agency is notified, who then notifies the medical examiner and State Historic Preservation Officer. Permits to excavate the unmarked human burial are issued by the Cultural Properties Review Committee within 60 days of application. The application must include plans for disposition or reinterment of the human remains and objects. Permits for excavation of human burials discovered during construction or land modification will be issued by the committee in consultation with the State Archaeologist and SHPO. Permits will also be issued on an annual basis to professional archaeological consultants and organizations. When the committee requires as a condition of the permit any object or artifact associated with a human burial be reinterred or disposed of, that burial will become the property of the person owning the land on which the artifacts or remains are discovered. It is a 4th Degree felony to knowingly, willingly or intentionally excavate, remove, disturb or destroy, without a permit, any human burial on state or private property. Fines will not exceed \$5,000 or imprisonment for 18 months or both. The offender will forfeit all objects, artifacts and human remains to the state.

Jurisdiction: All state and private lands in New Mexico.

Statute of Limitations: Not specified.

Areas Covered Under Act: All unmarked human burials and associated artifacts.

Ownership: Violations of the permitting process forfeit remains and objects to the state, otherwise the landowner.

Review/Consultation Committee: State Archaeologist and State Historic Preservation Officer must consult with the Cultural Properties Review Committee.

Liabile: Anyone who knowingly, willingly and intentionally excavates, removes, disturbs or destroys, without a permit, any human burial on state or private property. **Penalties:** Violations are 4th Degree felony with maximum fine up to \$5,000 or 18 months imprisonment, or both.

Exemptions: Not specified.

Permitting: Permits issued by the Cultural Properties Review Committee.

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NEW YORK

Citation: Indians (McKinney's Consolidated Laws of NY Book 25, §12-a); Education (McKinney's Consolidated Laws of NY Book 16, §233.3; 234); Parks, Recreation and Historic Preservation (McKinney's Consolidated Laws of NY Book 37B, §11.03; §19.01.12-a).

Date Enacted: Indians provisions derived from 1892 law; Historic Preservation provisions 1972, amended 1980; Permits and Collections Provisions 1947, amended 1958; Historic Sites provisions 1972

Summary: The Indians section of the statute authorizes the Office of Parks, Recreation and Historic Preservation to designate any Indian cemetery or burial ground as a place of historic interest. No one may destroy, alter, convert, or impair a cemetery or burial ground or any artifact found in one without the permission of the Office of Parks, Recreation and Historic Preservation. New York's preservation program is a cooperative endeavor between all state agencies and municipalities many of which have created their own local ordinances. Permits are required for archaeological or historic projects on state

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lands. Violations of the preservation provisions is a misdemeanor.

Jurisdiction: Sites or burials on state lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Indian cemeteries and burial grounds on state lands.

Review/Consultation Committee: Consultation is required with Native Americans.

Liable: Anyone who violates the law and removes human remains or artifacts without a permit.

Penalties: Violations are a Class A misdemeanor with jail terms from 16 days to one year and fines up to \$10,000.

Exemptions: Not specified.

Permitting: Excavation permits issued through the Office of Parks, Recreation and Historic Preservation.

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NORTH CAROLINA

Citation: Unmarked Human Burial and Unmarked Human Skeletal Remains Protection (NC Gen. Stat. §70-26-41).

Date Enacted: 1981

Summary: The statute deals with human remains. Article one, encourages private land owners to avoid excavation or destruction of Indian relics, artifacts, mounds or burial grounds. Any person in charge of construction or excavation on state lands or from a public agency, institution, county or municipality is responsible for reporting and preserving Indian relics, artifacts, mounds or burial grounds discovered. Permits are issued by the Department of Cultural Resources. If harm to or destruction of any religious or cultural site will occur, the Department notifies and consults with appropriate religious or cultural group including the NC Commission on Indian Affairs, who consults with the Eastern Band of Cherokee or other appropriate tribal groups or communities. If human skeletal remains are uncovered during archaeological investigation, the archaeologist bears the cost of reinterment. Any person who knows that unmarked human burials are being destroyed, defaced or damaged immediately will notify the medical examiner. If the remains are uncovered from construction or agricultural activity, the activity ceases immediately and will not resume without authorization of either the medical examiner or the chief archaeologist. If the remains are encountered by a professional archaeologist, they may be excavated after notification to the chief archaeologist, who notifies the chief medical examiner.

If remains are discovered by anyone other than a professional archaeologist, the medical examiner is contacted and determines as soon as possible whether the remains are subject of a crime. If not, the medical examiner notifies the chief medical examiner who has 48 hours to make arrangements with the landowner for the protection or removal of unmarked human graves on private lands. If agreement is reached for excavation, a professional archaeologist will determine the cultural or biological characteristics within two business days after removal of the burial. The chief archaeologist notifies the Executive Director of the NC Commission on Indian Affairs who notifies and consults with the Eastern Band of the Cherokee or other appropriate tribal groups or communities if the remains are Indian. Within four weeks of notification, the Executive Director notifies the chief archaeologist of the Commission's and tribal groups' concerns regarding the treatment and disposition of the remains. Within 90 days of receipt of these concerns, the chief archaeologist and Executive Director with approval of tribal officials will prepare a written agreement on the disposition including designation of qualified skeletal analyst, type of analysis and period of time for analysis, timetable for written progress reports, plan for the ultimate disposition of the Native American remains subsequent to completion of adequate skeletal analysis. If no agreement is reached, the Archaeological Advisory Committee will determine the terms. The tribal group may provide a suitable burial location: if they do not, the NC Commission of Indian Affairs will provide a location. The cost of transporting the remains to the reburial location is paid by the party conducting the excavation. The reburial ceremony may be provided by the appropriate

tribal groups, if they elect not to, the ceremony will be paid by the Commission on Indian Affairs. If the remains are other than Native American, a newspaper notice will be published for four weeks. If next of kin are located, the chief archaeologist has 90 days to develop a written agreement on the treatment and disposition of the remains. If no agreement is reached, the remains will be dealt with according to the wishes of the next of kin. If the non-Native American human remains have no next of kin, the chief archaeologist will permanently curate the remains according to standard museum procedures after adequate skeletal analysis.

Jurisdiction: All public and private lands in North Carolina.

Statute of Limitations: Not specified.

Areas Covered Under Act: Indian relics, artifacts, mounds or burial grounds, graves and human skeletal remains are protected.

Ownership: Not specified.

Review/Consultation Committee: The NC Commission on Indian Affairs is the primary point of consultation. The Commission notifies and consults with the Eastern Band of the Cherokee or other appropriate tribal groups or communities.

Liable: Any person who knowingly acquires, exhibits, sells or retains human skeletal removed from unmarked graves.

Penalties: Failure to notify authorities of discovery is a misdemeanor with up to two years in jail and fines at the discretion of the court. Disturbing burials in violation of the Act is a Class H felony.

Exemptions: Human skeletal remains acquired from commercial biological supply houses or through medical means and remains determined to be within the jurisdiction of the medical examiner.

Permitting: Permits are issued for archaeological excavation by the NC Department of Cultural Resources.

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NORTH DAKOTA

Citation: Protection of Human Burial Sites, Human Remains and Burial Goods (ND Century Code §23-06-27); Protection of Prehistoric Sites and Deposits (ND Century Code §55-03, et seq.).

Date Enacted: Burial provisions enacted 1990, amended 1995.

Summary: The law pertains to prehistoric and historic human burials, human remains and burial goods on state, local and private lands. When such remains are inadvertently discovered, the activity ceases and the local law enforcement office is notified. The law enforcement office then notifies the State Historical Society which does an initial examination to determine race and age within 24 hours, or as soon as possible. If race and age can be presumed based on location, historical data and associated burial goods, this information helps determine the disposition. If the remains are non-Indian, they may be further studied by a qualified archaeologist with in situ preservation as the optimal choice; in situ examination may include measurements and visual observations and a written description of the human remains and burial goods. When the burial cannot be restored, examination in situ may take place in addition to weighing of the human remains and burial goods after disinterment and prior to reinterment in another location. When in situ examination is not feasible, the remains will be sent to the Society for examination. A reasonable effort to locate the original burial site will be made and, if located, the site will be examined. When in situ study is impossible, the remains and burial goods will be excavated and sent to the Society for examination. For single burials, examination will be completed within 60 days; multiple burials examination will be completed within 90 days. Extensions may be granted with consent of the intertribal reinterment committee. If the remains cannot be determined by initial examination to be either Indian or non-Indian, it is presumed that they are Indian. If a human burial is inadvertently disturbed, the State Historical Society will notify the intertribal reinterment committee. Within 24 hours of notification, a representative will inspect the site and determine if the burial can be restored, protected in situ or if it must be disinterred and reinterred in another location. The intertribal reinterment committee will attempt to determine tribal identity or affiliation of the human remains and burial goods.

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The committee will also determine the appropriate Indian reservation for reinterment. The expenses for site restoration, reinterment and relevant ceremonies will be paid by the tribal government.

If a human burial will be affected by an undertaking, archaeological tests will be conducted. If human remains are encountered during the test, the activity ceases and the superintendent and the department will be notified. They will consult with the intertribal reinterment committee and determine if the tests should continue. Any one who desires to disinter human remains recorded with the state historical board, must provide documentation 60 days prior to the activity. Within 24 hours of the request, the superintendent notifies the intertribal reinterment committee and the society has 60 days after receipt to negotiate with the individual to avoid the burial site. The intertribal committee will be given the opportunity to consult. Should the negotiations fail, the superintendent will provide written notification that action may proceed provided that the remains have been disinterred. A qualified archaeologist will perform the excavation and the intertribal committee may appoint a representative to be present and assist during the excavation. The intertribal committee will attempt to determine the tribal identity or affiliation of the remains disinterred and subsequent to the completion of study will arrange for reinterment of the human remains and any and all burial goods at an appropriate location on an Indian reservation.

Jurisdiction: All public and private lands in North Dakota.

Statute of Limitations: Not specified.

Areas Covered Under Act: All prehistoric and historic human burial sites, human remains and burial goods are protected.

Ownership: Not specified.

Review/Consultation Committee: The intertribal reinterment committee is established and consulted throughout during the process.

Liable: Anyone who disturbs, moves, opens, exposes, damages, destroys or vandalizes a burial without a permit.

Penalties: Violations are a Class B misdemeanor with up to one year in jail and or a fines of up to \$1,000.

Exemptions: Not specified.

Permitting: Permits for archaeological excavation are issued through the State Historical Society.

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OHIO

Citation: Historic Society (Page's Ohio Revised Code, Title 1, §149, et seq.); Burials (Page's Ohio Revised Code, Title 1, §2927, et seq.).

Date Enacted: 1969, most recently amended in 1996

Summary: The majority of Ohio's historic and archaeological provisions are found in the statute establishing the State Historical Society. In §2927, Burials, provisions are outlined prohibiting desecration of any historic or commemorative marker or any structure, Indian mound, or earthwork, thing or site of great historical or archaeological interest. It is also illegal to disturb any object of reverence or sacred devotion. Violation of these provisions is a second degree misdemeanor. The Ohio Historic Preservation Advisory Board must include two Native Americans. The Board assists the Historical Society in carrying out the state's preservation program. The state does not have specific steps to follow for inadvertent discovery of human remains.

Jurisdiction: Burials on state lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Human burials and associated "sacred objects".

Review/Consultation Committee: Native Americans must be represented on the Historic Preservation Advisory Board.

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Liabile: Anyone who violates the law by desecrating a burial or commemorative structure.

Penalties: Violations are a is guilty of a 2nd Degree misdemeanor.

Exemptions: Not specified.

Permitting: Excavation permits issued through the State Historical Society.

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OKLAHOMA

Citation: Reburial Law (Okla. Stat. Ann. 21 §1161-1168.7).

Date Enacted: 1987, amended 1992

Summary: The statutes contain specific language on actions to be taken when human remains and/or burial furniture are discovered. While it does not specifically state what lands are covered, it does imply that all human burials are protected. It is a felony to buy, sell or barter for profit human remains or burial furniture previously buried in Oklahoma. Museums and scientific institutions, should they come into possession or knowledge of such remains, must consult with tribal leaders designated by the Oklahoma Indian Affairs Commission regarding disposition of remains can be traced to a specific group. If direct historical ties cannot be established, the final disposition of the remains will be determined by the State Historic Preservation Officer, State Archaeologist and Director of the Oklahoma Museum of Natural History. The law prohibits display of opened burials, human remains or burial furniture for profit. This is a misdemeanor and each day the display is opened is considered a separate offense. If human remains and/or burial furniture are discovered during a project, the activity ceases and the local law enforcement official is notified within 48 hours. Failure to report within 48 hours is a misdemeanor. If the remains are not the result of a crime, the State Archaeologist and the SHPO are notified within 15 days. If the remains have a direct historical relationship to a tribe, the State Archaeologist notifies the SHPO and consults with the tribal leader within 15 days regarding proposed treatment or scientific study and final disposition. If the remains are not traced to a tribe or if the remains are not claimed by the consulted group, the State Archaeologist, SHPO and Director of the Oklahoma Museum of Natural History may designate a repository for curation of the remains and burial furniture for scientific purposes.

Jurisdiction: The law implies that all public and private lands in Oklahoma.

Statute of Limitations: Not specified.

Areas Covered Under Act: All human burials and burial furniture in the state of Oklahoma.

Ownership: The SHPO takes responsibility.

Review/Consultation Committee: State officials must consult with tribal leaders designated by the Oklahoma Indian Affairs Commission.

Liabile: Anyone who fails to report the discovery of such remains; knowingly disturbs or removes human remains or burial furniture; or sells, buys or barter in human remains or displays such remains is liable for prosecution.

Penalties: It is a misdemeanor to fail to report or to display opened graves, human remains or burial furniture with fines up to \$500 and jail for up to six months. It is a felony to disturb human remains with penalties reaching \$1,000 and up to two years in the state penitentiary.

Exemptions: Not specified.

Permitting: Permits are issued through the Office of the State Archaeologist.

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OREGON

Citation: Indian Graves and Protected Objects (Or. Rev. Stat. §97.740 to §97.760); Archaeological Objects and Sites (Or. Rev. Stat. §358.905 to §358.955).

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Date Enacted: 1981

Summary: The law states that no person will willfully remove, mutilate, deface, injure or destroy any cairn or grave of any Native American. Anyone who inadvertently disturbs a native Indian grave, including by construction, mining, logging or agricultural activity, will at their own expense reinter the human remains under the supervision of the appropriate Indian tribe. It is illegal to possess any native Indian artifacts or human remains taken from a native Indian cairn or grave on or after October 3, 1979. It is illegal to publicly display or exhibit native Indian human remains or sell any native Indian artifacts or human remains taken from any native Indian cairn or grave. The law does not apply to possession or sale of native Indian artifacts from sources other than native Indian cairns or graves or artifacts removed from cairns or graves by other than human sources. Any discovered remains suspected to be native Indian shall be reported to the state police, the State Historic Preservation Officer, the appropriate Indian tribe, and the Commission on Indian Services. A professional archaeologist may excavate a native Indian cairn or grave and remove material objects and human remains, if it is necessary to protect the burial from imminent destruction. Any person who disturbs native Indian remains or a funerary object at or associated with an archaeological site shall reinter at their own expense those remains or objects under the supervision of an Indian tribe. Written consent of the appropriate Indian tribe in the vicinity is required, as is written notification to the State Historic Preservation Officer, prior to excavation. Failure by the tribe to respond within 30 days will be deemed consent. All material objects and human remains removed during an excavation, following scientific study, will be reinterred at the archaeologist's expense under the supervision of the Indian tribe. Indian tribes are those that are recognized by the Secretary of the Interior, listed in the Klamath Termination Act or listed in the Western Oregon Indian Termination Act.

Jurisdiction: All native Indian cairns, graves and burials on lands in Oregon.

Statute of Limitations: Civil action must be brought within two years of the discovery of the violation.

Areas Covered Under Act: Only native Indian cairns and burials and the human remains and grave goods within them.

Ownership: Not specified.

Review/Consultation Committee: Consultation with Indian tribe in the vicinity of the action is mandated.

Liabe: Anyone who knowingly violates the law by willfully removing, mutilating, defacing, injuring or destroying any cairn or grave of any Native American. It is illegal to possess any native Indian artifacts or human remains taken from a native Indian cairn or grave on or after October 3, 1979. It is illegal to publicly display or exhibit native Indian human remains, sell any native Indian artifacts or human remains taken from any native Indian cairn or grave.

Penalties: Civil penalties are the most common penalty for violations. Criminal action may be filed using general criminal penalty statutes.

Exemptions: The law does not apply to possession or sale of native Indian artifacts from sources other than native Indian cairns or graves or artifacts removed from cairns or graves by other than human sources.

Permitting: The SHPO in consultation with the appropriate Indian tribe will issue permission for a professional archaeologist to excavate a native Indian cairn or grave if the burial is in imminent danger of destruction.

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PENNSYLVANIA

Citation: Pennsylvania Historical and Museum Commission Policy on the Treatment of Human Remains; Historic Preservation (PA Consolidated Stat. 37, §104, et seq.).

Date Enacted: 1978; policy 1993

Summary: The Commonwealth of Pennsylvania has no law specifically addressing the treatment of

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Native American remains. The Pennsylvania Historical and Museum Commission (PHMC) has, however, issued an internal policy document to comply with the Native American Graves Protection and Repatriation Act. Any person carrying out archaeological investigations during which there is the potential for encountering human remains or burial sites must have, as part of their research proposal or permit request, a treatment plan for the treatment of such remains. When human remains are encountered in a manner anticipated under the treatment plan, the plan is activated. If human remains unanticipated by the treatment plan are encountered, then work stops, the coroner, as appropriate, and the Bureau for Historic Preservation of the PHMC are notified. The parties involved then modify the existing treatment plan accordingly. Any person who, while undertaking earth moving activities, becomes aware that human remains or a burial site are being disturbed notifies the local law enforcement officer. If the remains appear to be of prehistoric or historic nature, the PHMC is notified. In all cases, human remains are left undisturbed until there has been a full investigation. Upon an unexpected discovery, the PHMC has one week to notify potential lineal descendants of culturally affiliated groups, determined in part on ethnographic and historical relationships, associated artifacts, and the context and setting in which the remains or burials were found. After consultation, the PHMC has 15-30 days to develop and implement a final treatment plan. The PHMC has compiled an inventory of all human remains and associated funerary objects in Commonwealth and has appointed a Pennsylvania Advisory Committee on Human Remains. The historic preservation and archaeological statutes required permits issued through the State Archaeologist's office. For actions that might involve a human burial, the state must notify appropriate Native American tribes. Oil and gas development is restricted in areas with archaeological sites. Violations of the preservation statute include fines from \$100 to \$2,500 and jail terms up to 30 days to 1 year.

Jurisdiction: All state lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: All known and yet-to-be-discovered human remains and related objects.

Ownership: Not specified.

Review/Consultation Committee: State Archaeologist must notify Native American tribe and the Pennsylvania Advisory Committee on Human Remains.

Liable: Anyone who intentionally or inadvertently disturbs buried human remains, and institutions in possession of human remains and funerary objects.

Penalties: Violations of the preservation statute include fines from \$100 to \$2,500 and jail terms up to 30 days to one year.

Exemptions: Not specified.

Permitting: The State Archaeologist will issue permits.

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RHODE ISLAND

Citation: Antiquities Act (RI Gen. Laws §42-45-1-1, et seq.); Cemeteries (RI Gen. Laws §23-18-2.1, et seq.).

Date Enacted: Antiquities Act, 1974, amended 1988; Cemeteries Act amended 1992

Summary: Rhode Island protects Native American burials under its Cemeteries Act which places responsibility for protecting and, if necessary, altering or moving historic cemeteries with the local municipality. If human graves are discovered, the Historic Preservation Commission must be notified. No provisions are detailed requiring coordination, notification or consultation with Native American tribes. Other archaeological sites and resources are protected under the state's antiquities act which manages sites on state lands and in state waters. The statute also requires that the state be notified if sites are located on private land. The State Historic Preservation Commission is authorized to issue excavation permits.

Jurisdiction: All state lands and waters; state must be notified of sites on private lands.

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Statute of Limitations: Not specified.

Areas Covered Under Act: Human graves, as well as archaeological sites.

Ownership: Not specified.

Review/Consultation Committee: Not specified.

Liable: Anyone who disturbs a site without a permit.

Penalties: Not specified.

Exemptions: Not specified.

Permitting: State Historic Preservation Commission issues permits.

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SOUTH CAROLINA

Citation: South Carolina Cemetery Act (S.C. Code Ann. 39-55-15 to 39-55-305); Underwater Antiquities Act (Code of Laws SC, Title 54-7-610, et seq.).

Date Enacted: Cemeteries Act, 1984; Underwater Antiquities, 1991

Summary: Although there is no South Carolina law specifically singling out Native American burials on terrestrial areas, these burials are covered and protected under laws covering all burials regardless of age, race, culture, religion, etc. Public cemeteries cannot be established or operate unless licensed by the South Carolina Cemetery Board. Removal of the dead can should only be countenanced in exceptional circumstances, determined by the governing body of the county or municipality in which the burying ground is located. Relatives of deceased persons, if known, must given 30 days' notice privately. If relatives cannot be determined 30 days' notice must be published in a newspaper of general circulation. The new location must be agreeable to the governing body and relatives of the deceased. If an agreement cannot be reached a board of three members shall be appointed to resolve the dispute. Costs for removal must be borne by the person seeking removal. Any person who willfully disturbs or desecrates human remains is guilty of a felony, punishable by one to ten years in prison, and no more than a \$2,000 fine.

Section 820(c) of the Underwater Antiquities Act deals with discovery of human remains or gravesite as part of a shipwreck. If such remains are encountered as part of a licensed excavation, the activity ceases until the State Archaeologist or State Underwater Archaeologist can investigate the site. The state may remove the human remains for study or reburial. South Carolina claims jurisdiction to all Paleontological, archaeological and historic submerged cultural resource sin a shipwreck. Terrestrial site protection and management is placed in the Institute of Archaeology and Anthropology and the Department of Parks, Recreation and Tourism. No provisions are outlined for consolation with Native Americans or steps to follow when undocumented human remains are encouraged during terrestrial projects.

Jurisdiction: All state lands and waters.

Statute of Limitations: Not specified.

Areas Covered Under Act: Human graves including those in shipwrecks.

Ownership: Not specified.

Review/Consultation Committee: Not specified.

Liable: Anyone who disturbs a site without a permit.

Penalties: Prison from one to 10 years and fines up to \$2,000 for violation of the cemeteries law.

Exemptions: Not specified.

Permitting: The South Carolina State Archaeologist issues excavation permits.

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SOUTH DAKOTA

Citation: Cemeteries and Burial Records (SD Codified Laws Ann. §34-27-21, et seq.).

Date Enacted: 1990, amended in 1991

Summary: The law addresses human skeletal remains and funerary objects found anywhere in South Dakota. It is a Class six felony to knowingly buy, sell or barter human skeletal remains or funerary objects previously buried in the state; to knowingly display funerary objects or human skeletal remains previously buried in the state for profit or to aid and abet a commercial enterprise; or to knowingly disturb or allow disturbance of human skeletal remains or funerary objects, unless it is done by law enforcement officers or coroner. Anyone who discovers human remains immediately ceases the disturbing activity and reports the discovery to the appropriate law enforcement officer. Willful failure to report such a discovery within 48 hours is a class two misdemeanor. If the remains are not the result of crime, the State Archaeologist is contacted within 15 days. The State Archaeologist will issue permits to individuals authorized to disturb human skeletal remains and funerary objects. The State Historical Society will establish procedures to be followed in regard to final disposition of the remains. In addition, any state institution which comes into possession of human skeletal remains or associated funerary objects after July 1, 1990, has 15 days to contact the State Archaeologist who has up to one year to identify the remains or objects. If the remains are determined not to be of direct relation to a tribal group, defined as a federally recognized Indian tribe, the State Archaeologist is responsible for their final disposition after consultation with the Director of the State Office of History. If the remains are of direct relation to a tribal group, the State Archaeologist notifies the Director of the State Office of History and contacts the tribal group as designated by the Office of Indian Affairs. If within one year of the first contact, the tribe requests return of the remains or objects, the State Archaeologist shall turn over to the group the remains or objects. If within one year of the first contact, the group has not requested the return of the remains or objects, the State Archaeologist is responsible for the final disposition after consultation with the director of the State Office of History. Tribes may file an appeal within 30 days if the State Archaeologist refuses to return the remains or objects.

Jurisdiction: All private and public lands in the state of South Dakota.

Statute of Limitations: Not specified.

Areas Covered Under Act: Human skeletal remains and funerary objects are protected under the Act.

Ownership: Not specified.

Review/Consultation Committee: The State Archaeologist notifies the Director of the State Office of History and contacts officials of the tribal group as designated by the Office of Indian Affairs.

Liable: Anyone who knowingly buys, sells or barter human skeletal remains or funerary objects previously buried in the state; displays funerary objects or human skeletal remains previously buried in the state for profit; aids and abets a commercial enterprise; disturbs or allows disturbance of human skeletal remains or funerary objects is liable for prosecution. Also, anyone who willfully fails to report a discovery within 48 hours is guilty of a misdemeanor.

Penalties: It is a Class six felony to buy, sell, barter display, profit, disturb or allow disturbance of human skeletal remains or funerary objects except a law enforcement officers or coroner. It is a Class two misdemeanor to willfully fail to report such a discovery within 48 hours.

Exemptions: Not specified.

Permitting: The State Archaeologist will issue permits to individuals authorized by the State Historical Society.

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TENNESSEE

Citation: Archaeology (Tenn. Code Ann. §11-6-101-119); Offenses Against Public Health, Safety, Welfare (Tenn. Code Ann. §39-17-311-312); Tennessee Department of Environment and Conservation Division of Archaeology (Chapter 0400-9-1).

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Date Enacted: Amended in 1989, 1990, 1991, 1996

Summary: The statute was amended in 1990 to incorporate specific treatment of human remains and grave goods. Tennessee claims title to any and all archaeological sites and materials on state or local municipality lands. Excavation on such lands is prohibited without a permit issued by the State Archaeologist. A nine member archaeological advisory council is established to advise the commissioner of conservation and the State Archaeologist. Three of the members are to be Native Americans of at least 1/4 blood and representative of the Native American community of Tennessee. Where sites or artifacts may be found on state, county lands and the entity is preparing any earth moving activity, supervisors of such work should notify the Division of Archaeology of the discovery and location. The entity is charged with cooperating to the extent possible to prevent destruction of sites and artifact or to allow the Division of Archaeology to obtain maximum information and artifacts before the location is destroyed. Anyone who encounters or accidentally disturbs or disinters human remains on either publicly or privately owned lands, immediately ceases the activity and notifies the coroner or medical examiner and the local law enforcement agency. Intentional desecration of a place of burial is a Class A misdemeanor. Failure to notify the authorities or failure to cease activity is a misdemeanor with fines not less than \$50 and not more than \$1,000 or imprisonment not less than 10 days and not more than six months. The coroner or medical examiner determines, within five days, if the human remains are the result of a crime. If there are no forensic or criminal concerns, the coroner or medical examiner alerts the Division of Archaeology. Human remains and burial objects become the responsibility of the State Archaeologist, who determines if excavation is necessary and issues a permit for removal. Certain activities are exempted from provisions to cease including normal farming activities. If human remains of Native American Indians are to be excavated, the Native American members of the Archaeological Advisory Council, the Chairman of the Tennessee Commission on Indian Affairs, and the State Archaeologist must be notified, and at least one Native American observer is entitled to be present at the site during removal, excavation, or disinterment. The reinterment of Native American skeletal remains must be done in a manner consistent with original and/or traditional customs. All reburial areas should be as close to the original burial area as practicable, with boundaries clearly marked, and must be designated as a cemetery and be registered with the county's tax assessor. It is illegal to display or exhibit Native American Indian human remains except as evidence in a judicial proceeding. It is a felony to transport human remains into or out of Tennessee except for hospitals, medical schools, as part of burial preparation, or as evidence in a judicial proceeding. Any human remains discovered in the course of any excavation or accidentally uncovered shall be properly reburied following scientific analysis within six months of discovery. Scientific or medical research may be extended an additional six months.

Jurisdiction: All private and public lands in Tennessee.

Statute of Limitations: Not specified.

Areas Covered Under Act: Undocumented human burials.

Ownership: Tennessee claims title to any and all archaeological sites and materials on state or local municipality lands.

Review/Consultation Committee: The Tennessee Commission on Indian Affairs and the Archaeological Advisory Council, including at least 3 Native American members, must be consulted.

Liable: Anyone who knowingly disturbs human burials or fails to cease disturbing activities or fails to report discovery to the authorities.

Penalties: Failure to notify the authorities or failure to cease activity is a Class A misdemeanor with fines not less than \$50 and not more than \$1,000 or imprisonment not less than 10 days and not more than six months.

Exemptions: Certain activities are exempted from provisions to cease including normal farming activities such as plowing, discing, harvesting, or grazing.

Permitting: Excavation on such lands is prohibited without a permit issued by the State Archaeologist.

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TEXAS

Citation: Antiquities Code (Texas Code Ann. §191); Health and Safety (Texas Code Ann. §711.004).

Date Enacted: 1969, most recently amended 1991

Summary: Texas does not have specific NAGPRA-type legislation to protect human remains in unmarked graves. It's Antiquities Code incorporates all prehistoric and historic sites including American Indian or aboriginal campsites, dwellings and habitation sites. Responsibility for protecting sites is placed in the Texas Historical Commission which issues permits for excavations. §131 of the Antiquities Codes prohibits anyone from intentionally or knowingly defacing an American Indian or aboriginal site including burials. This section also requires owners permission for actions on private lands. The Health and Safety codes deal with general provisions pertaining to abuse of corpse. Penalties are misdemeanors with fines between \$25-\$1,000.

Jurisdiction: State lands and waters and private lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Archaeological sites, including American Indian burials.

Ownership: State claims responsibility for state lands and waters.

Review/Consultation Committee: Not specified.

Liable: Anyone who violates the act and disturbs a site without a permit or permission from the private land owner.

Penalties: Penalties are misdemeanors with fines between \$25-\$1,000.

Exemptions: Not specified.

Permitting: The Texas Historic Commission issues permits.

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UTAH

Citation: NAGPRA (Ut Code Ann. §9-9-401, et seq.).

Date Enacted: 1992

Summary: Utah's law is very similar to the federal Native American Graves Protection and Repatriation Act. It protects burial sites on state and private lands that have human remains. The ownership or control of Native American remains that are excavated or discovered on state lands are turned over to the lineal descendants of the Native Americans, if practicable, or to the Indian tribe that has the closest cultural affiliation with the remains and states a claim for the remains. If the tribe with closest cultural affiliation cannot be ascertained the tribe that is recognized as aboriginally occupying the area in which the remains are discovered, if a claim is filed. Unclaimed remains will be disposed in consultation with Native American groups and other interested organizations. The intentional removal or excavation of Native American remains from state lands may be permitted, only if the remains are excavated or removed under the terms established in a permit and remains from private lands are excavated with the written consent of the landowner. If remains are discovered inadvertently during construction, agriculture, mining, etc, the activity ceases and the state agency with primary management responsibility is notified until experts can determine cultural affiliation. Scientific study for up to 90 days may be done with approval of owner (descendant, tribal group or aboriginal tribe). In cases with conflicting ownership claims, the state agency will retain the remains until a court decision is made.

Any person who knowingly sells, purchases, uses for profit, or transports for sale the remains of a Native American is guilty of a Class A misdemeanor. A second or third offense is guilty of a third degree felony. A seven-member Native American Review Committee monitors the identification process,

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reviews any finding related to the identity or cultural affiliation of remains or their return, facilitates the resolution of disputes between tribes, lineal descendants, and state agencies relating to the return of remains, consults with Indian tribes, and makes recommendations, if appropriate, regarding future care of remains that are to be repatriated. Any person who discovers any archeological resources on lands controlled by the state, its subdivisions, or private lands shall promptly report the discovery to the appropriate state agency.

Jurisdiction: All state and private lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Unmarked graves on state and private lands.

Ownership: State agency with jurisdiction for the land.

Review/Consultation Committee: Native American Remains Review Committee is established and must be consulted.

Liable: Anyone who knowingly sells, buys, uses for profit or transports for sale Native American remains without the right of possession is guilty of a Class A misdemeanor.

Penalties: All fines and imprisonment in the criminal code associated with a Class A misdemeanor.

Exemptions: Not specified.

Permitting: Division of State History issues excavation permits.

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VERMONT

Citation: Historic Preservation (Vermont Stat. Ann. Title 22 §7).

Date Enacted: 1975, amended 1979, 1989, 1995

Summary: Vermont's historic preservation statute requires a coordinated preservation plan and environmental impact assessment before construction, mining, or development in order to protect archaeological and historic sites on state lands. The statute defines a site to include burial grounds; the state does not have a specific reburial or unmarked graves law. The state Advisory Council on Historic Preservation provides guidance to the Division of Historic Preservation but no direction is given requiring Native American participation on the Council. Permits are issued through the Division with the advice of the State Archaeologist. Violations of the law are a misdemeanor with fines up to \$1,000 or jail for six months.

Jurisdiction: State lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Archaeological and historic sites including burials.

Ownership: Not specified.

Review/Consultation Committee: No specific Native American participation is required on the Advisory Council on Historic Preservation.

Liable: Anyone who violates the act and disturbs a site without a permit.

Penalties: Violations of the law are a misdemeanor with fines up to \$1,000 or jail for six months.

Exemptions: Not specified.

Permitting: Permits are issued by the Division of Historic Preservation.

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VIRGINIA

Citation: Virginia Antiquities Act (Va. Code Ann. §10.1-2300, et seq.).

Date Enacted: 1991

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Summary: In 1991, Virginia issued regulations to deal with emergency situations where unmarked human remains are unexpectedly uncovered through archaeological excavation, natural causes or looting. In these cases, the excavation shall only proceed with a permit from the Virginia Department of Historic Resources. Until a permit is received, all work at the burial site stops. Once the human remains are excavated, they may be analyzed for up to two years, with the ultimate disposition being reburial unless an alternate plan is approved by the Department of Historic Resources through consultation with key interested parties. If the remains are Native American, prehistoric or historic, the Virginia Council on Indians and the appropriate tribal groups are notified and consulted. It is a Class 1 misdemeanor to intentionally deface, damage, or remove an object of antiquity or to perform archaeology without state issued permit. A Class 1 misdemeanor carries fines up to \$1,000 and up to one year in jail. Damaging an unmarked grave is a felony with jail terms from 2 to 10 years.

Jurisdiction: State and private lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Unmarked human remains unexpectedly uncovered through archaeological excavation or natural causes or looting regardless of ownership or age.

Ownership: Not specified.

Review/Consultation Committee: The Virginia Council on Indians and the appropriate tribal groups shall be notified and consulted.

Liability: Anyone who intentionally deface, damage, or remove an object of antiquity or to perform archaeology without state issued permit.

Penalties: Class 1 misdemeanor carries fines up to \$1,000 and up to one year in jail. Damaging an unmarked grave is a felony with jail terms from two to 10 years.

Exemptions: Not specified.

Permitting: The excavation shall only proceed with a permit from the Virginia Department of Historic Resources.

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WASHINGTON

Citation: Indian Graves and Records (Washington Rev. Code §27-44.010, et seq.).

Date Enacted: 1985; amended 1989

Summary: The statute recognizes the importance of Indian burial grounds and historic graves as irreplaceable, nonrenewable cultural resources. Indian burial sites, cairns, glyptic markings and historic graves located on public and private lands are to be protected. Any person who knowingly removes, mutilates, defaces, injures, or destroys a Native Indian cairn or grave or any glyptic markings or painted record of any tribe or peoples, or who sells artifacts or human remains that are known to have been taken from a Native Indian cairn or grave, or damages an historic grave is guilty of a Class C felony. This does not apply to the possession or sale of Native Indian artifacts discovered in or taken from locations other than Native Indian cairns or graves. It also does not apply to artifacts for which a permit was issued or artifacts that were removed by other than human action. Persons inadvertently disturbing Indian graves including through construction, logging, mining or agricultural activities, will reinter the human remains under the direction of the appropriate Indian tribe. Expenses for reinterment will be paid by the Office of Archaeology and Historic Preservation. The Director of Community Development, in consultation with the affected tribes, will develop guidelines for permits for archaeological excavations of Native Indian cairns and graves. An Indian tribe or enrolled member of a tribe may take civil action to secure an injunction, damages or other relief against any person who is alleged to have violated this act. The action must be brought within two years of the discovery of the violation.

Jurisdiction: All public and private lands in Washington.

Statute of Limitations: The statute for civil damages is within two years of the discovery of the

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violation.

Areas Covered Under Act: Indian burial sites, cairns, glyptic markings and historic graves are protected. Ownership: Not specified.

Review/Consultation Committee: Requires consultation with appropriate tribes.

Liable: Any person who knowingly removes, mutilates, defaces, injures, or destroys any cairn or grave of any Native Indian or any glyptic or painted record of any tribe or peoples or who sells any Native Indian artifacts or any human remains that are known to have been taken from an Indian cairn or grave or damages an historic grave is guilty of a Class C felony. Does not apply to the possession or sale of Indian artifacts from locations other than Native Indian cairns or graves or artifacts for which a permit was issued for removal from cairns or graves or by other than human action.

Penalties: Penalties range from a Class C felony for knowingly removing, mutilating, defacing, injuring, or destroying any cairn or grave of any Native Indian or selling any Native Indian artifacts or any human remains that are known to have been taken from an Indian cairn or grave or to damage an historic grave.

Exemptions: Does not apply to the possession or sale of Native Indian artifacts from locations other than Native Indian cairns or graves or artifacts for which a permit was issued for removal from cairns or graves or by other than human action. It also does not apply to inadvertently disturbance of Indian graves through construction, logging, mining or agricultural activities.

Permitting: The Director of Community Development and appropriate tribes will develop guidelines for issuing archaeological permits.

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WEST VIRGINIA

Citation: Protection of Human Skeletal Remains, Grave Artifacts and Grave Markers (WV Code §29-1-8a, et seq).

Date Enacted: 1991

Summary: The statute deals with all human skeletal remains, unmarked graves and human burials, grave artifacts and grave markers on private or public lands without reference to ethnic origin, cultural background or religious affiliation. No person may excavate, remove, destroy or disturb any prehistoric or historic ruins, burial grounds, archaeological site or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance unless a valid permit has issued by the Director of Archives and History. An archaeologist conducting work in compliance with federal law is not required to obtain a permit but must notify the director that an investigation is being undertaken. Anyone who either himself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs any protected resource without a valid permit or who fails to comply with the terms and conditions of a permit, is guilty of a misdemeanor with fines of \$100 to \$500 and imprisonment for ten days or to six months, or both. A person who intentionally excavates, removes, destroys or otherwise disturbs human skeletal remains of historical significance without a permit or who fails to comply with the terms and conditions relating to disinterment of human skeletal remains is guilty of a felony. A person who intentionally withholds information about the excavation, removal, destruction or other disturbance of historic or prehistoric remains is guilty of a misdemeanor with fines not more than \$100 and imprisonment of not more than ten days. A person who offers for sale or exchange any human skeletal remains, grave artifact or grave maker is guilty of a misdemeanor with fines of \$1,000 to \$5,000 and imprisonment for six months to one year.

Should an unmarked grave be discovered on private or public land, the county sheriff is notified within 48 hours. The sheriff notifies the Director of Archives and History if the remains appear to be from an unmarked grave. The Director performs an on-site investigation to determine the archaeological significance. If there is no archaeological significance, the removal, transfer and disposition of the remains will take place. If the remains are of archaeological significance, appropriate private and public organizations will be consulted. A permit for the archaeological excavation of the remains may be issued and will include direction for respectful treatment of the remains, need for any scientific analysis, or

reburial after consultation with any descendants. A final report must be submitted upon completion of the excavation. Private land owners must give written consent to the Director for excavation on privately owned land. All human skeletal remains and grave artifact found in unmarked graves on public or private lands and not subject to reburial are held in trust for the people of West Virginia and will be maintained with dignity and respect.

Jurisdiction: All private or public lands in West Virginia.

Statute of Limitations: Not specified.

Areas Covered Under Act: All human skeletal remains, unmarked graves and human burials, grave artifacts and grave markers are protected.

Ownership: People of West Virginia.

Review/Consultation Committee: The Director of Archives and History will consult with public and private organizations but no specific Native American review committee is established.

Liability: No person may excavate, remove, destroy or otherwise disturb any prehistoric or historic ruins, burial grounds, archaeological site or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance.

Penalties: Excavation, removal, etc. of human remains without a permit is a felony with prison between two and five years. Sale of human skeletal remains, grave artifacts or grave makers is a misdemeanor with fines of \$1,000 to \$5,000 and prison for six months to one year. Civil penalties may include forfeiture of any and all equipment, cost of restoration of the site, and data recovery. The state offers up to \$1,000 in rewards for information leading to arrest and conviction of violators.

Exemptions: Persons with valid permits issued by the Director of Archives and History are exempt. Archaeologists conducting work compliance with Federal laws are exempted.

Permitting: Permits for archaeological excavation of human remains or unmarked burials are issued by the Director of Archives and History.

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WISCONSIN

Citation: Burial Site Preservation (Wis. Stat. Ann. §157.70).

Date Enacted: 1985; amended 1989

Summary: The Director of the Historical Society will identify, record and catalog burial sites in order to protect sites from disturbance. The Director will provide a telephone service for any person to report a discovery or disturbance of a burial; establish a registry for any persons the Burial Site Preservation Board determines may have an interest in a catalogued burial site or class of sites. No person may intentionally cause or allow the destruction of a burial site. This does not prohibit normal agricultural practices which do not disturb human remains in a burial site or surface characteristic of a burial site. A person will immediately notify the Director if a burial site is being disturbed or may be disturbed. No person may intentionally cause or allow the disturbance of a cataloged burial site or the land contiguous to a burial site without a permit from the Director. Upon request of the application, the director determines if a hearing is necessary before issuing a permit. If a hearing is not necessary the director will determine whether a permit should be issued. Anyone who intentionally disturbs, without authorization, a burial site which is not cataloged or who intentionally disturbs, without a permit, a cataloged burial site or the catalogued land contiguous to the cataloged burial site, is liable. Any person with may bring an action for an injunction to prevent disturbance to the burial site or the cataloged land contiguous to a cataloged burial site or to obtain the human remains and objects related to the burial in the burial site for appropriate reinterment. Any person who fails to report the disturbance of a burial site or the cataloged land contiguous to a cataloged burial site will be fined not less than \$100 or more than \$1,000. Any person who intentionally disturbs without authorization a burial site which is not cataloged will be fined not less that \$500 nor more than \$2,000. Any owner who intentionally causes or allows any unauthorized activity which disturbs a burial site will be fined not less than \$1,000 or more than \$10,000. Any person who intentionally causes or allows activity which disturbs without a permit a

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cataloged burial site or the cataloged land bordering a cataloged burial site will be fined not less than \$1,000 nor more than \$10,000.

Jurisdiction: All state and private lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: All cataloged and non-cataloged burial sites and land bordering cataloged burial sites.

Ownership: Not specified.

Review/Consultation Committee: Burial Site Preservation Board reviews actions taken by the Director of the Historical Society.

Liable: Any person who fails to report the disturbance of a burial site or the cataloged land next to a cataloged site; anyone who intentionally disturbs a site; any landowner who allows a site to be disturbed without authorization; and anyone who intentionally causes or allows any activity which disturbs a cataloged burial site or the cataloged land bordering a cataloged burial site without a permit.

Penalties: Failure to report a disturbance of a burial site or intentionally disturbing an uncatalogued site carry fines from \$500 to \$2,000; allowing unauthorized disturbance of a burial site after receiving notice from the director carries fines from \$1,000 to \$10,000; intentionally disturbing a cataloged burial site carries fines of \$1,000 to \$10,000.

Exemptions: Normal agricultural practices which do not disturb the human remains or the surface characteristic of a burial site are exempted.

Permitting: Permits are available from the Director.

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WYOMING

Citation: Archaeological Sites (Wyoming Stat. Ann. §36-1-114, et seq.).

Date Enacted: 1935, amended 1945, 1957, 1997

Summary: Wyoming has not specific unmarked human burial protection legislation. What little legal precedent exists, deals with archaeological resources on state and federal lands. The law protects prehistoric ruins, relics and archaeological and paleontological deposits, which could include prehistoric human burials. The State Board of Land Commissioners has responsibility for issuing excavation permits, as well as for developing and implementing regulations. Most violations are misdemeanors with fines from \$25 to \$200 and jail up to six months. The 1997 amendment added sever penalties from \$500- 10,000 for anyone convicted of removing archaeological and paleontological deposits for commercial gain. No direction exists to coordinate with Native Americans.

Jurisdiction: All state and federal lands.

Statute of Limitations: Not specified.

Areas Covered Under Act: Relics, ruins, and archaeological and paleontological deposits.

Ownership: Not specified.

Review/Consultation Committee: Not specified.

Liable: Any person who violates state statute.

Penalties: Violations are misdemeanors with fines from \$25 to \$200 and jail up to six months.

Convictions related to commercial looting are felonies with fines from \$500 to \$10,000.

Exemptions: Not specified.

Permitting: Permits issued by State Board of Land Commissioners.

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TITLE IX--MISCELLANEOUS

SEC. 901. EXPANSION OF TERRITORIAL SEA.

(a) <<NOTE: 18 USC 7 note.>> Territorial Sea Extending to Twelve Miles Included in Special Maritime and Territorial Jurisdiction.--The Congress declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, for purposes of Federal criminal jurisdiction is part of the United States, subject to its sovereignty, and is within the special maritime and territorial jurisdiction of the United States for the purposes of title 18, United States Code.

(b) Assimilated Crimes in Extended Territorial Sea.--Section 13 of title 18, United States Code, is amended--

(1) in subsection (a), by inserting after "title," the following: "or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district"; and

(2) by adding at the end the following new subsection:

"(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Commonwealth, territory, possession, or district, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed, for purposes of subsection (a), to lie within the area of the State, Commonwealth, territory, possession, or district that it would lie within if the boundaries of such State, Commonwealth, territory, possession, or district were extended seaward to the outer limit of the territorial sea of the United States."

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Presidential Documents

Title 3—

Proclamation 5928 of December 27, 1988

The President

Territorial Sea of the United States of America

By the President of the United States of America

A Proclamation

International law recognizes that coastal nations may exercise sovereignty and jurisdiction over their territorial seas.

The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extend to the airspace over the territorial sea, as well as to its bed and subsoil.

Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution of the United States of America, and in accordance with international law, do hereby proclaim the extension of the territorial sea of the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty.

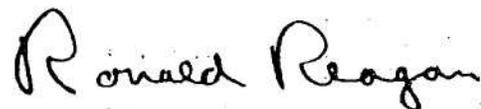
The territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law.

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the United States, the ships of all countries enjoy the right of innocent passage and the ships and aircraft of all countries enjoy the right of transit passage through international straits.

Nothing in this Proclamation:

- (a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom; or
- (b) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.



Presidential Documents

Title 3—

Proclamation 7219 of August 2, 1999

The President

Contiguous Zone of the United States

By the President of the United States of America

A Proclamation

International law recognizes that coastal nations may establish zones contiguous to their territorial seas, known as contiguous zones.

The contiguous zone of the United States is a zone contiguous to the territorial sea of the United States, in which the United States may exercise the control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea, and to punish infringement of the above laws and regulations committed within its territory or territorial sea.

Extension of the contiguous zone of the United States to the limits permitted by international law will advance the law enforcement and public health interests of the United States. Moreover, this extension is an important step in preventing the removal of cultural heritage found within 24 nautical miles of the baseline.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the authority vested in me as President by the Constitution of the United States, and in accordance with international law, do hereby proclaim the extension of the contiguous zone of the United States of America, including the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty, as follows:

The contiguous zone of the United States extends to 24 nautical miles from the baselines of the United States determined in accordance with international law, but in no case within the territorial sea of another nation.

In accordance with international law, reflected in the applicable provisions of the 1982 Convention on the Law of the Sea, within the contiguous zone of the United States the ships and aircraft of all countries enjoy the high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms, such as those associated with the operation of ships, aircraft, and submarine cables and pipelines, and compatible with the other provisions of international law reflected in the 1982 Convention on the Law of the Sea.

Nothing in this proclamation:

- (a) amends existing Federal or State law;
- (b) amends or otherwise alters the rights and duties of the United States or other nations in the Exclusive Economic Zone of the United States established by Proclamation 5030 of March 10, 1983; or
- (c) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

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IN WITNESS WHEREOF, I have hereunto set my hand this second day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99-23460

Filed 9-7-99; 8:45 am]

Billing code 3195-01-P

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Presidential Documents

Executive Order 13158 of May 26, 2000

Marine Protected Areas

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*), National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-ee), National Park Service Organic Act (16 U.S.C. 1 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), Wilderness Act (16 U.S.C. 1131 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*), National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), Outer Continental Shelf Lands Act (42 U.S.C. 1331 *et seq.*), and other pertinent statutes, it is ordered as follows:

Section 1. Purpose. This Executive Order will help protect the significant natural and cultural resources within the marine environment for the benefit of present and future generations by strengthening and expanding the Nation's system of marine protected areas (MPAs). An expanded and strengthened comprehensive system of marine protected areas throughout the marine environment would enhance the conservation of our Nation's natural and cultural marine heritage and the ecologically and economically sustainable use of the marine environment for future generations. To this end, the purpose of this order is to, consistent with domestic and international law: (a) strengthen the management, protection, and conservation of existing marine protected areas and establish new or expanded MPAs; (b) develop a scientifically based, comprehensive national system of MPAs representing diverse U.S. marine ecosystems, and the Nation's natural and cultural resources; and (c) avoid causing harm to MPAs through federally conducted, approved, or funded activities.

Sec. 2. Definitions. For the purposes of this order: (a) "Marine protected area" means any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.

(b) "Marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.

(c) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Sec. 3. MPA Establishment, Protection, and Management. Each Federal agency whose authorities provide for the establishment or management of MPAs shall take appropriate actions to enhance or expand protection of existing MPAs and establish or recommend, as appropriate, new MPAs. Agencies implementing this section shall consult with the agencies identified in subsection 4(a) of this order, consistent with existing requirements.

Sec. 4. National System of MPAs. (a) To the extent permitted by law and subject to the availability of appropriations, the Department of Commerce and the Department of the Interior, in consultation with the Department

of Defense, the Department of State, the United States Agency for International Development, the Department of Transportation, the Environmental Protection Agency, the National Science Foundation, and other pertinent Federal agencies shall develop a national system of MPAs. They shall coordinate and share information, tools, and strategies, and provide guidance to enable and encourage the use of the following in the exercise of each agency's respective authorities to further enhance and expand protection of existing MPAs and to establish or recommend new MPAs, as appropriate:

(1) science-based identification and prioritization of natural and cultural resources for additional protection;

(2) integrated assessments of ecological linkages among MPAs, including ecological reserves in which consumptive uses of resources are prohibited, to provide synergistic benefits;

(3) a biological assessment of the minimum area where consumptive uses would be prohibited that is necessary to preserve representative habitats in different geographic areas of the marine environment;

(4) an assessment of threats and gaps in levels of protection currently afforded to natural and cultural resources, as appropriate;

(5) practical, science-based criteria and protocols for monitoring and evaluating the effectiveness of MPAs;

(6) identification of emerging threats and user conflicts affecting MPAs and appropriate, practical, and equitable management solutions, including effective enforcement strategies, to eliminate or reduce such threats and conflicts;

(7) assessment of the economic effects of the preferred management solutions; and

(8) identification of opportunities to improve linkages with, and technical assistance to, international marine protected area programs.

(b) In carrying out the requirements of section 4 of this order, the Department of Commerce and the Department of the Interior shall consult with those States that contain portions of the marine environment, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, tribes, Regional Fishery Management Councils, and other entities, as appropriate, to promote coordination of Federal, State, territorial, and tribal actions to establish and manage MPAs.

(c) In carrying out the requirements of this section, the Department of Commerce and the Department of the Interior shall seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested persons and organizations through a Marine Protected Area Federal Advisory Committee. The Committee shall be established by the Department of Commerce.

(d) The Secretary of Commerce and the Secretary of the Interior shall establish and jointly manage a website for information on MPAs and Federal agency reports required by this order. They shall also publish and maintain a list of MPAs that meet the definition of MPA for the purposes of this order.

(e) The Department of Commerce's National Oceanic and Atmospheric Administration shall establish a Marine Protected Area Center to carry out, in cooperation with the Department of the Interior, the requirements of subsection 4(a) of this order, coordinate the website established pursuant to subsection 4(d) of this order, and partner with governmental and non-governmental entities to conduct necessary research, analysis, and exploration. The goal of the MPA Center shall be, in cooperation with the Department of the Interior, to develop a framework for a national system of MPAs, and to provide Federal, State, territorial, tribal, and local governments with the information, technologies, and strategies to support the system. This

national system framework and the work of the MPA Center is intended to support, not interfere with, agencies' independent exercise of their own existing authorities.

(f) To better protect beaches, coasts, and the marine environment from pollution, the Environmental Protection Agency (EPA), relying upon existing Clean Water Act authorities, shall expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment. Such regulations may include the identification of areas that warrant additional pollution protections and the enhancement of marine water quality standards. The EPA shall consult with the Federal agencies identified in subsection 4(a) of this order, States, territories, tribes, and the public in the development of such new regulations.

Sec. 5. Agency Responsibilities. Each Federal agency whose actions affect the natural or cultural resources that are protected by an MPA shall identify such actions. To the extent permitted by law and to the maximum extent practicable, each Federal agency, in taking such actions, shall avoid harm to the natural and cultural resources that are protected by an MPA. In implementing this section, each Federal agency shall refer to the MPAs identified under subsection 4(d) of this order.

Sec. 6. Accountability. Each Federal agency that is required to take actions under this order shall prepare and make public annually a concise description of actions taken by it in the previous year to implement the order, including a description of written comments by any person or organization stating that the agency has not complied with this order and a response to such comments by the agency.

Sec. 7. International Law. Federal agencies taking actions pursuant to this Executive Order must act in accordance with international law and with Presidential Proclamation 5928 of December 27, 1988, on the Territorial Sea of the United States of America, Presidential Proclamation 5030 of March 10, 1983, on the Exclusive Economic Zone of the United States of America, and Presidential Proclamation 7219 of September 2, 1999, on the Contiguous Zone of the United States.

Sec. 8. General. (a) Nothing in this order shall be construed as altering existing authorities regarding the establishment of Federal MPAs in areas of the marine environment subject to the jurisdiction and control of States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and Indian tribes.

(b) This order does not diminish, affect, or abrogate Indian treaty rights or United States trust responsibilities to Indian tribes.

(c) This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
May 26, 2000.