Tennessee Valley Authority

Public Safety Service

Archaeological Resource Protection Plan

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TENNESSEE VALLEY AUTHORITY (TVA) PUBLIC SAFETY SERVICE (PSS)

ARCHEOLOGICAL RESOURCES PROTECTION PLAN

SEPTEMBER 1993

It is the policy of the TVA PSS to protect the archeological resources located on TVA lands. TVA PSS will cooperate with all internal TVA organizations including the General Counsel Office (OGC), the Office of the Inspector General (OIG), TVA Cultural Resources, and all law enforcement agencies external to TVA. PSS will pursue criminal and civil action against all violators of archeological sites on TVA-owned or controlled properties and will provide assistance to other TVA organizations and to law enforcement agencies external to TVA in investigations of archeological resource violations off TVA property.

1.0 SCOPE

A. Civil Action

Section 7 of the Archeological Resources Protection Act (ARPA) provides that any person who violates any prohibition contained in an applicable regulation or permit issued under ARPA may be assessed a civil penalty by the federal land managers concerned. The TVA, along with the Departments of the Interior,

Agriculture, and Defense, has issued uniform regulations under ARPA. The Board has delegated to the President, Resource Group, the authority to issue notices of violation and assess civil penalties for the violation of any prohibition contained in TVA's ARPA regulations or permits issued by TVA under ARPA.

B. Criminal Action

Section 6 of the ARPA provides that any person who knowingly violates or counsels, procures, solicits, or employs any other person to violate any prohibition contained in the Act may be subject to criminal action. The pursuit of criminal action shall be determined by TVA's President, Resource Group, or his designee. This determination will be made upon consultation with Cultural Resources, the OIG, the OGC, and the PSS, as circumstances require, and with the United States Attorney's office in the appropriate federal district. In cases initiated or investigated by TVA's OIG, TVA's Inspector General will determine when criminal action is pursued subject to consultation with the Land Manager and/or other TVA organizations as appropriate.

The determination regarding criminal action will be guided by criteria set forth by each U.S. Attorney's office in the districts containing TVA's archeological sites.*

*See attachments for criteria for criminal action as set forth by the U.S. Attorney's for federal districts in the Tennessee Valley area.

If, after reviewing these criteria the President, Resource Group, or his designee determines that criminal action should be pursued, he shall arrange consultation with the United States Attorney's office of the appropriate district.

In cases initiated and/or investigated by the OIG, TVA's Inspector General may arrange consultation with the U.S. Attorney's office independent of other TVA organizations when appropriate.

2.0 REPORTING OF VIOLATIONS

A. Receiving the Report

Persons who wish to communicate suspected violations of ARPA regulations on TVA property may do so by contacting PSS, Cultural Resources, or the OIG. The following information should be obtained: description of the violation, the date and location of the violation, the identity of the violator, if known, and the name and address of the person making the report.

B. Initial Inspection

1. If the OIG receives the initial report, the information received will be forwarded to the PSS for preliminary inspection. Cultural Resources should also be informed of

the report. Depending on the location of the alleged violation and the availability of ARPA trained personnel, an ARPA trained archeologist, Public Safety Officer (PSO), or OIG agent should be dispatched to inspect the location stipulated in the report to determine if an ARPA violation is apparent.

If the preliminary site inspection indicates that a violation has occurred, an investigation will be initiated, the site secured, and archeologist requested.

2. If the PSS receives the initial report of violation, Cultural Resources should be notified and a preliminary investigation should be conducted as outlined in 2.0.B.1 above.

3. If Cultural Resources receives the initial complaint, the preliminary investigation should be conducted as indicated in 2.0.B.1 above.

4. When the initial report is received by either the PSS or Cultural Resources, the OIG will be advised.

3.0 NOTICE OF CIVIL VIOLATION BY TVA PSOs

A. Issuing Civil Citations

TVA PSOs who observe a person in the act of violating TVA's ARPA regulations or permits or who observe a person on TVA-controlled land in unauthorized possession of archeological resources may immediately issue a notice of violation to such person. The officer should also seize any archeological resources in the person's possession believed to have been obtained in violation of TVA's ARPA regulations. The notice of violation contains the information required to be included by section 1312.15(b) of TVA's ARPA regulations. The notice of violation does not contain the amount of penalty proposed to be assessed, but instead contains a statement that notice of a proposed penalty amount will be served after the damages associated with the violation have been ascertained. A copy of the notice of violation, along with all other information about the violation, is sent to Cultural Resources and a copy of the PSS Uniform Incident Report is sent directly to both the OGC and the OIG immediately upon preparation through the chain of command.

The PSS officer shall consult his supervisor regarding questions concerning arrests, the issuance of civil citations or other matters relating to ARPA enforcement. The district manager shall develop an understanding with the appropriate U.S. Attorney's office or offices regarding the internal policy of the U.S. Attorney or attorneys as they relate to ARPA cases.

If the individual has no contract/permit to dig in or otherwise affect a TVA archeological sight, the officer may issue the individual a TVA Notice of Violation of ARPA (TVA form 30534). The original shall be given to the violator, copy two shall be maintained by the issuing officer, copy three shall be sent to the PSS Corporate Office, the fourth to Cultural Resources. A Uniform Incident Report shall be completed by the officer and forwarded through the District Manager to PSS Corporate headquarters, the OIG, and the OGC.

If the PSO recognizes what he/she believes to be archeological resources and artifacts in the possession of the violator, the officer may confiscate those items. Also, the officer may confiscate any tools and equipment he/she reasonably believes to have been used in the violation. An inventory of all seized items should be completed by the PSO. The inventory shall be signed and dated by the investigating PSS officer and shall serve as a receipt with a copy being given to the individual from whom items have been confiscated. Chain of custody of all evidence (including seized items) shall be maintained by the PSO and subsequent persons having contact with such evidence.

B. Not Issuing Civil Citation

In certain cases a PSO may not issue a civil citation in order to further investigate the facts and make a decision as to criminal prosecution or civil action. For example, the PSO may

know that the individual involved is already the subject of an active investigation regarding ARPA violations. In such cases the officer should confiscate what he reasonably believes to be artifacts. The officer may also confiscate tools that appear to have been used at the scene. Identification of the violator should be obtained if possible.

4.0 CRIMINAL INVESTIGATION PROCEDURE

A. Criminal vs. Civil

All ARPA violations shall be treated initially as a criminal violation by PSS investigating personnel regarding preservation of the crime scene, the collection of evidence, the assessment of site damage, and the identification of witnesses and suspects. Data collected in the initial PSS investigation/ assessment will be reviewed with the Land Manager utilizing the criteria set forth in 1.0.B above in conjunction with Sections 6 and 7 of ARPA to determine whether the case should be pursued further and if pursued whether such pursuit should be civil or criminal.

B. Site Investigation

1. If the PSO conducting the preliminary inspection of the site determines that a site investigation/assessment is required, the investigator will contact Cultural Resources to

recommend such action be pursued. If a delay in initiating the investigation is anticipated, the PSS is responsible for securing the archeological site. The PSS is responsible for ensuring that any individuals so assigned are aware of the scene's outer perimeter in order to avoid inadvertent interference with crime scene processing.

2. Investigative Responsibilities at the Site

a. The ARPA investigator (either PSS, OIG, or outside law enforcement agent) is responsible for investigating possible criminal activity to include establishing federal ownership of the property, securing and examining the immediate scene of the violation, searching the general area of the violation for criminal evidence, ensuring the chain of custody for any criminal evidence discovered, interviewing witnesses and potential suspects, sketching and photographing the crime scene, and utilizing whatever other criminal investigatory methods may be appropriate under the circumstances. The investigator's objectives are to:

(1) establish federal ownership of the property

(2) establish that a crime has been committed

(3) identify the criminal

(4) establish venue (geographical jurisdiction)

(5) locate the criminal

(6) establish guilt

b. Cultural Resources is responsible for providing an ARPA trained archeologist to assess the archeological damage at the violated site. The archeologist assigned to assess sight damage normally should not begin the assessment until the PSS has conducted a preliminary investigation of the site. This practice will help ensure that no evidence is disturbed. By the same token, the PSS investigators should be extremely cautious about any of their own activity that may alter or disturb the archeological site damage to be assessed.

c. The PSS investigator has primary responsibility for management of the crime scene investigation; however, the investigator and archeologist shall assist each other as necessary in accomplishing the site investigation/assessment.

d. The archeologist's statement to include damage assessment will accompany the investigator's report which will function as the primary report. The report will be reviewed by the district manager and thereafter distributed as appropriate.

e. The PSS investigator is responsible for preparing the investigative report to include the archeologist's site damage assessment, evidence and photography logs, pertinent maps, drawings and crime scene sketches, witness statements, and other evidentiary items the investigator deems necessary. This report will be submitted to the distrct manager who shall thereafter distribute the report as appropriate. Cultural Resources shall maintain a copy of the archeological damage assessment. Any physical evidence collected shall be secured by the investigator and chain of custody maintained to ensure the integrity of the evidence.

3. Site Surveillance

If the PSO assigned to investigate an ARPA violation has reason to believe that a violation is of an ongoing nature, he/she may recommend site surveillance either as an alternative to or in addition to immediate site investigation/damage assessment. The PSO is responsible for obtaining approval of such surveillance from the appropriate District Manager, PSS, and the Vice-President, PSS or his designee. The PSS may notify Cultural Resources when appropriate prior to implementing such surveillance in order to prevent any inadvertent disruption of the surveillance by Cultural Resources personnel. Dissemination of information regarding any surveillance shall be handled discreetly on a "need-to-know" basis by all parties concerned.

4. Criminal Action

If after reviewing the submitted PSS investigative report all concerned parties determine that criminal action is required, the PSS and/or the OIG may pursue further criminal investigation if needed in accordance with the appropriate U.S. Attorney's office and coordinate the criminal prosecution with the Assistant U.S. Attorney assigned to the case.

5.0 PRELIMINARY RESPONSIBILITIES

A. Cultural Resources

1. It is the responsibility of Cultural Resources to provide the PSS a Site Vulnerability Assessment (SVA) for the purpose of prioritizing archeological site patrol requirements.

2. It is the responsibility of Cultural Resources to inform the PSS of any excavation or other activity that may be planned by either TVA Cultural Resources or by outside organizations through contract or permit to include the parameters of such excavation or activity.

B. Public Safety Service

1. It is the responsibility of the unit supervisor to establish patrols of the most significant and vulnerable sites as indicated by the S.V.A. in a manner that maximizes manpower.

2. All PSOs in affected units shall be familiarized with the location, appearance and significance of each site in order to better detect fresh activity.

3. It is the responsibility of the Public Safety Service to establish any required surveillance of suspected activity involving ARPA violations to include establishing electronic monitoring devices if appropriate.

ATTACHMENT 1

CRITERIA FOR CRIMINAL ACTION

U.S. ATTORNEY'S OFFICE FOR THE

NORTHER DISTRICT OF ALABAMA

The decision to pursue criminal action normally shall be based on the existence of one or more of the following factors:

1. When there is evidence that the digging for artifacts was for profit, i.e., that the items found were to be sold.

2. Where the subject has a prior conviction for the same activity.

3. Where the dig was substantial, that is, there is evidence of multiple holes or large holes or trenches.

4. When the dig was an excavation of a grave site.

Where a subject is caught in the act of digging, law enforcement personnel should use care with respect to detaining such persons for any purpose other than recovering artifacts. Should the agent or public safety officer determine that an arrest is warranted, the duty Assistant United States Attorney (AUSA) should be immediately contacted and advised of the situation. If time permits, we request that the duty AUSA be contacted prior to an arrest being made.

PUBLIC SAFETY SERVICE

ARCHEOLOGICAL RESOURCE PROTECTION

PATROL AND RESPONSE PROCEDURES

I. REPORT OF AN ARPA VIOLATION

A. Sources of Report

Report of an ARPA violation may come from the following sources:

1. General public
2. TVA employees
3. Cultural Resources
4. OIG
5. Other agencies

B. Information to be Obtained by PSO

If a PSO receives a report of an ARPA violation, the following information should be obtained:

1. Description of violation
2. The date and location of violation
3. Identity/description of violator if possible
4. Description of vehicle used if available
5. Name and address of person making report

C. Inspecting the Site

Upon receipt of a report of an ARPA violation, a PSO will be dispatched to the site to inspect it for activity of violation. The inspection procedure is as follows:

1. Arrive safely
2. Inspection is a brief viewing of the site for as long as it takes to determine if a violation has occurred

3. Treat as potential crime scene and create as little disturbance as possible while in vehicle or on foot
4. Look for signs of fresh disturbances
5. Get names and addresses of witnesses and what they witnessed
6. If there is an immediate need to collect evidence, ensure that it is properly documented and secured
7. After inspection is completed, contact dispatch with report
8. If violation is apparent, secure crime scene and initiate investigation
9. Notify unit supervisor of violation and request assistance if needed

II. PATROL TECHNIQUES FOR ARCHEOLOGICAL SITES

A. Prioritizing Patrol Activities

The ARPA sites to be patrolled are determined by the Site Vulnerability Assessment (SVA) as determined and developed by Cultural Resources

B. Patrolling Techniques

1. PSOs patrolling archeological sites shall know the location, appearance, and significance of sites to be patrolled in order to detect fresh activity
2. Utilize an irregular patrol schedule to avoid predictability

C. Signs of Activity

1. On vehicle patrol, look for indications of fresh site entry to include tire marks, new trails, and broken foliage

2. On boat patrol, look for signs of boat docking and footprints on bank

3. Look for freshly dug holes and logs and rocks that have been moved

D. Remote Sensing Devices

Remote sensing devices may be used to monitor important remote sites that cannot be patrolled as frequently as necessary. These devices are linked to the Central Alarm Station (CAS) where their activation will be signaled. The decision to utilize these devices will be determined by PSS management in consultation with Cultural Resources.

III. PSO DUTIES: ACTIVITY ONSITE - VIOLATOR NOT PRESENT

A. Report Investigation

If you see indications of violation, report this to your supervisor and recommend investigation be commenced. If you are uncertain if there has been a violation, request appropriate assistance through the unit supervisor.

B. Secure the Crime Scene

If there is a delay in response from PSS management, ensure that the crime scene is protected. The crime scene at an ARPA site should be looked upon as much larger than merely the specific disturbances that have been observed. It includes potential routes

of entry and exit, nearby places where tools and artifacts could be hidden by a violator, or where the violator may have taken a break or thrown trash and refuse. The initial investigator may require that several separate areas be treated as individual crime scenes as described above.

C. Interview Witnesses

As soon as you have determined that an ARPA violation may have occurred, look for the presence of individuals in the immediate area who may have seen the activity. Obtain their names and addresses, a brief description of who and what they saw, and any other information you feel is relevant to the investigation. Remember that someone who appears to be a witness may in fact be a perpetrator.

D. Collect Evidence

If circumstances (i.e., weather conditions) dictate that evidence should be collected immediately, the inspecting officer should do so. Ensure any evidence you collect at the scene is properly secured and documented to preserve the chain of custody.

E. Take Field Notes

If awaiting arrival of investigator, take detailed field notes of what you witness from the time of your arrival until the arrival of the investigator or until you are relieved. Be prepared to write a report based on these notes and to turn this report as well as the notes over to the PSS investigator.

Caution: Do not assume that any other investigator will see the same things you see or hear the same thing (from witnesses for example) that you have heard.

IV. PSO DUTIES: DISCOVERY OF ACTIVITY - VIOLATOR PRESENT

A. Observe Activities

1. If you come upon individuals who appear to be violating a TVA archeological site, you may wish to observe them, if possible, prior to subject contact. Such observation allows you the following advantages:

   (a) Time to better discern the purpose and level of their activity

   (b) Time to record more descriptive details of the activity, persons, equipment, and vehicles involved

   (c) The opportunity to take photographs if you have a camera available

   (d) Time to determine if the subjects pose a threat to your safety

   (e) The opportunity to call for backup

2. Prior to initiating contact, radio your dispatch with the following:

   (a) Your location

   (b) The number of subjects involved

   (c) Their activity

   (d) A brief description of the subjects

   (e) A description of their equipment

   (f) A description of their vehicles

3. Do not approach multiple violators if you have a reasonable fear for your safety. ARPA violators who are in the artifact business for personal gain may be armed and dangerous.

B. Avoiding Contact

In some circumstances, it may be advisable to avoid any contact with a violator. For example, if you discover a violator at the site where ongoing activity has occurred, a determination may be made to allow the suspect to leave the site undetected in order to discover other conspirators, evidence, etc. This determination should be made after consultation with PSS management, if possible.

V. INITIAL CONTACT WITH SUSPECT

A. Inform Suspect of TVA Restriction

If you discover someone engaging in violation of an archeological site, you should explain that:

1. The activity they are pursuing is prohibited on this site because it is protected as an archeological resource
2. Any such activity is only allowed by permit

B. Identify Suspects and Perform NCIC Check

VI. ELEMENTS OF ARPA VIOLATION

A. Criminal Offense

Every criminal statute contains elements of the offense all of which must be proven beyond a reasonable doubt in order for a criminal conviction to be obtained. The elements of a criminal ARPA violation are:

1. The crime must have occurred on federal or Indian lands
2. The site or artifacts in question must be identified as archeological resources
3. The activity must have been conducted without a permit
4. The activity must be designated as a prohibited activity under ARPA
5. There must be a damage assessment indicating whether the damage was above or below $500 to designate whether the offense is a misdemeanor or felony

B. Civil Violation

The elements necessary to prove a civil violation of ARPA are the same as the first four elements required for a criminal conviction. The fifth element is not essential because there is no distinction between a misdemeanor and felony in a civil action. The civil proceeding also allows for a lower standard regarding burden of proof, that being a preponderance of the evidence (a slight tipping of the scales) versus the criminal standard of proof beyond a reasonable doubt.

VII. PSO OPTIONS UPON CONTACT WITH SUBJECT

A. ID and Release

1. If you encounter individuals who in your judgment are not in violation to an extent that requires a formal action of citation or arrest, you may choose to only issue a verbal warning regarding their activity. Such individuals likely may

be random or surface collectors. Random collectors are nonsystematic, random collectors who do not plan their activity but rather see and take. Surface collectors are people who are not diggers but restrict their activities to surface collecting for recreation. The verbal warning should include:

(a) Obtaining a positive identification of the individuals if possible (minors may have no such identification)

(b) Explaining what an ARPA violation is and its consequences for them

(c) Confiscating any artifacts in their possession

(d) Documentating and securing the items seized in the event a question concerning your actions arise subsequent to your encounter

(e) Providing the individuals with a receipt for items seized

(f) Reporting the incident in writing

2. Officer Uncertainty

If you are uncertain whether the situation you have encountered requires a citation or an arrest, you should identify the subject (if possible) and briefly detain while you contact your supervisor for direction. In such instances you should also:

(a) Explain what an ARPA violation is and what its consequences may be

(b) Confiscate any artifacts in the subject's possession, give receipt for items seized, and ensure the chain of custody for items seized as evidence.

(c) Explain that civil or criminal charges may be considered by TVA

(d) Report the incident in writing

B. Detain and Contact Supervisor, Assistant United States Attorney (AUSA)

If you believe you have probable cause to arrest the violator for an ARPA violation, you should detain the violator and contact your supervisor for direction. The supervisor may contact the AUSA for direction if appropriate. The AUSA may advise to arrest, release, or issue a civil citation based on the facts presented. You should be familiar with both the communication process and criteria for an arrest relative to ARPA as required by the appropriate U.S. Attorney in the event the U.S. Attorney's office cannot be contacted or in the event you might have to contact that office directly.

C. Collection of Evidence from Subject

There may be occasions when evidence needs to be seized from the suspect's person when no arrest is effected (such as soil samples from clothing or shoes to match with footprints). Such seizures must be based on either the signed consent of the subject or a search warrant. A receipt for items seized shall be given to the subject, and the items seized shall be properly secured and documented to preserve the chain of custody.

D. Arrest on State Charges

In some instances, you may cite or arrest the subject on state charges (i.e., vandalism, assault, criminal trespassing). Following your action, PSS can still contact your AUSA or the TVA Land Manager as appropriate regarding civil or criminal ARPA charges. Be sure to inform the AUSA that subject has been arrested and charged with a state crime relative to this violation.

E. Issue Civil Citation

If you determine, based on facts at hand, that a civil citation for an ARPA offense should be issued, take the following actions:

1. Inform the subject of the specifics of the violation
2. Fill out completely the Notice of Violation (TVA 30534)
3. Ensure the facts indicating a violation are clearly stated
4. Explain the significance of the citation, the site damage assessment, and the administrative review procedure to the recipient. Explain that criminal prosecution may also result.
5. Sign the citation and request the subject sign it. If subject refuses to sign, simply write "Subject Refuses to Sign" in signature block.
6. Distribute the copies as indicated on the citation
7. Submit a written report to you supervisor

F. Property Seizure

1. Archeological items

   (a) All the options stated above allow for the confiscation of what you reasonably believe to be archeological resources and artifacts.

(b) If items are seized, you should issue a receipt to the individual from whom the items have been seized.

2. Excavating tools

(a) Tools and equipment may be seized from violators pending civil or criminal action.

(b) A receipt for seized tools and equipment should be provided to the individual from whom they are seized.

3. Vehicles

(a) In cases where on-the-scene arrest is effected, vehicles involved may be impounded:

(1) If they are involved in the ARPA violation.

(2) If they pose a hazard or traffic obstruction if left where they are.

(b) Vehicles found at the scene of a violation may be examined in accordance with the following guidelines:

(1) Search incident to arrest - The interior of the passenger compartment that can be reached without exiting the vehicle may be searched for weapons and destructible evidence.

(2) Probable cause - A reasonable belief based on the facts at hand that evidence relating to the violation will be found in or about the vehicle. All parts of the vehicle that could conceal evidence relative to the crime at hand may be searched.

(3) Inventory - When a vehicle is impounded, the contents must be inventoried. All portions of the vehicle where people could reasonably be expected to keep valuables may be inspected.

(c) A copy of the inventory should be provided to the vehicle's operator/owner. The original should be maintained by the investigating office and made a part of the case report. Such inventory is documentary evidence.

Archaeological Resources Protection Act of 1979[7]

AN ACT To protect archaeological resources on public lands and Indian lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

16 USC 470 aa

Short Title

SEC. 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

Findings and Purpose

SEC. 2. (a) The Congress finds that—

PURPOSE

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

Definitions

SEC. 3. As used in this Act—

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

[7] The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–470mm), as set forth herein, consists of Public Law 96-96 (October 31, 1979) and amendments thereto.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

(i) the national park system,

(ii) the national wildlife refuge system, or

(iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "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, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

Excavation and Removal

Permit application.

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, 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.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431–433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

Custody of Resources

Regulations.

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469–469c) or the Act of June 8, 1906 (16 U.S.C. 431–433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

16 USC 470 ee

A. The Digger

B. Seller case

C. PRIVATE LANDS - provided there is STATE LAW prohibiting such as graves, etc

D. HIRES

Prohibited Acts and Criminal Penalties

SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

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

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign com-

merce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $500 such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both.

Penalties felony if more than $500.00

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

Civil Penalties

SEC. 7. (a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty, the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Subpenas.

Witness fees.

16 USC 470 gg

Forfeit; either
1) Criminal
2) Civil
3) Remedy
see all items in commission of crime
Vehicles, dozer, backhoe, etc.

Rewards; Forfeiture

SEC. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but not to exceed $500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in

the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 6,

(2) assessment of a civil penalty against such person under section 7 with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

Confidentiality

SEC. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469–469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

Regulations; Intergovernmental Coordination

Rules and regulations.

SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform

Submittal to congressional committees.

rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

Rules and regulations.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

Public lands.

(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program.

Reports.

Cooperation with Private Individuals

SEC. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

Savings Provisions

SEC. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

Report

SEC. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469–469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

SEC. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—

(a) develop plans for surveying lands under their control to determine the nature and extent of archeological resources on those lands;

(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archeological resources; and

(c) develop documents for the reporting of suspected violations of this Act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies.

federal register

Friday
January 6, 1984

Part V

Department of the Interior

Office of the Secretary

Department of Agriculture

Office of the Secretary

Tennessee Valley Authority

Department of Defense

Office of the Secretary

43 CFR Part 7
36 CFR Part 296
18 CFR Part 1312
32 CFR Part 229

Archaeological Resources Protection Act of 1979; Final Uniform Regulations

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 7

DEPARTMENT OF AGRICULTURE

36 CFR Part 296

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1312

DEPARTMENT OF DEFENSE

32 CFR Part 229

Archaeological Resources Protection Act of 1979; Final Uniform Regulations

AGENCIES: Departments of the Interior, Agriculture, and Defense and Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: These final regulations establish uniform procedures for implementing provisions of the Archaeological Resources Protection Act of 1979 in response to direction in section 10(a) of the Act. These uniform regulations will serve as the foundation and basic policy standard for additional regulations which departments and other agencies of the Federal government may promulgate pursuant to section 10(b) of the Act. These regulations enable Federal land managers to protect archaeological resources on public lands and Indian lands, by issuing permits for authorized excavation and/or removal of archaeological resources, by imposing civil penalties for unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources, by providing for the preservation of archaeological resource collections and data, and by ensuring confidentiality of information about archaeological resources when disclosure would threaten the resources.

DATES: These regulations were submitted on October 7, 1983, to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, and will take effect on February 6, 1984.

FOR FURTHER INFORMATION CONTACT: Bennie C. Keel, National Park Service, Department of the Interior, Washington, D.C., 202–343–4101; Barbara Levin, Office of the Solicitor, Department of the Interior, Washington, D.C., 202–343–7957; John G. Douglas, Bureau of Land Management, Department of the Interior, Washington, D.C., 202–343–9353; Evan I. DeBloois, U.S. Forest Service, Department of Agriculture, Washington, D.C., 202–382–9425; Garland P. Thompson, Army Corps of Engineers, Department of Defense, Washington, D.C., 202–272–0517; or Maxwell D. Ramsey, Office of Natural Resources, Tennessee Valley Authority, Norris, Tennessee, 615–632–6450.

SUPPLEMENTARY INFORMATION:

Background

These regulations implement provisions of the Archaeological Resources Protection Act of 1979 ("Act"; Pub. L. 96–95; 93 Stat. 721; 16 U.S.C. 470aa–*ll*). They were prepared by an interagency rulemaking task force composed of representatives of the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, as directed in section 10(a) of the Act.

The Act has two fundamental purposes: (1) To protect irreplaceable archaeological resources on public lands and Indian lands from unauthorized excavation, removal, damage, alteration, or defacement; and (2) to increase communication and exchange of information among governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained prior to enactment of the Act.

Provisions of the Act which address the first purpose, protection, include requirements for a permit, to be issued by the appropriate Federal land manager to any qualified person who would make use of archaeological resources for the purpose of furthering archaeological knowledge in the public interest. For any person who would make unauthorized use of archaeological resources, without a permit, criminal and civil penalty and forfeiture provisions are prescribed in the Act. Basic government-wide standards for the issuance of permits and for the implementation of civil penalty provisions are a principal focus of these regulations. Also, preservation of collections and data, and protection of locational information, when its disclosure might result in harm to archaeological resources, are provided for in the Act and these regulations.

With regard to the second purpose, section 11 of the Act directs that the Secretary of the Interior shall take such action as may be necessary to foster and improve the communication, cooperation, and exchange of information among private individuals, Federal authorities responsible for the protection of archaeological resources on public lands and Indian lands, and professional archaeologists and archaeological organizations, in order to expand the archaeological data base for the archaeological resources of the United States. Because of the specific assignment, this purpose will be addressed separately.

Section 10(a) of the Act calls for the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, to promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of the Act. Consideration of the provisions of the American Indian Religious Freedom Act is specified as a prerequisite to preparing such regulations. Specific reference to uniform regulations in the Act is included also in section 3(1) (definition of "archaeological resource"), section 4(a) (permit application requirements), section 4(b) (standards for permit application evaluation), section 4(d) (permit terms and conditions), and section 10(b) (agency-specific regulations consistent with uniform regulations).

Certain provisions, such as criminal prohibitions and criminal penalties, are outside the scope of this rulemaking. In order to be fully informed about the nature and extent of archaeological resource protection under the Archaeological Resources Protection Act of 1979, it is necessary to consult the Act as well as these regulations.

These regulations are designed to provide Federal land managers the ability to fully exercise their authority under the Act. However, because a variety of land management conditions exists among Federal agencies, supplemental detailed regulations may be promulgated under the authority of section 10(b) of the Act.

Public hearings were held during March and April 1980, in Denver, Colorado; Phoenix, Arizona; Portland, Oregon; and Knoxville, Tennessee, following publication of a notice of public hearings on March 19, 1980 (45 FR 17622). These hearings were held to provide an opportunity for early public input into the rulemaking process and to initiate an early dialogue among various groups interested in the use and/or protection of archaeological resources. Proposed uniform rules were published

on January 19, 1981 (46 FR 5586), as 36 CFR Part 1215. Public comment on the proposed rules was invited for a 60-day period, to end March 20, 1981. Public hearings were held during the comment period, in Chicago, Illinois; Atlanta, Georgia; Albuquerque, New Mexico; San Francisco, California; Anchorage, Alaska; and Denver, Colorado. Because of widespread interest expressed at the public hearings for additional time to submit written comments, the comment period was extended until April 30, 1981 (46 FR 22208), making a total of 101 days available for interested parties to submit comments on the proposed rules.

Comments were received from a broad array of private individuals, local, State, and Federal agencies, amateur and professional scholarly associations, hobbyist groups, Indian tribes, scientific and educational institutions, various industries, and others with interests in the use of public lands and resources. A total of 137 persons presented testimony during the six public hearings. Two hundred nineteen written responses were received before the end of the comment period, expressing a total of 418 comments. Three of the written responses were in the form of petitions. Comments were addressed to all but two of the 23 sections of the proposed rules, ranging from as few as two to as many as 66 comments on a given section. Sections 1215.3, 1215.6, 1215.4, and 1215.7 drew the greatest volume of comments, in that order, each receiving 45 or more. No other section drew more than 15 comments. There were 62 comments which did not pertain directly to specific sections, but rather addressed the Act or the regulations in more general terms.

Many of the public comments raised valid concerns with, or forced greater attention to, the substance of certain provisions of the proposed regulations, and the construction, concepts, and wording of affected sections were altered accordingly. Many other comments represented misunderstanding of basic issues, and these comments were also helpful in identifying needs for explanatory as well as procedural language. Some comments were critical of wording or provisions drawn directly from the Act, in most cases appearing to show a lack of awareness of the statutory basis for the proposed regulations. In the discussions which follow, reference is frequently made to the section of the Act involved in order to clarify the statutory-regulatory relationship.

Finally, given the volume of comments, it is impractical to respond in detail here to every question raised or suggestion offered. However, all comments were considered, and most contributed to the rulemaking process.

In the discussions which follow, section numbers given in the central headings refer to the proposed 36 CFR Part 1215, while numbers in the italicized paragraph headings refer to the final part.

Changes in Response to Public Comments

§ 1215.1 Purpose (Renumbered § —.1).

This section was expanded and reworded to make clearer the extent to which these regulations apply. Based on a number of general comments which show misunderstanding of the scope and effect of the proposed regulations, paragraph (a) was expanded to state explicitly that these regulations enable Federal land managers to protect archaeological resources through four mechanisms: permits, civil penalties, preservation of collections and data, and confidentiality of archaeological resource information. Also, specific reference to the American Indian Religious Freedom Act was incorporated in keeping with section 10(a) of the Act.

Several comments suggested greater specificity in paragraph (b). Wording was changed slightly to state more directly that no new restrictions on authorized uses of the public lands are created by these regulations. Comments from representatives of industries which have ongoing interests in the use of public lands and resources expressed concern that land-use applicants would be required to apply for permits under these regulations in addition to applications for use entitlements under other legal authorities. These comments were acknowledged by adding a paragraph (b)(1) to § —.5, "Permit requirements and exceptions," rather than by further expansion of the purpose statement. Permits may be required for archaeological consultants to land-use applicants, but not for the land-use applicants themselves. This does not represent any change from similar requirements applicable under other laws and regulations, primarily the American Antiquities Act of 1906 and 43 CFR Part 3.

§ 1215.2 Authorities (Renumbered § ——.2).

Several comments offered additional legal authorities to be added to this section. One comment pointed out that related authorities are listed at the head of the regulations and need not be listed again. Since the authority for promulgating these regulations is confined to the Archaeological Resources Protection Act of 1979, the section was shortened to follow this last comment. The two remaining paragraphs were reworded slightly to clarify the relationship of these and subsequent regulations to the provisions of section 10 of the Act; paragraph (b) is retained for informational purposes, so that the public may be informed that authorized agency regulations may add specificity to the general provisions of these uniform regulations.

§ 1215.3 Definition (Renumbered § —.3).

This section drew a heavier body of comment than any other section in the proposed regulations, with the majority of comments addressing the definition of "archaeological resource" (proposed § 1215.3(a)). This definition is central not only to the remainder of these regulations, but also to the enforcement of criminal provisions of the Act. Section —.3(a) retains the fundamental features of the definition of "archaeological resource" from the proposed regulations, but it has been restructured in important ways, making it a more precise tool for delimiting judgments about whether or not an item in question is an archaeological resource, and making it more clear that certain items excluded by the Act fall outside the scope of the definition.

The key conditioning provisions for determining what is an archaeological resource, taken from the statutory definition in section 3(1) of the Act, are stated in the base definition in § —.3(a) of the regulations: In order to be considered archaeological resources under these regulations, items must be material remains of human life or activities, at least 100 years of age, and of archaeological interest. Subdefinitions, defining "of archaeological interest" and "material remains," provide the standards for applying the base definition. Where classes of material remains and illustrative examples were included as part of the definition of "material remains" in the proposed rules, they are now assigned to a separate paragraph and are specified to be of archaeological interest, and therefore archaeological resources, unless conditions of ensuing paragraph (a)(4) or (a)(5) apply. This definite status responds to comments about residual uncertainties in the proposed definition. Several illustrative examples were added to material remains classes in response to comments

What is not an "archaeological resource" is included in a separate paragraph (a)(4), drawing on sections

3(1) and 12(b) of the Act and responding to comments that certain excluded items had been listed, apparently counter to direction in the Act. Because of the way the definition was structured in the proposed rules, inclusion was appropriate since those items might be "archaeological resources" under certain circumstances. In the revised structure, paleontological remains, coins, bullets, and unworked rocks and minerals are definitely stated not to be "archaeological resources" themselves, unless they are located in immediate association with archaeological resources.

Many commentors expressed concern that the proposed definition would not allow dislocated material remains, which had lost archaeological interest by reason of their dislocation, to be collected by hobbyists. This concern was directed primarily to items eroded from archaeological sites along the shores of artificial lakes and redeposited sufficiently out of context as to remove their information potential. Lakes specifically mentioned were those resulting from projects of the Army Corps of Engineers and the Tennessee Valley Authority. Commentors pointed out that collection of these remains may contribute more to their preservation than allowing them to be further dislocated due to human-caused or natural disturbance. In recognition of the fact that material remains can, in certain circumstances, lose their archaeological interest and that their collection by the public under these circumstances might not be adverse to the purposes of the Act, a new paragraph (a)(5) was added to the definition of "archaeological resource." This new provision is based on the premise that if the circumstances clearly warrant a determination that certain material remains in certain areas have lost archaeological interest because of dislocation or other causes, the protected status of the remains should be removed and the public so informed. In the absence of such a determination, the presumption of archaeological interest would be retained in order to protect the remains. The final regulations provide that Federal land managers may determine that certain material remains, in specified areas under their jurisdiction, and under specified circumstances, are not of archaeological interest. Any such determination would have to be documented and made public.

Under sections 6 and 7 of the Act, criminal and civil penalties are not to be applicable to removal of arrowheads located on the surface of the ground. "Arrowhead" was defined in a technical manner in § 1215.3(b) of the proposed regulations, generating many comments. Many professional archaeologists commented that distinctions between arrowheads and other tools and weapon projectiles of similar form would prove difficult if not impossible, regardless of how a technical definition might be written. One commentor provided a substantial body of documentation from the published literature which demonstrates the difficulty of relying on shape and size criteria for differentiating "arrowheads" from dart points, spear points, hafted knives, drills, and other tools. Several commentors recommeded that a lay definition be used. In light of the fact that the Congress had used the lay term "arrowhead" rather than alternative technical terms that might have been used, and that a stated congressional intent of the non-penalty provisions is to protect unwary recreationists from the heavy fines and other punishment that might be levied under the Act, it was determined that a lay definition for a lay term is appropriate. Such a definition was included as § —.3(b).

Neither the Act nor these regulations exclude arrowheads from the definition of archaeological resources. Arrowheads over 100 years of age and of archaeological interest are archaeological resources under section 3(1) of the Act and § —.3(a)(3)(iii) of these regulations. Their removal from public lands of Indian lands without a permit is prohibited, but is not punishable under the Act or these regulations. However, regulations under other authority which penalize their removal remain effective. Contrary to opinions frequently expressed in the comments and elsewhere, the Act does not legalize the collection of arrowheads from public lands or Indian lands.

Several commentors suggested that the definition of "Federal land manager," paragraph (c) in both proposed and final regulations, should show that a secretary of a department or other agency head may delegate management authority to other persons. A clause to this effect was added to the definition.

The "public lands" definition, paragraph (d) in both versions, received several comments with regard to the effect of "fee title" specification. Some commentors questioned whether the language would exclude certain lands in the public domain administered by the Bureau of Land Management in the Department of the Interior. All Bureau of Land Management lands, including those for which no title document as such exists, are covered in the fee-title concept as used in the Act. In response to comments, the definition was clarified by addition of the words "except Indian lands" at the end, since the fee-title provisions could be interpreted in a technical way to include certain Indian lands.

The definition of "Indian tribe," paragraph (f) in both versions, was expanded to include Alaska Native villages or tribes recognized as eligible for services provided by the Bureau of Indian Affairs. Related discussion touching on the definition of "Indian tribe" is found in the discussion of changes to § 1215.6 (new § —.7).

Several comments questioned the lack of mention of several trust territories and the Trust Territory of the Pacific Islands in the definition of "State" in paragraph (h) of both versions. The statutory language was retained unchanged since the requested changes are beyond the reach of rulemaking.

A number of comments asked that definitions be provided for certain terms, such as "bullet," "harm," "destruction," and others. The decision was to allow undefined terms to rest on common meaning and dictionary definitions. The extent of the meaning of "excavate" in these regulations was clarified in §—.5(b)(1) in response to one such comment.

§ 1215.4 Excavation or removal of Archaeological Resources (Renumbered §—.5; Retitled "Permit Requirements and Exceptions").

In response to one comment on clarity of purpose, the title of this section was changed. The reason for its movement in the order of sections is explained below, under discussion of proposed rule §1215.14 (new §—.4).

This section also drew a substantial body of comment, most of it aimed at clarifying relationships between this section and other sections of the regulations.

Paragraph (a) in the proposed rules stated the permit requirement in passive construction, inadvertently departing from clear representation of statutory provisions that any person may apply for a permit, and that the Federal land manager may issue a permit if certain conditions are met. Rewording of the paragraph and reference to conditions guiding the Federal land manager's decision corrected this departure. One commentor noted that the word "wishing" was inappropriate, and the word "proposing" was substituted. Linkage to prohibitions, now in §—.4, was incorporated by adding a restraint

against beginning the proposed work before a permit has been issued.

The exceptions to the permit requirement were the subject of many comments. A new paragraph (b)(1) was added in response to concerns, on the part of representatives of mining, forestry product, and other land-use interests, that the statement in the Purpose section, §1215.1(b) (new §—.1(b)), did not fully exempt persons holding authorizations to use public lands or resources from having also to apply for and receive a permit under these regulations. The new paragraph (b)(1) states that land use authorized under permits, leases, licenses, or entitlements does not also require a permit under these regulations. To answer concerns expressed in several comments, it states that authorized earth-moving excavation does not constitute "excavation and/or removal" as used in these regulations. It concludes by pointing out that this exception does not exempt the Federal land manager from responsibilities under other authorities, and that excavation and/or removal pursuant to those authorities are subject to permit requirements of these regulations.

The relationship of the Act and these regulations, other archaeological preservation authorities, and uses of public lands and resources, requires some explanation. As part of the decisionmaking process prior to authorizing the use of public lands or resources, Federal land managers are to take into account the potential effects of the authorization on significant archaeological and historic properties, under provisions of section 106 of the National Historic Preservation Act. Other statutes, such as the National Environmental Policy Act, similarly may require pre-authorization review of potential environmental effects. In some cases, the Federal land manager may request a land-use applicant to retain the professional services of a qualified consulting archaeologist, historian, or other specialist in order to gather resource inventory data pertaining to the area where the proposed land use would occur. Depending on findings, the Federal land manager may also request that the land-use applicant implement measures to mitigate effects of the proposed land use. This might include the recovery of data through the scientific excavation of archaeological resources.

Consultants employed by the land-use applicant (or authorized land user) to perform inventory or mitigation tasks are required to possess a permit to do this work. This requirement is not new. Until the passage of the Act, such permits were issued under the authority of the American Antiquities Act of 1906 and uniform regulations at 43 CFR Part 3. Permit issuance is now being shifted to the Archaeological Resources Protection Act of 1979 and these regulations as provided in section 4(h) of the Act. As before, qualified persons conducting archaeological work on public lands and Indian lands are required to possess a permit.

Upon satisfaction of environmental review and other pertinent requirements, the Federal land manager may authorize the proposed land use, incorporating any necessary restrictions and stipulations in the authorization instrument. At that point, archaeological resource consideration will normally have been completed, and any further provisions, such as what action to take in the event of discovery of a buried archaeological resource, will be stipulated. At no time is the land-use applicant (or authorized land user), whose purpose is other than the excavation or removal of archaeological resources, required to hold a permit issued under these regulations.

The original paragraph (b)(1), pertaining to an Indian tribe or member thereof excavating or removing any archaeological resource on Indian lands, was moved to become § —.5(b)(3). One change was made in this paragraph. For the proposed rule, the statutory phrase "Indian lands of such Indian tribe" was interpreted to include both tribal lands and allotted lands of tribal members. Therefore, the words "or members of such tribe" were added. However, due to the complexity of this issue, it was decided that any clarification of the applicability of the regulations to allotted lands of tribal members should be addressed in Department of the Interior implementing regulations pursuant to section 10(b) of the Act. Accordingly, the final version adheres to the language of section 4(g)(1) of the Act.

Paragraph (b)(2), excluding from permit requirements the private collection of any rock, coin, bullet, or mineral which is not an archaeological resource, was reworded slightly for clarity. Determinations of whether or not a rock, coin, bullet, or mineral is an archaeological resource depends on § ——.3(a)(4) and other provisions of the definition of "archaeological resource."

Paragraphs (b)(3) and (b)(5) of the proposed rules are now paragraphs (b)(4) and (b)(5); they are slightly reworded, but are unchanged in substance.

Several comments were received on paragraph (b)(4) of the proposed rules, regarding the permit status of employees and agents of the Federal government. The provision in the proposed rules had two intents. The first was to prevent putting Federal land managers in the inappropriate position of being required to issue permits to their own employees, hired under the selection constraints of applicable personnel regulations, before allowing them to perform official duties connected with the Federal land manager's archaeological resource management responsibilities. The second intent was to avoid requiring the Federal land manager to duplicate the assessment of qualifications and the definition of work requirements for persons carrying out the Federal land manager's archaeological resource management responsibilities under a contract or similar instrument. The comments did not negate the desirability of these features, but they did point out that the Act provides no exception for employees and agents to the permit requirement and notification provisions. This is acknowledged to be the case. Persons carrying out official agency duties under the Federal land manager's direction cannot be excepted from the permit requirement. Rather, they are not required to apply for a permit, because their status represents an alternative kind of permit, subject to the same standards as permits issued under this part. This is made more explicit in the revised regulations. The former paragraph under exceptions has been elevated to a separate paragraph (c). Because use of the phrase "employees and agents" might inadvertently restrict the classes of persons who could be called on to perform the Federal land manager's duties, the phrase has been changed to "persons." "Official duties" was tightened to "official agency duties under the Federal land manager's direction." And a proviso was added that prior to authorizing a person to perform official agency duties, the Federal land manager shall document compliance with provisions of those sections of the regulations pertaining to professional qualifications appropriate to the work to be conducted, terms and conditions under which authorized work is to be performed, and notification of Indian tribes when official duties might affect an Indian cultural or religious site, as determined by the Federal land manager.

Paragraph (d), in both the proposed and final regulations, provides for the issuance of a permit in response to a request from the Governor of any State. One commentor asked if it is intended

that a Governor may request a permit, which the Federal land manager would be obligated to issue, for persons who would be found not qualified under normal application procedures. This question addresses the fact that qualifications are left to the Governor's determination under provision of section 4(j) of the Act. This possible outcome was clearly not the intent of the Congress, in light of other provisions within section 4(j) and in the broader context of a statute designed to protect archaeological resources. This provision is interpreted to apply to qualified persons acting on behalf of the State, such as a State Archaeologist, a member of the State Historic Preservation Officer's staff, or staff of a State educational institution such as a university or museum. Several other comments questioned whether permits requested by a Governor could be issued for Indian lands, and whether notification procedures with regard to Indian cultural or religious sites would apply. Permits for Indian lands may be issued in response to a Governor's request. However, such requests are subject to the consent provisions of section 4(g)(2) of the Act. Notification provisions of section 4(c) of the Act also apply. These provisions are incorporated in the regulations in §§ ——.8(a)(5) and —.7 respectively.

The proposed rules included information in § 1215.4(c) that permits other than those required in these regulations might be needed. The several comments addressing this paragraph indicated that more confusion than information was imparted. The proposed paragraph (c) was included to insure public awareness that there are other general and specific authorities answered to by various Federal land managers which might have prohibitions or permit requirements for certain activities or in regard to material items which do not meet the tests for "archaeological resource" under the Act or these regulations. The confusion was compounded by mention that special use permits might be required for non-collecting or non-disturbing activities, which was intended as an example, but which was interpreted in a number of different ways by commentors. The new § —.5(e) is a more straightforward expression of caution to the public to consider consulting with the Federal land manager before assuming that no permit is needed. The terminology which contributed to this confusion has been dropped.

§ 1215.5 Application for Permits (Renumbered § —.6; Retitled "Application for Permits and Information Collection).

This section received relatively little comment, and stands as proposed with only minor rewording. Several of the comments suggested adding specific provisions which are adequately covered in other sections of the regulations. Some recommended useful policy provisions which were considered more appropriate to agency-specific regulations under section 10(b) of the Act than to these uniform regulations. A few comments ran counter to provisions of the Act and were rejected. One comment recommended that "copies of" be inserted ahead of "records, data, photographs, and other documents," and this was done.

§ 1215.6 Consideration of Indian Tribal Religious and Cultural Concerns (Renumbered § —.7; Retitled "Notification to Indian Tribes of Possible Harm to, or Destruction of, Sites on Public Lands Having Religious or Cultural Importance).

This section received the second largest number of comments, and involved more of the task force's review and discussion time than any other section. Several of the proposed provisions proved very controversial, and while commentors' opinions were usually cleanly divided, evaluation was made more difficult by the frequent recognition that both sides in polar arguments had equal strength and validity. Upon review it was concluded that the proposed section had suffered from overspecification, and that the most satisfactory resolution of the consequent problems is to return to language more nearly tracking the Act, leaving the closer specification to agency regulations under section 10(b) of the Act.

Some general discussion of the Act's provisions is necessary before explaining the changes that were made in the final regulations. Section 4(c) of the Act provides that:

> If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, 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.

Section 10(a) of the Act, the statutory basis for these regulations, also specifies that "Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996)," a charge acknowledged in § —.1(a) of these regulations.

The American Indian Religious Freedom Act (AIRFA) established a Federal policy to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians, their right of freedom to believe, express, and exercise their traditional religions. There are fundamental differences between traditional tribal religions and the more common religions of the larger American society. These differences are described in the report submitted by the President to the Congress pursuant to section 2 of AIRFA. One of the most important characteristics of traditional tribal religions is reverence for the natural world, upon which traditional tribal cultures depend. Specific places may have special religious significance for reasons such as the presence of shrines, cemeteries, vision quest sites, or plants and animals that have religious significance. In enacting AIRFA, the Congress recognized that infringements of religious freedom for traditional Native Americans have resulted in part from lack of knowledge and from the insensitive and inflexible enforcement of Federal policies and regulations. Section 4(c) of the Act and the reference to AIRFA are interpreted to seek to preclude lack of knowledge and insensitive policies and regulations with respect to issuance of permits under the Act.

Section —.7 of these regulations establishes a substantially revised process by which Federal land managers will provide the required notification and consider tribal religious and cultural concerns which may be affected by the issuance of permits under these regulations. In carrying out this process Federal land managers may meet with tribal representatives to discuss tribal interests. Opportunities for tribal representatives to present their views orally will generally result in better communication between tribes and Federal land managers than will exclusive reliance on written communication. Any mitigation or avoidance measures which are adopted as a result of such consultation will be incorporated into terms and conditions of permits.

A number of comments addressed the provisions in the proposed paragraph (a)(1) for providing notice to Indian tribes having a reservation within 200 miles of the proposed permit area, suggesting alternatively that the distance was too great, not great

enough, or irrelevant. The intent of the 200-mile radius was to improve the probability that affected tribes would receive notice. However, as comments pointed out, the provision would have been burdensome for Federal land managers to administer, and in some parts of the country it would have resulted in tribes routinely receiving notice for areas in which they have no particular interest, creating a burden also for them. As one commentor noted, in light of the removal of many Indian tribes to areas distant from their aboriginal territories, it might also have led inadvertently to failure to notify those tribes which have interests but presently reside more than 200 miles away, notwithstanding proposed paragraph (a)(2), which would have caused other Indian tribes known or believed to have interests to be notified.

The final regulations do not retain the 200-mile provision. Instead, paragraph (b)(1) requires the Federal land manager to identify those tribes which have aboriginal or historic ties to particular units of Federal land and to initiate communication with those tribes to determine the location and nature of sites of religious or cultural importance on those lands. Once such information is compiled, if an application for a permit is received for an area which a tribe has identified as important, and the Federal land manager determines that activities proposed in the application might affect religious or cultural sites, that tribe would received notice of the application.

Several commentors, including some Indian tribes, expressed support for the development of a national inventory of tribal religious and cultural sites on public lands. Paragraph (a)(5) of the proposed rules provided that any such central listing, which may be established by the Secretary of the Interior under the Act or under other authority, would be consulted for notification purposes. However, it was concluded that these uniform regulations are not the appropriate place to stimulate policy options on the part of any single agency. Moreover, reference to an as yet undeveloped program proved confusing. The provision was therefore dropped from the final regulation.

Several commentors pointed out that there are some cases of conflicts between archaeological interests and Indian tribal religious or cultural interests which are irreconcilable. Particular concern was expressed regarding the treatment of Native American graves, grave offerings, cemeteries, and cremation sites, since practices surrounding disposal of the dead are an integral part of Native American religion. A number of commentors recommended that conflicts between the conduct of archaeology and Native American religious concerns could be reduced by removing graves, human skeletal remains, and related items from the definition of "archaeological resource." This recommendation was rejected for two reasons. First, the Congress explicitly included graves and human skeletal remains in the statutory definition of "archaeological resource," in section 3(1) of the Act. Second, listing items in the definition of "archaeological resource" in these regulations is not done for the purpose of limiting what archaeologists may find to be of interest or the discipline of archaeology may choose as its subject matter. Rather, the definition supplies the basis for enforcing the penalty provisions of the Act. If graves and human skeletal remains were excluded from coverage under the Act, there would be no penalties under the act for their unpermitted disturbance. Because of the notification requirement of § —.7 and its relationship to terms and conditions under § —.9(c) of these regulations, tribal religious and cultural concerns relative to graves and human remains can have an important role in limiting permitted work to that which is not in conflict with religious beliefs or cultural practices.

Several commentors suggested that the Federal land manager should be required to exclude any site of tribal religious or cultural importance from the area embraced by a permit, on the basis of guarantees of religious freedom in the First Amendment and the American Religious Freedom Act. This recommendation is not adopted, since Federal land managers are bound by constitutional standards regardless of the wording of these regulations, and since the application of constitutional standards to specific cases depends on specific fact situations. These regulations set forth a mechanism for Federal land managers to make contact with Indian tribes, notifying them of possible conflicts arising from permit applications and responding to requests for consultation, and to incorporate in terms and conditions of the permit any mitigation or avoidance measures adopted as a result of consultation.

Several comments reflected concern about the confidentiality of information regarding the location of tribal religious and cultural sites. Desecration of sites has occurred in the past, and many Indians view disclosing the location of a site as inviting desecration. In some instances, disclosing the location of a site is prohibited by tribal religious teachings. Under provisions of the Act and these regulations, Indian tribes may find themselves in the uncomfortable position of having to act counter to their preferences or beliefs by confiding locational information to the Federal land manager, aware that the Federal land manager's legal authority to withhold information from the public may be limited, or to remain silent in the expectation of harm or destruction from activity authorized under a permit. The Federal land manager is bound by the Freedom of Information Act to disclose agency records formally requested, unless the information is subject to an exemption. Two exemptions may apply to some Indian religious or cultural sites. If such sites are also archaeological resources, or coincide in location with archaeological resources, the Federal land manager may hold their location and nature confidential under section 9 of the Act (and § —.18 of these regulations). If they are included in or eligible for inclusion in the National Register of Historic Places, the Federal land manager may withhold information under section 304 of the National Historic Preservation Act. But if neither of these exemptions applies, the Federal land manager may be required to disclose such information in response to a Freedom of Information Act request if it is part of the agency's records. Indian tribes must decide for themselves whether and how to participate in Federal land managers' attempts to determine whether lands under their jurisdiction contain sites of religious or cultural concern to Indian tribes.

Notification of Indian tribes depends to some degree on the definition of "Indian tribe" in the Act and the regulations. Several commentors disagreed with the proposed definition, which used Federal recognition as a determining criterion, because the Act did not refer to Federal recognition. The Act defines "Indian tribe," in part, as "any Indian tribe, band, nation, or other organized group or community." This definition leaves uncertainty as to which social groups of American Indian heritage a Federal land manager might determine to constitute an Indian tribe for purposes of notification. In general, "Indian tribe" as used by the Federal government is a term of art which implies a government-to-government relationship. For groups of Indians which have maintained tribal or other identity, but which are not federally recognized as Indian tribes, a process has been established by the Bureau of Indian Affairs by which they may attain

acknowledgment of tribal status. The definition of "Indian tribe" was expanded slightly, to include also Native Alaska villages or tribes eligible to receive services of the Bureau of Indian Affairs, but was otherwise not changed. The response to concerns that are recognized groups would not be included in notifications was to require the Federal land manager to identify and communicate with federally recognized tribes which have aboriginal or historic ties to involved Federal lands, and also to encourage the Federal land manager to identify and communicate with other groups with similar ties, even though they do not have recognition status. Further, unrecognized groups may identify themselves to and initiate communication with the Federal land manager.

Several commentors addressed a related issue, whether tribal governments are always capable of representing the interests of tribal members who practice traditional tribal religions. Factional divisions may exist among some Indian tribes, and some practitioners of traditional religions either may not recognize the legitimacy of tribal governments or may not view their tribal governments as being concerned for traditional religious interests. Notwithstanding these possibilities, the regulations must reflect the requirement of section 4(c) of the Act for the Federal land manager to provide notice to affected tribes. The most practical way for initial contact of this kind is through the government-to-government relationship discussed above, and it is appropriate that notice should be provided to the chief executive officer of the tribal governing body. The issue of adequate representation of religious views is a matter best addressed within the tribes themselves. The final regulations include language in § —.7(a)(1) encouraging Indian tribes to designate a tribal official who will be the focal point for any notification and discussion, and this may be a person well versed in the traditional tribal religion.

A number of comments addressed various parts of the Act and the proposed regulations which might be applied differently on Indian lands than they would be on public lands. For example, one commentor suggested that Indian tribes might be delegated the permitting role of the Federal land manager for archaeological work on Indian reservations. Another questioned the implications and applicability of the savings provisions in section 12 of the Act to Indian lands, and another noted that the Indian landowner consent provisions might be difficult to implement where a permit application involves allotted lands in which numerous persons hold fractional interests. Since these and similar Indian-related issues in need of clarification fall within the implementation responsibilities of the Secretary of the Interior, rather than applying to all Federal land managers, they would best be treated in the regulations to be prepared by the Secretary of the Interior under sections 5 and 10(b) of the Act.

Finally, several commentors suggested that the proposed 45-day period which tribes were to be allowed for responding to notices is too long and would unnecessarily delay issuance of permits. One tribe commented that 45 days is too short a period. In the final regulations the time period is revised to 30 days, which is considered to be a reasonable time period that will not cause unnecessary delay, and will give Indian tribes adequate opportunity to respond that they do have concerns. The specified time period does not require that the Federal land manager issue a permit 30 days after giving notice to an Indian tribe, whether or not concerns are raised, but rather requires that the Federal land manager allow 30 days for Indian tribes to respond. Any further consultation and consideration may occupy additional time without regard to the 30-day response period.

§ 1215.7 Issuance of Permits (Renumbered §—.8).

This section also drew a substantial volume of comments, many of them from archaeologists and others with professional interests in permit issuance under the Act. The section establishes the standards under which Federal land managers will exercise their discretion in determining whether or not to issue permits. It includes provisions for determining applicants' qualifications and the appropriateness of work proposed, and for insuring that collections and records will be cared for properly. It also provides that review of permit applications which overlap jurisdictional boundaries will be coordinated among the Federal land managers involved.

Paragraph (a) was expanded to include reference to the duration of permits. This change is addressed under discussion of proposed § 1215.8.

Paragraph (a)(1) was reworded slightly in response to one comment, changing "theoretical and methodological design" to "archaeological theory and methods," because the intent of the original phrasing was not clear. The revised wording is intended to incorporate all pertinent aspects of the art and science of archaeology. One commentor recommended that a paragraph be added, among minimum qualifications, to specify managerial capabilities not necessarily demonstrated through the proposed provisions. This suggestion was incorporated essentially as submitted, as paragraph (a)(1)(ii).

Several commentors addressed paragraph (a)(1)(i) of the proposed rules, which requires, alternatively, a graduate degree in anthropology or archaeology, or equivalent training and experience. A number of commentors took the viewpoint that historians should be specified as eligible to receive permits to conduct historical archaeological work. It is recognized that not all qualified persons practicing archaeology in the United States possess graduate degrees in anthropology or archaeology, and the provision was intentionally left open for persons who have attained qualifications through training and experience not leading to a graduate degree in anthropology or archaeology. Persons in this category may be historians, or they may represent any of a number of other educational backgrounds. The original provision was left unchanged. It should be noted that not all persons holding graduate degrees in anthropology or archaeology would meet the minimum qualifications for a permit under these regulations.

One comment suggested that a single authority in each State, such as the State Archaeologist, be established as the official who determines that individuals meet qualification requirements. Under section 4 of the Act, the Federal land manager has the responsibility for determining an applicant's qualifications, pursuant to uniform regulations. It would be an inappropriate delegation of authority for any Federal land manager to rely fully on an outside source for such judgments, but it is possible that such consultation could aid the Federal land manager in reaching decisions. The way that the Federal land manager carries out the responsibility to determine qualifications is open in the Act, and it is left open in these regulations.

Paragraph (a)(2), addressing the public interest purpose of proposed work, has been expanded to clarify that the public interest may be met under either of two general categories, scientific or scholarly research such as might be conducted under a research grant, or preservation of archaeological data such as might be required to mitigate the effects of a competing land use. Several comments expressed concern about the

limits of the "management plan" in paragraph (a)(3). One commentor pointed out that while "management plan" is apparently intended in a general sense, the phrase has different specific meanings among different federal agencies. The provision was expanded to make it clear that the phrase is not intended to apply in any narrow sense that would hamper the Federal land manager from following existing management commitments. A new paragraph (a)(4) provides that compliance with historic preservation law satisfies the requirements of paragraphs (a)(2) and (a)(3).

It should be noted that the language in paragraph (a)(5) differs somewhat from the language of the Act in section 4(g)(2), regarding Indian landowner consent. The wording used was suggested by the Bureau of Indian Affairs and the Office of the Solicitor, Department of the Interior, and appeared in the proposed rule. The reason for changing the statutory language is that allotted Indian land is, in most instances, subject to the regulatory authority of an Indian tribal government. In order to protect the interests of both Indian landowners and tribal governments, these regulations provide clear guidance that the consent of both the Indian landowner(s) and the tribal government having jurisdiction over such allotted lands will be required. In many cases in which there is not tribal government jurisdiction over specific allotted lands, only the consent of the Indian landowner(s) will be required. Further clarification of this issue will be provided in regulations issued by the Secretary of the Interior pursuant to section 10(b) of the Act.

A few comments were received on proposed paragraph (a)(6), which required certification that materials and records would be turned over to the repository not later than the date of submission of the final report to the Federal land manager. Several commentors suggested that a period of 90 days be allowed, which was done in the new paragraph (a)(7). One recommended that the regulations recognize that not all specialized samples should be kept at the same repository, and that some samples are destroyed or altered during analysis (such as pollen, dendrochronology, radiocarbon, and thermoluminescence samples). The validity of this recommendation is acknowledged, and the new paragraph (a)(6) has been changed slightly to allow that more than one repository might be proposed, substituting "any" for "the." This ties indirectly with a new provision in §—.13(d), mentioned below under discussion of proposed § 1215.13. Records accompanying the samples and other materials can satisfactorily account for destroyed or altered samples. Also, there is nothing in these regulations to bar Federal land managers and permittees from reaching agreement on special exceptions to the general provisions regarding preservation of materials and data.

Several commentors pointed out inappropriate differences between proposed paragraphs (a)(6)(i) and (ii). The differences were due to a proofreading oversight and have been corrected in the new paragraphs (a)(7)(i) and (ii).

Paragraph (b) was not clear to several commentors. The intent of the provision is to ensure that when permits would be required from more than one Federal land manager, the resulting permits would not be unnecessarily dissimilar. As a hypothetical example, an archaeologist might propose to carry out settlement and subsistence research by conducting survey and test excavations throughout the watershed area of a small tributary to a major river in the western United States, wherein the lower elevations are managed by one agency, and the higher ground is managed by another. The applicant would submit applications for two permits, making each agency aware of the other's involvement. In accordance with the reworded provision of paragraph (b), the Federal land managers involved would be required to coordinate the review and evaluation of the applications and the issuance of the permits. Because of the coordination, the terms and conditions of the permits should be similar or identical. While it is not provided for in these regulations, it might be within the discretionary latitude of the Federal land managers to agree to combine two (or more) permits which might be issued under such circumstances into a single permit issued jointly.

Several commentors suggested that the time between receipt of an application and a decision should be governed by a 30- or 60-day decision requirement placed on the Federal land manager. No time limits were imposed in these uniform regulations, because of the need to accommodate internal management requirements which vary from agency to agency. In addition, it is necessary to allow adequate time for Federal land managers to consider Indian tribal concerns pursuant to §—.7, when applicable. However, timeliness of action in response to permit applications is highly important, and Federal land managers should ensure that review and evaluation time are held to the minimum needed.

§ 1215.8 Time Limits of Permits—Deleted.

This section proposed that permits could be issued for up to a 3-year period, could be extended for up to 4 months, could be renewed, and would be reviewed annually if issued for a period greater than 1 year. Because specific time limits are most appropriately determined on a case by case basis, the maximum limit was changed to "a specified period of time appropriate to the work to be conducted" and inserted in §—.8(a). An extension provision was included as §—.9(f), and an annual review provision as §—.9(g). There is no limit on the number of times a permit can be extended, and thus there is no provision for renewal.

§ 1215.9 Terms and Conditions of Permits (Renumbered §—.9).

This section was the subject of relatively few comments, of which nearly half pertained to accounting for Indian concerns. Paragraph (c) dealt with terms and conditions requested by Indian tribes or Indian landowners for work on Indian lands. In response to comments, the paragraph was expanded to apply also to public lands, tying in with the consultation process under §—.7.

One comment recommended insertion of "and required" in paragraph (a)(1), which was done. One suggested that the type of security referenced in paragraph (d) should be specified. The permissive wording of paragraph (d), which would have allowed the Federal land manager to require security, was not drawn from provisions of the Act. Also, circumstances which might necessitate the posting of bond or other security would be rare. Although the provision was deleted from the final regulations, its deletion does not prevent Federal land managers from requiring security.

One commentor suggested new language to specify that individuals named in a permit would not be released from responsibility under a permit in the event of reassignment or separation until all outstanding obligations had been satisfied. A new paragraph (e) was inserted in response to the suggestion, with one important change. In some instances the individuals named in a permit, who are responsible for conducting the work and/or carrying out the permit's terms and conditions, are working on behalf of an institutional or corporate permittee. In such a case, it is the permittee, not named individuals, that is responsible to

the Federal land manager for meeting permit requirements. Accordingly, paragraph (e) requires that the permittee, rather than named individuals, not be released from terms and conditions until obligations have been satisfied, whether or not the permit remains in force. Roles of individuals named in a permit are integral parts of the terms and conditions of a permit, and any change in their involvement in the work authorized, without the Federal land manager's prior approval, might warrant suspension or revocation of the permit.

§ 1215.10 Suspension, Revocation and Termination of Permits (Renumbered §—.10; retitled "Suspension and revocation of permits").

Few comments were offered on this section. The section was restructured to clarify the "program purposes" provision in the original version, and to adhere more closely to the statutory language in section 4(f) of the Act.

§ 1215.11 Compliance With Regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) (Renumbered §—.12; Retitled "Relationship to Section 106 of the National Historic Preservation Act").

The order of this section and the section on appeals was reversed, to move the latter into a logically more appropriate proximity to the sections addressed. This section was retitled, since it is not within the scope of these regulations to require compliance with any statute other than the Act or with regulations other than pertaining to the Act.

Section 4(i) of the Act provides: "Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966." This simple statement has occasioned wide misunderstanding and overextension. Some commentors believed that issuance of a permit under this part would eliminate the requirement for section 106 compliance with respect to all land uses associated with the permit. Others felt that eliminating section 106 compliance in any way would be inappropriate. Some explanation is in order.

Permits under this part will be issued under essentially two sets of circumstances. The first is where the applicant proposes to conduct archaeological investigations for purely academic or research purposes. Under section 4(i) of the Act, issuance of a permit for this purpose will not require section 106 compliance. Since there is nothing in the Act or its legislative history which indicates a different intent, it is beyond the scope of this rulemaking to change the plain meaning of section 4(i).

The second set of circumstances under which permits may be issued pursuant to this part relates to archaeological work required by the Federal land manager under other resource protection statutes (see related discussion under proposed § 1215.14, below). On occasion, archaeological investigations may be required as part of the section 106 compliance process carried out by the Federal land manager prior to authorizing a land-use request. Such investigations will require a permit under this part. Issuance of the permit itself does not and should not require duplication of section 106 compliance procedures. However, the mere fact that a permit will be required as part of the process does not affect the applicability of section 106 to the Federal land manager's proposed authorization of the land use.

As a hypothetical example, utility company might apply for the grant of a right-of-way across public lands to construct an electrical power distribution line. Lacking availability of archaeological staff to respond in a timely manner, the Federal land manager might request the company to provide information about the presence or absence and significance of archaeological resources within the area of the proposed construction project. The company would then retain an archaeological consultant, who would apply to the Federal land manager for a permit, under the Act and these regulations, to conduct archaeological survey and test excavations in the project area. If the consultant met qualification requirements, the Federal land manager would issue a permit without considering this action, in and of itself, to be subject to section 106 compliance procedures. The consultant would conduct the permitted work and submit a report to the company, which would then submit the report to the Federal land manager as requested. If the report were to show that archaeological resources are present in the proposed project area, the Federal land manager would consider the applicability of section 106 before reaching a decision to authorize the right-of-way. The issuance of a permit under the Act and these regulations would be an action substantially independent from the larger requirement of section 106 compliance with regard to Federal authorization of the proposed right-of-way.

Alternatively, had the Federal land manager already possessed sufficient information, so that no request to the company would have been necessary, and had that information shown that an archaeological property, eligible for the National Register of Historic Places, would be intersected by the proposed right-of-way, there would be no question about the need to comply with section 106. Whether or not a permit is issued under the Act and these regulations, the Federal land manager's responsibility to determine the effects of a proposed undertaking on eligible or listed National Register properties remains unchanged.

§ 1215.12 Appeals Relating to Permits (Renumbered §—.11).

Very few comments addressed this section. It was revised slightly for clarity. Since many agencies already have appeal procedures, no attempt was made to establish standard appeal procedures in these uniform regulations.

§ 1215.13 Custody of Archaeological Resources (Renumbered §—.13).

Among the relatively few comments on this section several pertained to tightening or loosening the ownership provisions. Paragraphs (a) and (b) have an information function; ownership is not subject to regulation under the Act.

A new paragraph (d) was added to give Federal land managers the latitude to provide for exchange of materials among appropriate repositories until such time as the Secretary of the Interior may promulgate the regulations provided for in section 5 of the Act. This ties in with provisions mentioned above, under discussion of proposed § 1215.7, for allowing materials to be housed in more than one repository.

One commentor, representing a State museum, saw a need to protect reputable repositories from committing a technical violation of section 6 of the Act, through "receiving" archaeological resources which might have been removed illegally from public lands or Indian lands. Under the Act, receiving archaeological resources, removed from public lands or Indian lands in violation of the permit requirement in the Act or these regulations, is itself a violation. However, a university, museum, or other institution should be free to receive such resources, in the same sense of taking temporary custody on behalf of a Federal land manager or Indian tribe, so long as the appropriate Federal land manager or Indian tribe is given prompt notification. Such notification would be evidence of a lack of intent to violate the Act, thereby eliminating an essential element of a criminal violation. And although intent need not be established

for imposing civil penalties, Federal land managers would not be expected to seek civil penalties under such circumstances. Nevertheless, no provision has been added to extend the requested protection to museums. First, the regulations do not apply to criminal prosecutions; and second, with respect to civil penalties, it was deemed unwise to waive civil penalties by regulation for all persons who might return archaeological resources illegally removed or excavated from public lands or Indian lands, and unfair to waive penalties for certain institutions only. Such matters are best left to discretion, to be handled on a case-by-case basis.

§ 1215.14 Prohibited Acts (Renumbered §—.4).

In the proposed rules, this section included all prohibitions from section 6 of the Act. The final regulations include only those prohibitions relating to permit requirements or for which civil penalties are provided in these regulations. The application of civil penalties to persons engaged in trafficking in archaeological resources in interstate or foreign commerce in violation of State or local law is not practical or appropriate due to the manner in which civil penalties must be assessed. Consequently, the prohibition against such trafficking, proposed paragraph (c), was deleted. The section was moved to occupy a new place ahead of the permit sections, since its prohibitions are the basis for the permit sections.

§ 1215.15 Criminal Penalties—Deleted.

Because criminal prosecution will be pursued independently from these regulations, the criminal penalties section was dropped. The Act should be consulted for information on criminal penalties which the courts may impose.

§ 1215.16 Determination of Archaeological or Commercial Value and Cost of Restoration and Repair (Renumbered §—.14).

Under both the criminal penalty and civil penalty sections of the Act, sections 6 and 7, penalty amounts are to be established in reference to two factors, the archaeological and commercial value of the archaeological resources involved in the violation and costs of restoration and repair. Several commentors were critical of the idea of using commercial value, since the importance of fair market value in the assessment of penalty amounts tends to lend a false legitimacy to the marketing of archaeological resources, and might promote illicit trade. However, through the use of commercial value to set penalty amounts, persons who traffic in archaeological resources will find that their own price schedules are being used against them. In the long run, high prices translated into fines may be instrumental in discouraging illegal excavation, removal, and commerce. It is also important to have more than one measure for setting penalty amounts. Archaeological resources with very high dollar value might be removed under some circumstances without doing a great deal of damage to archaeological value, while conversely, extreme amounts of damage might be done to archaeological value for the sake of removing items which have very little market value. Archaeological value and commercial value as used in the Act and these regulations are enforcement tools; they are independent from concepts about the intrinsic worth of archaeological resources, whether those be based on scientific detachment, awe, aesthetics, or profit motive.

One commentor suggested application of cost-benefit analysis to costs of restoration and repair. This suggestion is inappropriate to determining a penalty amount. Such analysis might be used for management purposes, to help reach a decision about whether or not to proceed with restoration and repair, but to apply it to penalties could result in the least fine for the most destructive violation.

One comment proposed including the costs of reinterment of human remains according to tribal customs as part of the cost of restoration and repair. This proposal was incorporated in paragraph (c)(7).

§ 1215.17 Assessment of Civil Penalties (Renumbered §—.15).

Several changes were made to this section in response to comments and for purposes of clarification and simplification.

The proposed regulations provided for three notices, a "notice of violation" (§ 1215.17(b)), a "notice of assessment" (§ 1215.17(c)), and a "notice of penalty" (§ 1215.17(g)). The first two, the notice of violation and notice of assessment, were to have been served either separately or concurrently. The purpose for proposing these two distinct notices was twofold. First, the notice of violation was viewed as an educational tool. The proposed regulations called for its issuance in "minor" offenses where the Federal land manager had already determined not to assess a civil penalty. Comments focusing on the "minor" offenses led to the recognition that issuance of a notice of violation under the civil penalty provisions, with no intention to follow through with civil penalty proceedings, was inappropriate. If it is appropriate to use the civil penalty provisions in a non-punitive way, the proper procedure is to remit (i.e., cancel) or mitigate (i.e., lessen) the penalty assessed, as provided in the Act. References to remitting the penalty have therefore been inserted along with references to mitigation, and notices of violation in these final regulations are to be used only to initiate civil penalty proceedings.

The second purpose to be served by the two notices was to provide the Federal land manager a vehicle for serving a notice of violation before determination of the damages associated with the violation. However, the option of serving a notice of violation can be preserved by providing for a delayed notice of the proposed penalty amount, if necessary, without reference to a separate type of notice. Accordingly, the former notice of violation and notice of assessment have been combined into one notice, a "notice of violation," with an optional provision for a deferred notice of a proposed penalty amount. The former notice of penalty has been redesignated as the "notice of assessment."

The regulations were also restructured to de-emphasize the importance of the maximum penalty amount allowable. Using this amount to establish the initial proposed penalty amount in every violation was viewed as too inflexible and potentially too onerous on persons served with a notice of violation. The Federal land manager is therefore no longer required to determine the maximum penalty amount allowable for each violation, although care must be taken that no penalty assessed exceeds the statutory maximum.

§ 1215.18 Civil Penalty Amounts (Renumbered § —.16).

In keeping with the decision to place less emphasis on the maximum penalty amount, the requirement to determine the amount was removed from this section. The maximum penalty amount is simply stated in paragraph (a), and paragraph (b) was relabeled "Determination of penalty amount, mitigation, and remission."

Among the several comments addressed to this section, a few suggested that there be no mitigation or remission of penalty amounts without the consent of the affected Indian tribe, where the violation occurred on Indian lands or affected a tribal religious or cultural site on public lands. This suggestion was not accepted because the Act charges the Federal land manager with determining civil penalty amounts. However, the final regulations

include new paragraphs (b)(2) and (b)(3) which provide for consultation with affected Indian tribes before making a decision to mitigate or remit a penalty, in order to enable the Federal land manager to achieve a more just result.

One comment recommended that tribal religious or cultural values which can be quantified by the affected Indian tribe should be considered in setting penalty amounts. This recommendation was not incorporated in the regulations, since it is but one potential example of "other factors" the Federal land manager is directed to take into account under Section 7(a)(2) of the Act. It should be noted that there may be opportunity for an Indian tribe to make damages known through provisions in (§ —.16(b) (2) and (3) of these regulations.

One commentor suggested that a uniform fixed schedule of fines should be established to apply to most civil violations, not just minor offenses. Fines and applicability criteria would be based on broad and easily determined categories of damage. This would simplify the task of the Federal land manager, and would place the burden on the violator to demonstrate that the statutory limits of "fair market value of resources destroyed or not recovered" and "costs of restoration and repair" are less than the proposed penalty. While this suggestion has merit, establishment of fixed penalty amounts in accordance with the statutory criteria could be best accomplished by agency regulations issued pursuant to section 10(b) of the Act or by other administrative action, after some experience in assessing civil penalties under the Act has been acquired.

A new criterion, § —.16(b)(1)(vi), was added to allow reducing a proposed penalty determined to be excessive under the circumstances.

§ 1215.19 Forfeiture and Rewards (Renumbered § —.17; Retitled "Other Penalties and Rewards").

There were several comments offering suggestions for clarifying forfeiture provisions. These are statutory provisions, and were included for information only. In order to allow the public to be aware that other penalties besides those detailed in these regulations might apply, the revised section includes reference to the sections of the Act pertaining to criminal prohibitions, criminal penalties, and forfeiture provisions. Forfeiture regulations may be issued by individual agencies pursuant to section 10(b) of the Act.

The rewards provisions remain essentially the same, with the addition of a provision that persons who provide information in connection with having a civil penalty amount mitigated under (§ —.17(b)(3)(iii) shall not be eligible to receive a reward.

§ 1215.20 Confidentiality of Archaeological Resource Information (Renumbered § —.18).

This section closely follows the wording of section 9 of the Act. Several comments suggested changes which would have departed from statutory provisions. One commentor recommended that the wording be restated in a positive form, so as to encourage dissemination of knowledge, increase public appreciation, and promote a public conservation ethic. This is a very worthwhile suggestion, but it pertains more to the charge of the Secretary of the Interior under section 11 of the Act than to the protection of sensitive information. With some minor corrections, the section remains essentially as proposed.

§ 1215.21 (Reserved)—Deleted.

§ 1215.22 Report (Renumbered § —.19).

This section was left exactly as proposed. There were no comments.

§ 1215.23 Interpretive Rulings—Deleted.

The proposed section stated: "Each Federal land manager may publish from time to time, as an appendix to this part, statements of policy and legal opinions relating to the interpretation, enforcement, and implementation of the Act and this part." The section was deleted, since individual agency statements of policy or legal interpretation would not be binding on other agencies, and therefore should not be codified with these uniform regulations (see 44 U.S.C. 1510).

The Issue of Metal Detector Use

At the public hearings in March and April 1980 and during the commenting period, concern was expressed that the use of metal detectors and associated collector-hobbyist activities on public lands and Indian lands could be a major enforcement target of the Act and the regulations. Nothing in the Act or in these regulations addresses the use of metal detectors on public lands or Indian lands. In considering the legislation, Senator Dale Bumpers stated in the Congressional Record, "This legislation does not affect the use of metal detectors on public lands. If it is legal to use metal detectors currently, this act does not diminish that use. If it is illegal to use metal detectors, as in national parks, this act does not allow such use" (125 CR S14722, October 17, 1979). The same is true of these regulations. However, while the use of metal detectors is neither authorized nor prohibited by the Act and these regulations, unauthorized excavation of archaeological resources discovered while using metal detectors is prohibited on public lands and Indian lands. Also, it is important for users of metal detectors and others to be aware that there are other land management regulations and land use restrictions which govern activities on public lands and Indian lands.

Hobby collecting in various forms is engaged in by a large number of responsible persons, and such hobbyists are encouraged to work together with Federal land managers to deter resource destruction. To protect themselves from unintentionally violating any law or regulations, persons wanting to use public lands and Indian lands should obtain information regarding permissible activities from the Federal land manager's local representative. To the small percentage of collectors, treasure hunters, and metal detector users who destroy archaeological resources in violation of prohibitions, the Act and these regulations prescribe heavy criminal and civil penalties.

Authorship

These uniform rules were prepared by an interagency rulemaking task force composed of representatives of the Department of the Interior (Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, National Park Service, Office of the Solicitor); Department of Agriculture (Forest Service, Office of the Secretary); Department of Defense (Departments of Army, Navy, Air Force); and the Tennessee Valley Authority.

Compliance With Other Authorities

Environmental Effects

The Secretary of the Interior has prepared an Environmental Assessment on this rulemaking and has made a Finding of No Significant Impact pursuant to regulations of the Council on Environmental Quality implementing the National Environmental Policy Act (42 U.S.C. 4332). Copies of the Environmental Assessment and Finding of No Significant Impact are available for public review in the National Park Service's Washington Office.

Economic Impact

The Secretary of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193,

February 17, 1981), and would not have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (5 W.S.C. 601 *et seq.*). These determinations are based on findings that the rulemaking is primarily directed toward the management of Federal resources, with negligible or no impact on the general public, and with cumulative economic impact of less than $100,000,000 per year.

Information Collection

The Office of Management and Budget has given approval for the information collection requirements in section—.6 of these regulations (Application for permits and information collection") pursuant to the Paperwork Reduction Act (44 U.S.C. 3507). The clearance number is 1024–0037.

Regulations Promulgation

The Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority are promulgating identical regulations on protection of archaeological resources and are codifying these regulations in their respective titles of the Code of Federal Regulations. Since the regulations are identical, the text of the regulations is set out only once at the end of this document. The part heading, table of contents, and authority citation for the regulations as they will appear in each CFR title precede the text of the regulations.

Approval

These regulations have been approved by the Secretary of Agriculture, the Secretary of Defense, the Secretary of Interior, and the Chairman of the Board of the Tennessee Valley Authority.

Department of the Interior (43 CFR Part 7)

List of Subjects in 43 CFR Part 7

Historic preservation, Monuments and memorials, Antiquities, Archaeology.

Title 43 of the Code of Federal Regulations is amended by adding Part 7 to read as follows:

PART 7—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

Sec.

Authority: Pub. L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa–*11*) (Sec. 10(a)). Related authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

(OMB Control No.: 1024–0037)

J. Craig Potter,

Acting Assistant Secretary, Fish and Wildlife and Parks.

Department of Agriculture, Forest Service (36 CFR Part 296)

List of Subjects in 36 CFR Part 296

Historic preservation, Monuments and memorials, Antiquities, Archaeology.

Title 36 of the Code of Federal Regulations is amended by adding Part 296 to read as follows:

PART 296—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

Sec.

Authority: Pub. L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa–11)(Sec. 10(a).) Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

(OMB Control No.: 1024–0037)

Dated: October 24, 1983.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

Department of Defense (32 CFR Part 229)

List of Subjects in 32 CFR Part 229

Historic preservation, Monuments and memorials, Antiquities, Archaeology.

Title 32 of the Code of Federal Regulations is amended by adding Part 229 to read as follows:

PART 229—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

Sec.

Authority: Pub. L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa–*11*). (Sec. 10(a)). Related authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

(OMB Control No.: 1024–0037)

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

Tennessee Valley Authority (18 CFR Part 1312)

List of Subjects in 18 CFR Part 1312

Historic preservation, Monuments and memorials, Antiquities, Archaeology.

Title 18 of the Code of Federal Regulations is amended by adding Part 1312 to read as follows:

PART 1312—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

Sec.

Authority: Pub. L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa-11) (Sec. 10(a)). Related authority Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

(OMB Control No.: 1024–0037)

Dated: December 15, 1983.

C. H. Dean, Jr.

Chairman.

§—.1 Purpose.

(a) The regulations in this part 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 all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. These regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 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 when disclosure would threaten the 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.

§—.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 10(a) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii), which requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority jointly develop uniform rules and regulations for carrying out the purposes of the Act.

(b) In addition to the regulations in this part, 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.

§—.3 Definitions.

As used for purposes of this part:

(a) "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 followiing 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, ivery, 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;

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

(x) Any portion or piece of any of the foregoing.

(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 subparagraph shall be documented. Such determination shall in no way affect the Federal land manager's obligations under other applicable laws or regulations.

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

(c) "Federal land manager" means:

(1) With respect to any public lands, the secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands, including persons to whom such management authority has been officially delegated;

(2) In the case of Indian lands, or any public lands with respects to which no department, agency or instrumentality has primary management authority, such term means the Secretary of the Interior;

(3) The Secretary of the Interior, when the head of any other agency or instrumentality has, pursuant to section 3(2) of the Act and with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.

(d) "Public lands" means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, except lands on the Outer Continental Shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

(e) "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) "Indian tribe" as defined in the Act means any Indian tribe, band, nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the **Federal Register** by the Secretary of the Interior pursuant to 25 CFR Part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

(g) "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.

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

(i) "Act" means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–*11*.).

§ —.4 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § —.6 or exempted by § —.5(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.

§ —.5 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands or Indian 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 § —.6(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the public 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 any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal or archaeological resources on Indian lands, 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 §—.6. However, the Federal land manager shall insure that provisions of §—.8 and

§—.9 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 under §—.7.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of §—.5(b)(5), §—.7, §—.8(a)(3), (4), (5), (6), and (7), §—.9, §—.10, §—.12, and §—.12(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 public lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands or Indian lands any activities 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.

§—.8 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 public lands or Indian 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, locational 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 §—.8(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 public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian 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, or 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 information collection requirement contained in § —.8 of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0037. The purpose of the information collection 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 public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ —.7 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 a 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 § —.9.

(4) When the Federal land manager detemines that a permit applied for under this part must be issued immediately because of an imminent threat of 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.

§ —.8 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 theses, 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 a permit; and

(v) Applicants proposing to engage in historical archaeology should have had 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 public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the public lands or Indian 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) shall be deeded satisfied by the prior approval:

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(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 where the permit is for the excavation and/or removal of archaeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(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 manager shall coordinate the review and evaluation of applications and the issuance of permits.

§—.9 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 insitutions 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 Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on public lands shall include such terms and conditions as may have been developed pursuant to §—.7.

(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.

§—.10 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 §—.4. The Federal land manager shall provide written notice to the permittee of the 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 §—.15 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 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.

§—.11 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.

§—.12 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, 1966 (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.

§—.13 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations providing for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

(d) In the absence of regulations referenced in paragraph (c) of this section, the Federal land manager may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Federal land manager.

§—.14 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 §—.4 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 obtainable 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 §—.4 of this part or conditions of a permit issued pursuant to this part shall be 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 damaged as a result of a violation of 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 religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.

(8) Preparation of reports relating to any of the above activities.

§—.15 Assessment of civil penalties.

(a) The Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in §—.4 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 a 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 of 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 §—.16.

(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 in the notice of assessment:

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

(2) The basis in §—.16 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 or 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 a 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 United States 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 United States 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.

§—.16 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 §—.4 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 §—.4 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 the 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 archaeological resources removed from public lands or Indian 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 public lands or Indian 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) When the penalty is for a violation on Indian lands, the Federal land manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Federal land manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

§ —.17 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 local government who furnish information or render service in the performance of their official duties, and persons who have provided information under — .16(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

§ —.18 Confidentiality or archaeological resource information.

(a) 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 provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) 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.

(2) 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:

(i) The specific archaeological resource or area about which information is sought;

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

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

§ —.19 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.

[FR Doc. 84-368 Filed 1-5-84; 8:45 am]

BILLING CODES 4310-70-M, 3410-11, 3810-01, 8120-01-M

MEMORANDUM OF AGREEMENT

BETWEEN

TENNESSEE VALLEY AUTHORITY

AND

UNITED STATES DEPARTMENT OF THE INTERIOR

FOR IMPLEMENTING ADMINISTRATIVE HEARING PROCEDURES UNDER

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979, AS AMENDED

THIS MEMORANDUM OF AGREEMENT (MOA), made and entered into this 3rd day of May, 1990, by and between the TENNESSEE VALLEY AUTHORITY (TVA) and the UNITED STATES DEPARTMENT OF THE INTERIOR (DOI);

W I T N E S S E T H:

WHEREAS under Section 7 of the Archaeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. § 470ff, any person assessed a civil penalty for violation of any prohibition contained in an applicable regulation or permit issued under ARPA must be given notice and opportunity for a hearing with respect to such violation; and

WHEREAS under the regulations of the respective parties to this MOA (43 C.F.R. § 7.37 for DOI and 18 C.F.R. § 1312.15(g) for TVA), any person served with a notice of civil penalty assessment may file a written request for a hearing with the adjudicatory body specified in the notice, which hearings are to be held in accordance with the requirements of 5 U.S.C. § 554; and

WHEREAS Section 3(2) of ARPA, 16 U.S.C. § 470bb(2), authorizes the head of any agency to delegate to the Secretary of the Interior such agency head's responsibilities, in whole or in part, under ARPA; and

WHEREAS by this MOA, TVA desires to delegate to DOI the responsibility of providing a hearing for eligible persons requesting one under 18 C.F.R. § 1312.15(g); and

WHEREAS DOI possesses sufficient administrative law judges to preside at such hearings on behalf of TVA and is willing to consent to the proposed delegation; and

WHEREAS the parties desire to enter into this MOA solely for the purpose of providing for the use by TVA of DOI's administrative law judges in the event that a person served by TVA with a notice of civil penalty assessment files a written request for a hearing; and

WHEREAS by this MOA, the parties desire to define their respective responsibilities in making the delegation and conducting the hearings;

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. TVA hereby delegates to the Secretary of the Interior, subject to the terms and conditions contained herein, the authority to conduct administrative hearings, whenever requested by persons who have been assessed a civil penalty by TVA and who are eligible to request such a hearing, and to issue decisions in such hearings, as provided for in 18 C.F.R. § 1312.15(g) and 43 C.F.R. § 7.15(g).

2. The administrative hearings shall be conducted in accordance with DOI's regulations at 43 C.F.R. § 7.37, with DOI's administrative law judges presiding.

3. DOI shall notify TVA in writing when a request for an administrative hearing of a TVA notice of assessment has been made within ten (10) days after receipt of such request.

4. Notwithstanding the provisions of 43 C.F.R. § 7.37(d)(2), TVA's Office of the General Counsel shall represent TVA in all administrative hearing proceedings, and service upon TVA shall be made to the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499.

5. TVA shall reimburse the Office of Hearings and Appeals in DOI for the total cost of each hearing conducted for TVA hereunder. The terms for such reimbursement shall be established by means of a reimbursable support agreement between TVA and DOI in accordance with 31 U.S.C. § 1535.

6. All civil penalties assessed by TVA shall be paid only to TVA and used by TVA in accordance with Section 26 of the Tennessee Valley Authority Act of 1933, as amended, 16 U.S.C. § 831y.

7. Nothing contained herein shall affect the authority of TVA to, in its sole discretion, remit or mitigate civil penalties or otherwise resolve or settle appeals prior to the final decision of the administrative law judge. All decisions of the administrative law judge issued in hearings held hereunder shall be considered the decision of TVA.

8. In all matters related to the administration of this MOA, the Vice President, River Basin Operations, 601 West Summit Hill Drive, OCH 1E 61E-K, Knoxville, Tennessee 37902, shall act for TVA and the Chief Administrative Law Judge, United States Department of the Interior, Office of Hearings and Appeals, Hearings Division, 4015 Wilson Boulevard, Arlington, Virginia 22203, shall act for DOI. All written notices required to be sent hereunder shall be sent to the representatives of the parties at the addresses listed in this section.

9. This MOA shall remain in effect until terminated by either party upon thirty (30) days' written notice to the other.

10. Notwithstanding the termination of this MOA as provided in section 9 herein, DOI shall continue to provide for administrative hearings in all cases where a request for hearing was made prior to the termination date, unless otherwise agreed by the parties.

11. Nothing contained herein is a waiver by TVA of any defenses that it may have with respect to any claim or in any proceeding arising out of or in any way connected with any decision issued by any administrative law judge on behalf of TVA pursuant to this MOA. Without limitation by reason of specification, nothing contained herein is, or shall be presumed or construed to be, a submission by TVA or by the United States to subject matter or personal jurisdiction with respect to any proceeding under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, brought against TVA or the United States on account of any claim arising from the activities of TVA. 28 U.S.C. § 2680(l).

IN WITNESS WHEREOF, the parties hereto have caused this MOA to be executed by their duly authorized representatives as of the day and year first written above.

UNITED STATES DEPARTMENT OF THE INTERIOR

By _____
Secretary

TENNESSEE VALLEY AUTHORITY

By _____
Executive Vice President and
Chief Operating Officer

OGC

Approved by TVA
Board of Directors

FEB 22 1990

SWK

ASSISTANT SECRETARY

NOTICE OF VIOLATION
ARCHAEOLOGICAL RESOURCES PROTECTION ACT (ARPA)
TENNESSEE VALLEY AUTHORITY

NOV No.

NAME	ID #	BOAT OR VEHICLE ID #	DATE
HOME ADDRESS	CITY	STATE / ZIP	
BUSINESS ADDRESS	CITY	STATE / ZIP	

HOME PHONE *(Include Area Code)*	BUSINESS PHONE *(Include Area Code)*	D.O.B.	AGE	SEX	RACE

The following facts are believed to show that you have committed a violation of TVA's regulations implementing ARPA, 18 C.F.R. part 1312:

_____

_____

_____

_____

This conduct constitutes a violation of 18 C.F.R. § 1312.4, which prohibits excavating, removing, damaging, or otherwise altering or defacing any archaeological resource located on public lands without a permit or selling, purchasing, exchanging, transporting, or receiving any archaeological resource that has been excavated or removed from public lands without a permit. Notice of a proposed civil penalty amount will be served by TVA after the damages associated with the alleged violation have been ascertained. You have the right to file a petition for relief pursuant to 18 C.F.R. § 1312.15(d), or to await TVA's notice of assessment, and to request a hearing in accordance with 18 C.F.R. § 1312.15(g). You also have the right to seek judicial review of any final administrative decision assessing a civil penalty. In addition to civil penalties, you may be subject to criminal prosecution.

_____ _____
Name *Title*

I hereby sign this notice with the understanding that my signature is not an admission of guilt or liability, but only to certify that I received a copy of this notice.

Signed _____ Date _____
Recipient

Inquires regarding this notice of violation may be addressed to Tennessee Valley Authority by calling toll free 1-800-824-3861.
See reverse side of this form for additional information.

Distribution of copies: 1. Recipient 2. Issuing Officer 3. PSS Supervisor/Case File 4. Cultural Resources

TVA 30534 (RD-RBO 3-93)

NOTICE OF VIOLATION

18 C.F.R. § 1312 – PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

§ 1312.4 Prohibited acts

(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § 1312.8 or exempted by § 1312.5 (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.

§ 1312.15 Assessment of Civil Penalties

(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 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.

(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, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 calendar 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 or any offer of mitigation or remission made by the federal land manager.

ARCHEOLOGY

definition

The SCIENTIFIC RECONSTRUCTION of PAST HUMAN BEHAVIOR from MATERIAL REMAINS and their CONTEXT.

key terms

1. RECONSTRUCTION - "study"

2. PAST -

   Two periods of study -
   prehistoric: 40,000/20,000 B.C. - 1500 A.D.
   historic: 1500 A.D. - 1890/1940 A.D.

3. HUMAN BEHAVIOR -

   Shared group behavior necessary for the survival of humans in their environment (CULTURE).

4. MATERIAL REMAINS -

   Site: A place which has physical evidence of shared group behavior; purposeful behavior rather than accidental.

   Artifact: Any material object made or altered by humans.

   Feature: A non-portable artifact.

   Specimen: A non-artifactual, material object which provides evidence relevant to the study of past human behavior.

ARCHEOLOGY

definition cont.

5. CONTEXT -

The spatial arrangement, either horizontally or vertically, of sites, artifacts, features, and specimens.

Context is extremely important because most past human behavior is reflected not by material objects themselves, but by how there are situated in relation to one another.

Horizontal Context: The arrangement of objects on one surface or plane.

Vertical Context: The arrangement of objects in buried surfaces superimposed in layers one over another (stratigraphy).

ARCHAEOLOGICAL RESOURCES
AS LISTED IN THE UNIFORM RULES AND REGULATIONS FOR THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT
(must be more than 100 year old)

1. Surface or subsurface structures, shelter, facilities, or features, including but not limited to:

domestic structures	storage structures	cooking structures
ceremonial structures	artificial mounds	earthworks
fortifications	canals	reservoirs
gardens or fields	bedrock mortars	grinding surfaces
rock alignments	cairns	trails
borrow pits	cooking pits	refuse pits
burial pits/graves	hearths	kilns
post molds	trenches	middens

2. Surface or subsurface artifact concentrations or scatters.

3. Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments, including but not limited to:

pottery	other ceramics	cordage
basketry	other weaving	bottles
other glassware	bone	ivory
shell	metal	wood
hide	feathers	pigments
flaked stone	ground stone	pecked stone

4. By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials

5. Organic waste, including but not limited to:

vegetal remains	animal remains	coprolites

6. Human remains, including, but not limited to:

bone	teeth	mummified flesh
burials	cremations	

7. Rock carvings rock paintings, intaglios and other work of artistic or symbolic representation.

8. Rockshelters and caves or portions thereof containing any of the above material remains.

9. All portions of shipwrecks including but not limited to:

armaments	apparel	tackle
cargo		

10. Any portion or piece of any of the foregoing.

" LOOTING A MOMENT IN TIME "

STACY D. ALLEN
LEAD PARK RANGER
SHILOH NATIONAL MILITARY PARK

"The looting of archaeological resources on your public lands, or any historical site, is not a simple case of trespass and petty larceny. It is a major crime perpetrated against present and future generations."

The moment: May 1, 1863

Col. Francis M. Cockrell's Missourians fought desperately to hold their advanced position, along the brushy creek bank, just west of the quiet little Mississippi town of Port Gibson. However, their battleline was steadily being worn away as casualties mounted and overpowering waves of massed Federal infantry pressed their front and flanks. The Confederate counterattack here, had bought valuable time, and initially sent the Union forces reeling back. Cockrell's men hammered hard on Grant's right flank, only to have the advance slowly grind to a halt along the Federal side of the creek. Now, the battle hung in the balance, but only for a brief time. Soon the yanks brought in fresh troops and began to advance forward through the thick timber dense with the smoke of battle.

The tide had shifted. With no hope for possible reinforcements arriving in time and the rebel troops now completely exhausted by the long day of battling superior numbers, over rugged terrain, the issue had been decided. The battle was lost. Quickly, Cockrell's survivors were forced to withdraw from their salient position across the creek, falling back on the main Confederate force. Soon, Maj. Gen. John S. Bowen had his entire force falling back, leaving the battlefield to U. S. Grant's victorious Army of the Tennessee. A signal victory in the Vicksburg Campaign had been won, and the Battle of Port Gibson, Mississippi was history-- now just another moment in time.

The looting: Autumn--100 years later.

The two men slowly worked their way up the thicketed creek bank. They each listened intently for the quiet tone signals which would alert them to the location of hidden metal treasures lying beneath the surface of the peaceful old battleground. The pretty fall day had been uneventful so far. No major find had been made. Only an unfired minie ball and a piece of rusted canister had been recovered from the fine loess soil, common to this region. Each had visited the area in the past several times. It was one of their favorite places to relic hunt. It was somebody elses property, but that didn't matter. This area was the rugged backcountry of Claiborne County, Mississippi, and vast portions of the land lay unoccupied, being owned by timber companies or private hunting clubs. Two men could easily slip into this jungle of timber, vine and cane without being noticed.

Chunk! One of the metal detectors struck something quite hard sticking up from the surface of the ground. What was it? Reaching down the man slowly pulled free from its ancient resting place a long metal object, now rusted from years exposed to the harsh climate. He was overjoyed as he realized that what he held in his hand was an iron ramrod from a 19th century, military issue, rifled musket. What a find!

Soon, his companion joined him to admire the discovery, when both noticed, not more than a couple of yards away, in plain view, was another ramrod. Their excitement grew when on recovery of this second relic they found a third. Now their search became intense as each combed the western bank of the creek bottom. Not all of the items were as easily recovered as the first, but in a short span of time the two men had collected several dozen ramrods. Most were still located above the ground, sticking upright and stretched along the creek bank, on a fairly straight line for a couple of hundred yards. What a find!

The two hunters were estatic. This type of discovery was extremely rare. Nothing like this had ever been recovered here on the rugged battlefield of Port Gibson. The men drove home that evening quite satisfied with their discovery. They would have to come back here soon.

The battlefield of Port Gibson is mostly private land and unprotected. Like so many historical or prehistorical sites located in the United States, on public or private land, it is subject to intense trespass and looting. Furthermore, unlike other significant battle sites associated with the Civil War, the Port Gibson battlefield was never set aside to be preserved as a National Park. It never received the thorough research and field survey required to accurately locate exact troop positions, and the movements made by each, during the battle. Few Civil War veterans returned to the area after the war, and the important firsthand knowledge of the battlefield's topography and significant terrain features was lost as the old soldiers past away.

Just what had the two men discovered? Several dozen Civil War ramrods of course. But in what context were these materials left on that battlefield? Context is extremely important because past human behavior is reflected not by the material objects themselves, but by how the objects are situated in relation to each other within the site. Utilizing the material remains and their context is how archaeologists reconstruct past human behavior. Artifacts, such as the ramrods recovered at Port Gibson, are the material objects made, modified or used by man through time. Artifacts are our keys to studying past human events. The story that the artifact tells is a moment in time.

Therefore, why were the artifacts (ramrods) arranged as they were on the battlefield? What story did they tell? It was common when using muzzle-loading muskets during the heat of battle, for infantry soldiers of the Civil War standing and fighting from a fixed position on the battleline, not to return the ramrod to its place on the musket. Instead, they avoided this extra fumbling and simply stuck the end of the ramrod in the ground beside them while they continued to fight. Then, all they had to do was reach down to grab up the ramrod to load and fire again. Those ramrods then, marked a fixed battleline. But whose? We do know the general facts concerning the activities of the two armies that day, and who fought who, but no true exact troop positions were ever precisely located.

But recorded history by the participants tells us that only one unit fought in the proximity where those ramrods were discovered. Only one brigade made a determined stand there. Fighting desperately to hold that piece of ground on the Confederate left flank, west of the creek, the 3rd and 5th Missouri Infantry regiments of Col. Francis M. Cockrell's tough brigade. As Cockrell's position was driven back and overrun by the yankee onslaught, the overpowered men of the Missouri brigade had to flee to a new position across the creek. In the chaos and confusion many left their ramrods--the artifacts discovered a 100 years later, still marking that moment in time.

It truly was a major and significant discovery. For the two relic hunters had, by accident, stumbled across the only known unit position to be located on the Port Gibson battlefield. What a find! This was a discovery which, if properly documented, along with careful continued preservation of the remaining site, would provide the foundation and a permanent cultural benchmark to accurately place the other units of both armies spatially, in context, on the battlefield. This would provide a more thorough and precise interpretation of the actual events as they occurred, on that day so long ago.

Ah! But remember, those ramrods were looted from the context in which they were left in place on the battlefield. To this day, neither of the two relic hunters, both growing old themselves, can show me the exact location of the area in which they made their great find. They have lost the memory of the site. So, another moment in time was lost to looters of your history. That moment is lost forever, with no chance for recovery. Everyone loses. The present and future generations, and especially the past generation who fought that war and paid for that piece of hallowed ground with the ultimate sacrifice of their young lives. All lost for the few dollars those ramrods brought at a Civil War relic show, marked, "Battlefield dug. Port Gibson, Mississippi."

" The looting of Shiloh is an intentional attempt to steal a part of your history ...an invasion and destruction of hallowed ground. "

THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT

PUBLIC LAW 96-95--Oct. 31, 1979

16 USC 470ee Sec. 6.(a) No person may excavate, remove, damage, or otherwise alter or deface , or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands...

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands...

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

SMOKEY AND THE LOOTERS:
THE JONES-GEVARA POTHUNTING CASE
DECEMBER 1977 - JUNE 1980

By
Martin E. McAllister

Shortly before Christmas in 1977, Forest Service law enforcement officers and sheriff's deputies from Arizona's Yavapai County were called out to search a remote portion of the Tonto National Forest. Their goal was to find and apprehend several individuals, possibly pothunters, who had threatened to kill a hunter four days earlier. At 2:00 a.m. on the morning of December 22, I was awakened by a phone call bringing me news that pothunters had been apprehended on our Forest. As I excitedly called my assistants and we prepared to leave for the area, none of us could have predicted that by that evening the catch would be six pothunters working at three different sites in an area of several square miles. We certainly could not imagine that these events, which marked the beginning of the Jones, Jones and Gevara case, would not end until more than two years later. Nor did we imagine that it would involve a legal battle taken all the way to the Supreme Court or that it would result in radical legislative action by the U.S. Congress to better protect the Nation's archeological sites.

The events leading up to this remarkable case began sometime before December 22, 1977, when two brothers, Thayde and Kyle Jones, and their friend, Robert Gevara, left their homes in East Carbon City, Utah, and headed for Arizona. They eventually set up a camp in an abandoned stone house at an old mining claim on the Cave Creek Ranger District, Tonto National Forest. From this base, they began systematically looting a prehistoric archeological site they had found nearby.

During the weekend of December 17-18, an individual from Phoenix was hunting quail in the same area. He encountered two armed men on a dirt bike accompained by a large, vicious dog. While talking to these men, he noticed that they had in their possession a large prehistoric pot. He informed them that pothunting on Federal land was illegal and that they could be arrested for removing the pot. According to his account, they responded by threatening to shoot him or set their dog on him. Afterwards, they told him they would dispose of his body by throwing it down a nearby mine shaft. His reaction to their proposal was unfavorable, but it took only the levelling of his own weapon to prevent the two from carrying out their threat. After disarming his would-be assailants, the hunter returned to Phoenix and reported the incident to the local sheriff's department.

Forest Service personnel were notified on Monday, December 19, and an aerial surveillance flight over the area was scheduled for the following afternoon. During the flight, a truck was observed which suggested the possibility that these individuals might still be there. On this basis a ground search seemed warranted. A group of Forest officers and county deputies was assembled to set out for this remote part of the Forest, arriving the next morning (December 22) to begin the search. By late

afternoon, no one had been found and the officers were ready to call off the effort. In frustration they walked to a high point to scan the area one last time with binoculars before leaving. Their perserverance was rewarded when they noticed a vehicle parked on a ridge-top archeological site below their vantage point. Two people were observed loading objects, assumed to be artifacts, into the vehicle. Before the officers could make their way to the site, the suspects had departed and were driving out on a dirt road leading from the site area. The officers stopped them and conducted a "probable cause" search of their vehicle. They found digging tools and a large quantity of artifacts and several firearms. The tools and artifacts were confiscated but the suspects, John and Frederick Wagner of Prescott, Arizona, were not held since it was felt that they would not attempt to flee to avoid prosecution.

Before their release, one of the two brothers agreed to accompany a Forest Service officer back to the site to show him exactly where they had been digging. Unbeknownst to the Wagners, the site they had been looting was a short distance from the one the Jones brothers and Gevara were working. In going to the Wagner site, several officers discovered the Jones-Gevara camp in the abandoned stone house. Since it was already dark and it was not known for certain if the camp's occupants were also pothunters, the law enforcement officers left the area without disturbing them.

The officers felt there was little risk that these new suspects would leave the area during the night, especially since it was already after 10:00 p.m. when their camp was discovered. They decided to return to the area early the next morning after spending the night in Prescott. Their late arrival in Prescott (after midnight) caused them to delay in calling the archeologists until 2:00 that morning.

Fortunately for the final outcome of the Jones-Gevara case, two of the archeologists involved had prior experience in evidence collection in such a case. Only a few months earlier, assistants and I had been called in to assist Regional Arheologist Dee Green in collecting archeological evidence for the Smyer-May case on the Gila National Forest in New Mexico (see Collins and Green 1978 and Green 1979 for accounts of this case). The foresight in providing us with this training paid off as we had a fair idea of what we should do at the scene. We found ourselves rapidly gathering the basic essentials (boxes, tags, bags, tape, etc.) at our office at 3:00 in the morning. We now use evidence collection kits, equipment and supply checklists and standardized evidence collection procedures. Developing these things has allowed us to respond much more quickly and efficiently since the Jones-Gevara case.

Shortly after dawn on the morning of December 22, we met the law enforcement officers who had returned to the area from Prescott. The first task at hand was to determine what the people at the camp were doing without alerting them to our presence. Fortunately, the camp was in a basin, and there was a convenient vantage point on an escarpment above. From this point the stone house could be observed at a distance. It was decided that the archeologists should proceed to this point on foot and report back by radio what they saw.

We arrived there just in time to see a truck leave the stone house, but shortly thereafter we lost sight of it in the vegetation. It took us some time to relocate the vehicle. In the meantime, it was moved to a more distant part of the basin and, even using binoculars, we were unable to determine exactly what was transpiring. We did feel that we could see two of three individuals moving about the area, however. To confirm our suspicions that the vehicle might be at an archeological site, the law enforcement officers put in a radio request for an unobtrusive flight over the area by a spotter plane. The fly over produced affirmative results and the decision was made that several of the officers would move in on foot for a closer look while the rest remained with the vehicles. The archeologists remained at their original vantage point.

From a concealed spot on a ridge above the site, the officers observed Jones, Jones and Gevara digging. They watched them for about 20 minutes as they dug simultaneously in several rooms. These officers then walked back off the ridge and radioed for the others to bring the vehicles. Having picked up the observers, the entire group of Forest officers and deputies drove toward the site as rapidly as possible. However, the suspects must have heard them approaching because, as we observed from our vantage point, they immediately began moving about the area. The dirt road taken by the officers ran right next to the site, but by the time the officers arrived, Kyle Jones had fled on foot while Thayde Jones and Robert Gevara had driven their vehicle on up the road to where it ended at a stock tank and windmill. The officers followed the vehicle and apprehended Thayde and Gevara, but Kyle could not be found. They were quite concerned because a search of the vehicle yielded not only two loaded firearms, but also ammunition for a third weapon which was missing and presumed to be in Kyle's possession. Returning to the site with the two in custody, some of the officers began a search of the area for Kyle while others began to examine the site and their camp.

By this time we had begun walking back toward our vehicle and shortly thereafter we received a radio call requesting us to come to the site. Upon our arrival there, it was immediately apparent to us that the movement we had seen had been back and forth across the road from the site to another area. We examined this area and found a cache of artifacts and digging paraphernalia. Some of the sherds seemed to have been sorted and bagged separately. Most of these bags were later found to contain sherds predominantly from single reconstructable vessels which were accompanied by slips of cardboard with written descriptions of the pots. We found the site to be a large Classic Period, boulder-masonry pueblo with 50 or more rooms and both Sinagua and Salado pottery types present. The site looted by the Wagners is directly above the Jones-Gevara site and is similar and probably related to it.

By this time it was already 1:30 in the afternoon and we still had the task ahead of collecting all the evidence found at both the site and camp. The basic procedure utilized at the site involved mapping, with separate identification of each disturbance locus, photographing each locus and collecting evidence from each, assigning a unique evidence number to each item or lot of items and packaging each item or lot separately.

We then kept all evidence in our control until we were able to secure it under lock and key later. The artifacts collected include 4 whole pots, a large quantity of sherds, among which were 16 reconstructable vessels (many of those obviously while digging them out), 1 sherd pendant, 3 stone axes, 10 manos and mano fragments, 2 whole metates and 1 partial metate, and several bone awls. Also collected was a large quantity of human bone unearthed by the suspects, including 1 complete skull. In addition, we confiscated a number of tools and other digging gear. We also received all of the artifacts and digging tools confiscated from the Wagner's the night before. By the time this process was completed, the 3/4 ton, pickup truck we were driving was completely loaded with evidence.

While we spent the remainder of the afternoon completing this job, accompanied by two officers with Thayde and Gevara in custody, the other officers continued their search for Kyle, who still had not been found. By midafternoon they called back the spotter plane which had been standing by at a nearby landing strip. Though not successful in locating Kyle, the airborne observers did spot another vehicle in the area and the officers on the ground went to investigate. They found the vehicle unoccupied, but noticed another archeological site on a hillslope above where it was parked. The officers later told us that they thought it totally inconceivable that anyone would be at the site since a rather noticeable air and ground search had been going on in the general vicinity. However, as they approached the site to make sure, they heard digging and saw rocks and dirt flying up out of a hole in one of the rooms. Despite their presence in the site area, this activity continued at a rapid pace and the officers were able to walk right to the edge of the room being looted. In the hole, digging, was an individual later identified as Don Lowden from Phoenix. Lowden was thoroughly surprised upon discovering the officers watching him and offered no resistance, though he did have a loaded rifle in the pit with him.

This site had been severely vandalized but in questioning Lowden and confiscating the material actually in his possession, it was apparent that he had been there for a very brief period of time and caused only minor disturbance. (This site was the same type as those looted by the Jones brothers and Gevara, and the Wagners.) On this basis, he was cited for a misdemeanor Code of Federal Regulations violation and released. (Lowden was later convicted of this misdemeanor violation and was fined $25.)

At 8:00 p.m., well after dark, most of us finally left the area. However, one deputy stayed behind in his vehicle to see if Kyle would appear after the main party left. This ploy worked and Kyle was apprehended walking out along one of the roads in the area. Since the missing firearm was not visible on his person, a pack he was carrying was searched. No weapon was found in the pack, but it did contain a number of Polaroid photographs, some of which showed the suspects looting the site. Despite the fact that we already had his brother in custody, Kyle tried to explain his presence there by claiming that he had been hitchhiking on the main highway when he was kidnapped and brought to this area and robbed.

After a long, but productive day, we arrived back in Phoenix at midnight. We secured the evidence while the law enforcement officers booked the Jones brothers and Gevara into county jail where they spent the night. During the booking, Thayde boasted he would never do any time for digging in a ruin. On the following afternoon the three were arraigned before a Federal magistrate on charges of theft of Government property. Court appointed attorneys were assigned to each and they were released on their own recognizance. Later in the afternoon we held a press conference announcing the events of the previous two days. This resulted in a barrage of radio, television and newspaper stories over the next few days. Needless to say, we had a very merry Christmas in 1977.

Interestingly enough, we found out later that the individuals who threatened the hunter and set off this remarkable chain of events were not among the six we apprehended. This means that still another site in the same general area was probably being looted by other individuals at or about the same time.

The charges finally filed against Jones, Jones and Gevara were theft of Government property (18 U.S.C. 641), destruction of Government property (18 U.S.C. 1361) and aiding and abetting in these acts (18 U.S.C. 2). Under these statutes, the defendants potentially faced felony convictions with penalties up to 10 years in jail and $10,000 fine. They were not charged under the Antiquities Act of 1906 due both to the legal status of this Act in Arizona as a result of the Diaz decision, and to the inappropriateness of its misdemeanor penalties in relation to the magnitude of the acts alleged (see Collins and Green 1978).

The evidence against Jones, Jones and Gevara was devastatingly strong. They had passed a National Forest property boundary sign on the road into the site area so they had been notified that they were on Federal land. The site they were looting was signed with a Forest Service sign with the warning that such acts are illegal. They had been observed in the act of digging, had attempted to conceal their act by caching tools and artifacts and had fled the scene when officers approached. They had caused a substantial amount of damage to the site and removed a large quantity of artifacts. In addition, artifacts were found among their possessions at the camp. Finally, to put "the frosting on the cake," they had been good enough to take photographs of themselves documenting their actions.

Despite the amount of effort which had gone into making the arrests in this case, the hardest part of the job remained to be done. Beginning immediately the day after Christmas, we worked almost exclusively on case preparation for the next 3 months. In addition to work by law enforcement personnel, other Forest officers and the U.S. Attorney's staff, the Tonto Forest archeological staff put in approximately 1,000 hours on the case. Additional assistance was provided by a member of the Regional Archeologist's staff and by other professional archeologists who we called on for technical expertise.

There were a number of jobs to do. We prepared a detailed case report on the suspects and the events leading up to the charges filed against them. This effort led us to the discovery that all three had previous criminal records and, most importantly, that Thayde Jones had a prior conviction under the Utah State Antiquities Act. We had to process all of the archeological evidence to a point where values could be assessed and the items were ready for introduction as evidence. This effort involved washing, numbering, and sorting many of the thousands of artifacts and reconstructing 16 vessels.

Dr. Emil Haury of the University of Arizona was kind enough to come to Phoenix to appraise the artifacts. He placed their value at $1,217. (This is a museum insurance value figure; their worth on the commercial market would probably have been closer to $5,000 or $6,000.) In addition, estimates of the costs of professional recovery of the remaining material and information from the areas of the site destroyed by the defendants were provided by archeologists from the Arizona State Museum, Arizona State University, and the Museum of Northern Arizona after an on-the-ground inspection. These services and those of Dr. Haury were provided to the Forest Service without charge, a fact indicative of the commitment of Arizona's archeological community to the urgent necessity to stop pothunting. The data recovery figues obtained ranged as high as $37,619. Finally, as the trial date approached, we worked closely with Assistant U.S. Attorney Dan Drake in actual courtroom case preparation.

In pre-trial hearings in late March, the strength of our case was confirmed by the testimony of the Forest officers and sheriff's deputies present when the arrests were made. Forest Service archeologists and other potential expert witnesses were not called during these hearings. In their defense, Thayde Jones and Gevara could only claim that they were not at the site and that during the time between 8:00 a.m., when we saw them leave their camp, and 1:00 p.m., when they were arrested, they drove less than a mile up the road to the windmill to "wash up." At the end of the pre-trial testimony, Federal District Court Judge William Copple's reaction was to compliment Kyle Jones' attorney for not putting him on the stand so he could perjure himself as the other two defendants obviously had done. He then set a trial date.

At this point, we were extremely optimistic and trial preparation continued at an even more intensive pitch than before. The shock came on April 12, 1978, just before the trial date, when, in response to a defense motion, Judge Copple ruled for dismissal of the charges. He based his ruling on the fact that a Federal statute existed which specifically protected archeological sites, the 1906 Antiquities Act. He stated that Congress apparently intended looters of such sites to be charged under this Act, rather than the more general theft and destruction statutes, and that the defendants should have been so charged. However, he then went on to note that this was not possible because the Antiquities Act had been ruled

"unconstitutionally vague" in the Ninth Judicial Circuit on the basis of the Diaz decision and that our only resource was legislative action i.e., the creation of a new and better Federal archeological sites protection law. Needless to say, we were devastated, especially since our case was so strong and we had put so much effort into its preparation. The only glimmer of hope was Assistant U.S. Attorney Drake's belief that the Judge's ruling could be effectively appealed and his willingness to petition the Justice Department for permission to do so.

On the basis of this ruling, we were also reluctant to pursue criminal prosecution of the Wagners. Later, in response to a civil action filed against them by the U.S. Attorney's Office, they agreed to a settlement involving a payment of $750 and the forfeiture of all artifacts they had removed from National Forest lands.

The press responded to Judge Copple's ruling with a gratifying editorial outcry to the effect that archeological sites in Arizona and the Ninth Circuit were now totally unprotected from looters. Unfortunately, this also notified pothunters of this fact and we suspect that looting on Federal land intensified as a result. The press was not entirely correct, however, as the Code of Federal Regulations provisions, which protect sites from vandalism on National Forest lands, are based on the Forest Service Organic Act of 1897 and not on the 1906 Antiquities Act as are the corresponding regulations of Department of Interior agencies such as the Park Service and Bureau of Land Management. Thus, when these agencies were helpless to prosecute under the Antiquities Act, theft and destruction statutes or Code of Federal Regulations provisions, the Forest Service could and did prosecute violations in two other cases in Arizona in 1978 and 1979. Of course, such prosecutions were not the long term answer as the misdemeanor penalties they were limited to simply would not dissuade commercial looters.

An appeal of Judge Copple's decision in the Jones-Gevara case to the Ninth Circuit Court of Appeals was finally filed in January 1979. As we waited for a response to the appeal, legislative action had already begun in the U.S. Congress at the instigation of Arizona's and New Mexico's Congressional delegations. Then, in late October 1979, the Archaeological Resources Protection Act of 1979 was signed into law by President Carter. We feel that this was a direct response to the situation created by the Jones-Gevara case. At the same time, it was frustrating to know that this case still had not been successfully prosecuted. Fortunately, though, our frustration was short-lived.

It was later the same day we heard about ARPA being signed when word came that the Ninth Circuit Court of Appeals had ruled in the Government's favor. It had reversed Judge Copple's decision and remanded the defendants for trial. The ruling was based on the principle that when two Federal statutes prohibit the same act (e.g., artifact theft and site destruction) the Government may prosecute under either unless there is specific Congressional direction precluding prosection under one or the other. Also confirmed in this ruling was the Government's claim that site and artifacts found on Federal lands are, in fact, Government property. This is clearly a highly important finding, especially since it appears to establish that looters

of historic sites and artifacts can be prosecuted under the general theft and destruction statutes even though they might be immune from legal action under the 100-year age limit of the Archaeological Resources Protection Act.

Our elation was equally short-lived, however, as the defendants' attorneys immediately requested Supreme Court review of the Ninth Circuit decision. The long awaited beginning of the end came, nevertheless, in just a few months, when the Supreme Court denied this request and a new trial date was set for May 1980. Knowing that they had exhausted all available dismissal avenues and that the evidence presented against them in a trail would be overwhelming, the Jones brothers, Gevara and their attorneys began the plea bargaining process. They apparently feared the maximum felony-level, incarceration penalties of the theft and destruction statutes (10 years) and wished to plead under the more lenient jail time provisions of the Archaeological Resources Protection Act. Though not enacted when they committed their crimes, they were allowed to plead guilty under the new Act by virtue of what is know as a "waive jurisdiction" agreement.

Robert Gevara was allowed to plead guilty to a misdemeanor violation of the Archaeological Resources Protection Act. On May 19, 1980, he appeared before Judge Copple and was sentenced to serve 1 year in jail and pay a fine of $1,000, with the stipulation that at least 6 months of the 1 year sentence would be served in a penal institution. Kyle Jones was allowed to plead guilty to a misdemeanor violation of the Archaeological Resources Protection Act. On June 2, 1980, he appeared before Judge Copple and was sentenced to serve 1 year in jail and pay a $1,000 fine. Due to his previous conviction under the Utah State Antiquities Act-Thayde Jones was not allowed to plead guilty to a felony violation of the Archaelogical Resources Protection Act. On June 2, 1980, he appeared before Judge Copple and was sentenced to serve 18 months in jail and pay a $1,000 fine.

Though not the first convictions under the new Act, these are the most severe penalties ever exacted in the effort to stop the looting of our Nation's cultural heritage. In reporting the sentences, a local radio station in Phoenix announced: "If you're thinking about digging up Indian ruins on Federal land, don't! The Government means business . . . ." The Jones-Gevara case was complete.

ARCHEOLOGICAL RESOURCES DAMAGE ASSESSMENT

SITE 16WN63
WINN RANGER DISTRICT, WINN PARISH
KISATCHIE NATIONAL FOREST, LOUISIANA

Alan W. Dorian
Forest Archeologist
April 11, 1990

INTRODUCTION

This report and resource damage assessment is prepared as a result of a recent violation of the Archeological Resources Protection Act of 1979 (ARPA) (16 USC 470aa-11) on land administered by the US Forest Service.

On the afternoon of March 28, 1990, I received a Data General electronic message from Winn District Law Enforcement Officer Tom MAY saying that he had observed signs of fresh digging in the vicinity of protected archeological site number 16WN63 (Figure 1). I visited the location, in Township 10 North, Range 2 West, Section 24, NE of NE 1/4, with Archeological Technician Tim PHILLIPS the following day and verified that the disturbance noted by Officer MAY was due to unauthorized excavation of an archeological site.

PHILLIPS and I photographed the excavations, made a sketch map, and measured areas of disturbance. It was drizzling when we arrived in the late morning, thus all areas of damage had received rain, but it was clear that the backdirt piles in some areas were quite fresh, while others were recent, but not fresh.

No permits to excavate archeological sites have been issued by the Kisatchie National Forest, either under the Antiquities Act of 1906 or the Archeological Resources Protection Act of 1979.

ARCHEOLOGICAL RESOURCE DESCRIPTION

16WN63 was recorded by Forest Archeologist David Johnson in May 1984 during cultural resources inventory pursuant to Section 106 of the National Historic Preservation Act (Figure 2). In the Louisiana Site Record Form (Appendix 1), Johnson placed the site on the east side of Road 550, roughly 100-150 feet east of the area under discussion, but notes "This site probably continuous all along terrace edge." The recently disturbed area is a previously unknown subsurface extension of site 16WN63.

In Johnson's report of his 1984 fieldwork (Johnson et al 1986) he notes 16WN63 to be a roughly linear site on a natural levee terrace above the floodplain of Big Creek. His estimate of site size was 600 feet in length by 50-60 feet in width. Given the current situation, we now know the site to be at least 300-900' in length and overall site size is slightly in excess of one acre. Johnson (1986:43) also relates the recovery of 58 stone artifacts from shovel tests at 16WN63, including several worked tools. In his recommendations,

he (1986:49) notes that the site is potentially eligible for nomination to the National Register of Historic Places and "will be protected from further disturbance". The site contains archeological interest and has been in protected status since 1984.

16WN63 may be of extreme importance to the scientific understanding of lithic (stone) manufacturing techniques, subsistence processess, and prehistoric use of alluvial levee environments. The prehistoric picture of Winn Parish, as a whole, is poorly understood when compared to the known archeological record in other central Louisiana Parishes (viz., Winn Parish has only 210 recorded sites vs 363 in Grant, 399 in Natchitoches). Thus, its significance is further enhanced by the relative paucity of knowledge regarding prehistoric Winn Parish.

While damaged, 16WN63 retains sufficient research potential to merit continued protected status.

TOTAL RESOURCE DAMAGE

In all, a generally triangular area measuring approximately 150 feet on a side (or roughly .25 acre) has been damaged. Fifteen separate holes within the "triangle" were recorded, with the majority of these being at or near the periphery of the damaged area (Figure 3). There may be additional excavations in the center of the triangle, but if so, these have been obscured by the backdirt from the perimeter excavations, and are not now recordable.

The holes ranged in size from 2.5' X 2' X 2' in depth to as large as 16' in length and 6' in width. Average depth of the the excavations (as determined by use of a soil probe) was 2 feet; the maximum depth of one hole was nearly 3 feet. All excavations were irregular in shape, and virtually all walls were undercut, thus measurements taken at ground surface consistently recorded less volumetric disturbance than actually occurred. A very conservative measure of the total volume of disturbed soil is 25 cubic yards.

Most backfill piles contained "caches" of stone cores, flakes and chips.

Mr. GIDDENS admits to excavating two holes on 16WN63, and these two excavations are the only ones fully discussed or assessed.

Hole 1

The excavation is roughly dumbell shaped (Figure 4) and measures 45" in length, 29" in width, and 25" in depth. The two end walls are severely undercut.

Hole 2

The excavation was done within a previously dug hole, thereby enlarging it. The portion attributable to Mr. GIDDENS appears as semicircular arc on the eastern and southern perimeter of the existing excavation (Figure 4). It measures 98" in length, 16" in width, and averages 10" in depth.

DAMAGE ASSESSMENT

Introduction

Pursuant to 16 USC 470ff, the following damage assessment summary uses two elements of resource damage:

1. Cost of restoration
2. Archeological (scientific) value

Both elements use dollar figures tied to "in-service" costs, rather than "out-service" professional consulting fees and costs. Wage-per-hour quotations do not include cost-to-government benefits such as health care, retirement, or administrative overhead. In all, dollar and time estimates were rounded down in an effort to reach the most reasonable and conservative figures possible.

1. Cost of restoration

   This is the cost, in time and labor, to rehabilitate the site to the extent possible and includes, but is not necessarily limited to, backfilling holes, (re)contouring the ground surface, erosion control, and revegetation.

2. Archeological value

   This constitutes the loss, in dollar amounts, of scientific information as a result of damage to the site. This element is divided into two sub-factors:

   a. Excavation - The area of disturbance is measured and square and cubic foot calculations of the damage are made. The cost estimate for this element is then tied to the time/cost of professionally excavating and recording an equivalent volume of material at the site.

   b. Reporting - This constitutes the cost of analyzing recovered materials, including specialized laboratory procedures if appropriate, and writing and producing a professional report documenting the above excavation.

DAMAGE ASSESSMENT
16WN63, Winn Ranger District

Restoration (Holes 1 and 2)

1 GS 11 Archeologist for 4 hrs	$ 57.00
1 GS 7 Archeologist for 4 hrs	38.00
1 GS 5 Technician for 4 hrs	32.00
Total restoration cost	127.00

Archeological Value

Two areas of damage are factored. The volume of disturbed soil within Hole 1 is conservatively .7 cubic yard, that within Hole 2, .3 cubic yard. Thus, a total of 1 cubic yard is used in the following labor and cost breakdown.

Using a minimal crew of two persons (1 Field Supervisor, 1 Technician) a conservative estimate of excavation rate, including recording, mapping, photography is 1 cubic yard per day. Therefore, one full eight hour day would be needed to professionally excavate the amount of disturbed soil within Holes 1 and 2.

Excavation

1 GS 11 Archeologist for 8 hrs	$115.00
1 GS 5 Technician for 8 hrs	65.00
Total excavation cost	$180.00

Laboratory analysis (cleaning, sorting, analysis, cataloging) No specialized procedures:

1 GS 7 Archeologist for 12 hrs	$115.00
1 GS 5 Technician for 8 hrs	65.00
Total laboratory cost	$180.00

Report writeup:

1 GS 11 Archeologist for 12 hrs	$170.00
1 GS 5 Cleric for 8 hrs	65.00
Duplication, binding	50.00
Total reporting cost	$300.00

SUMMARY OF DAMAGE VALUES

Restoration:	$ 127.00
Archeological:	
Excavation	$ 180.00
Analysis	$ 180.00
Writeup	$ 300.00
Total resource damage of Holes 1 and 2:	$ 787.00

REFERENCE CITED:

Johnson, David and James Morehead, Timothy Phillips, and James Whelan
1986 THE WINNFIELD TORNADO: CULTURAL RESOURCES SURVEY AND PREDICITIVE MODELING IN THE KISATCHIE NATIONAL FOREST, WINN PARISH, LOUISIANA. On file, FOrest Supervisor's Office, Pineville, LA.

Figure 1

General Vicinity

	LOCA	BOAT	CAMI	DRIN	FISH	HIKING TRAILS	PICNICKING	SANITARY FACILITIES	SKIING	SWIMMING	TRAILER DUMP STATION	TRAILER SPACE
CLOUD CROSSING	B-2	●	●	●	●			●				●
GUM SPRINGS	C-3		●	●			●	●				●
STUART LAKE	F-6		F	●	●	●	●	●		F		●
SADDLE BAYOU HUNTER CAMP	E-5		●					●				

FEE AREA=F ELECTRIC MOTORS ONLY=E

LAUNCH RAMP=L CARRY DOWN ACCESS=A

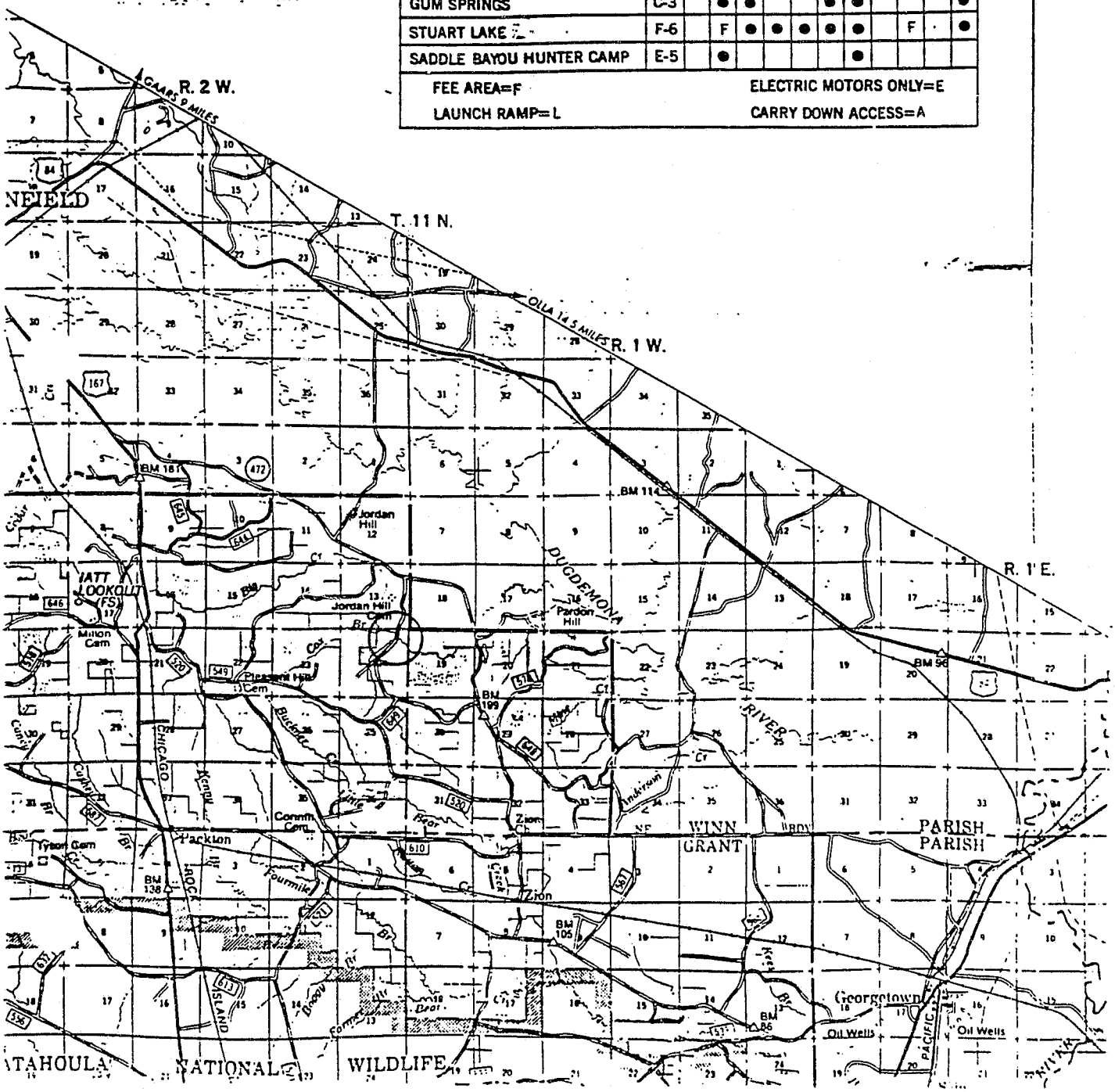


Figure 2

USGS Packton Quadrangle map
depicting 16WN63 location

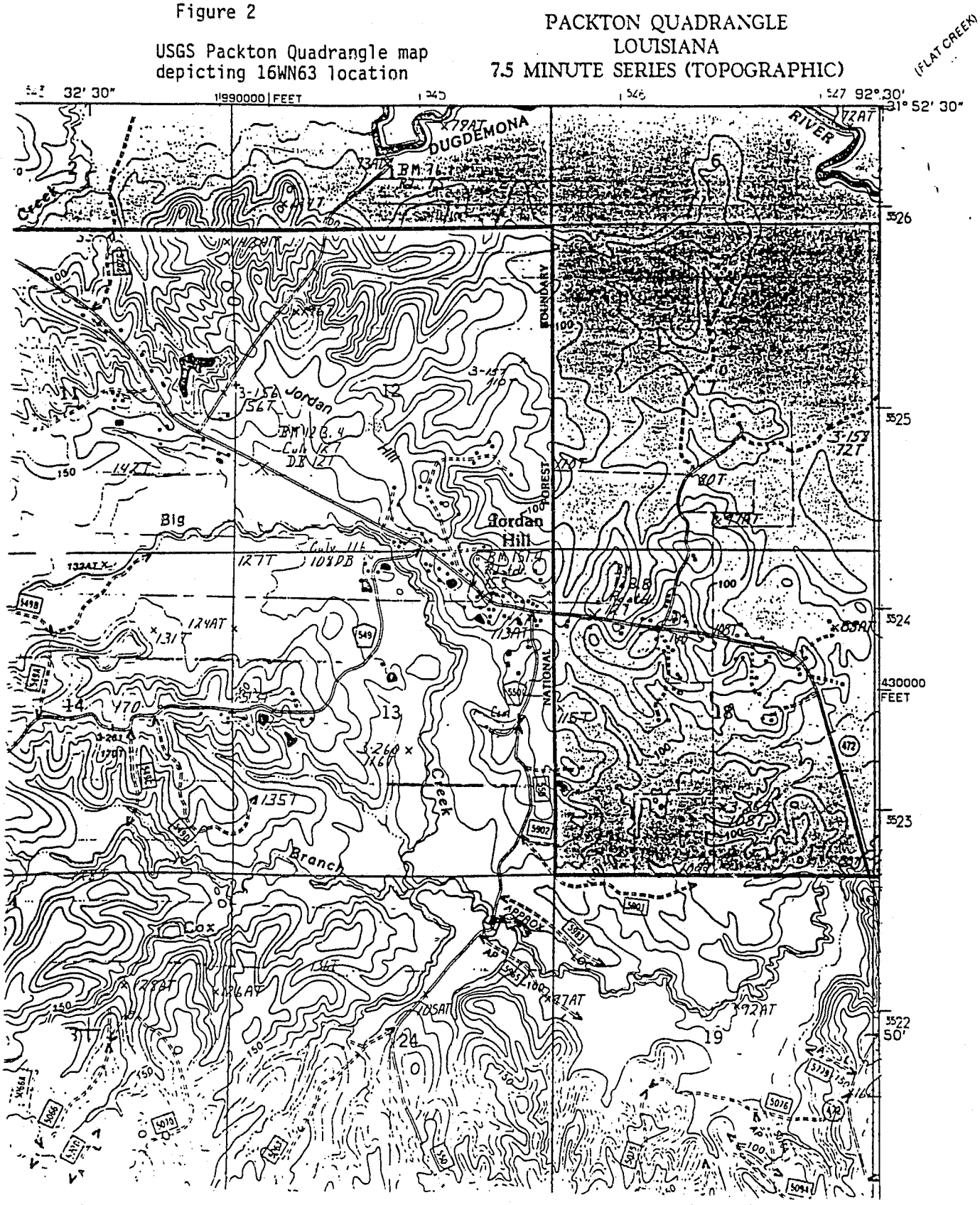
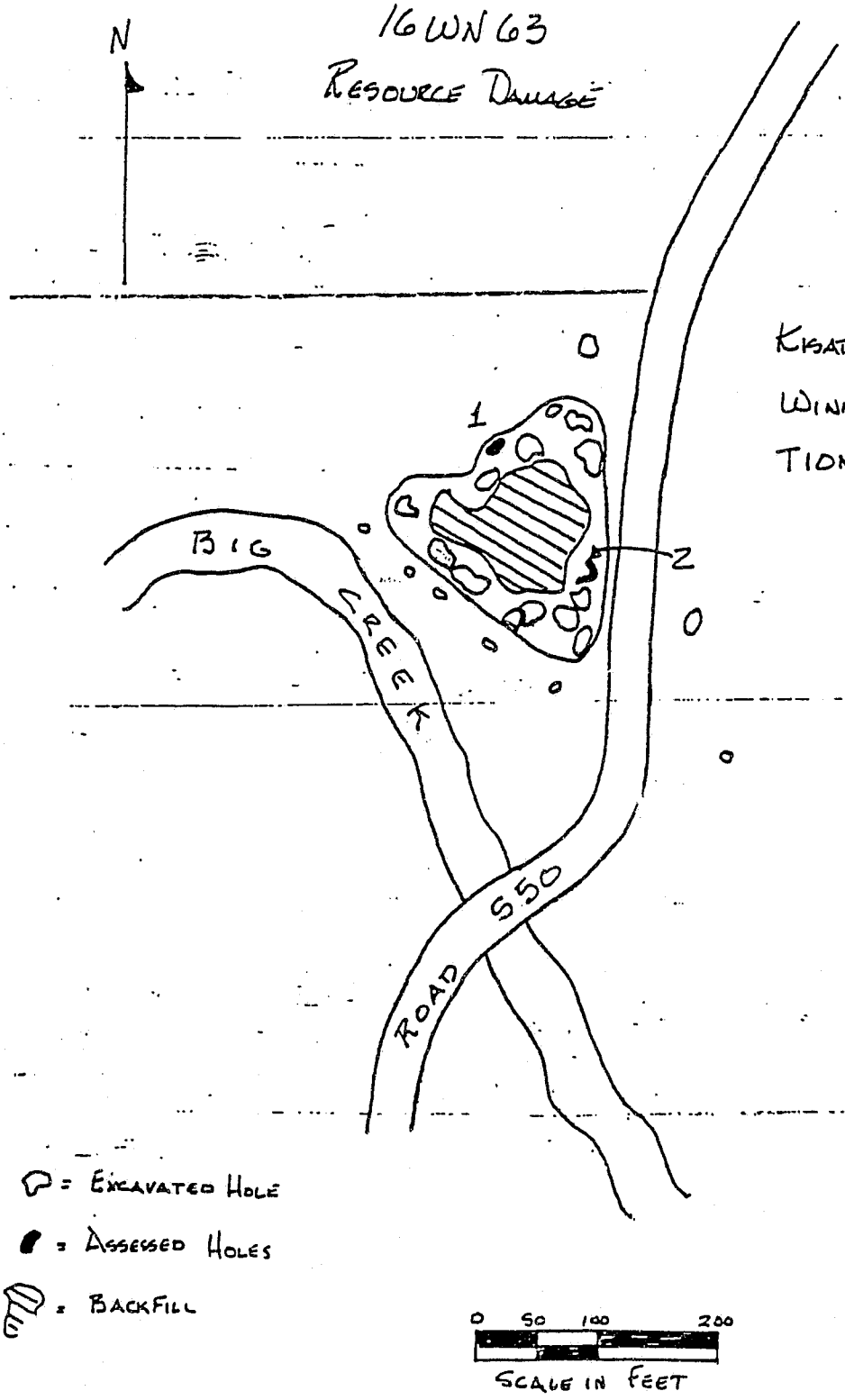


FIGURE 3

16WN63

RESOURCE DAMAGE



KISATCHIE NATIONAL FOREST

WINN RANGER DISTRICT

T10N, R2W, SECTION 24, NE of NE

= EXCAVATED HOLE

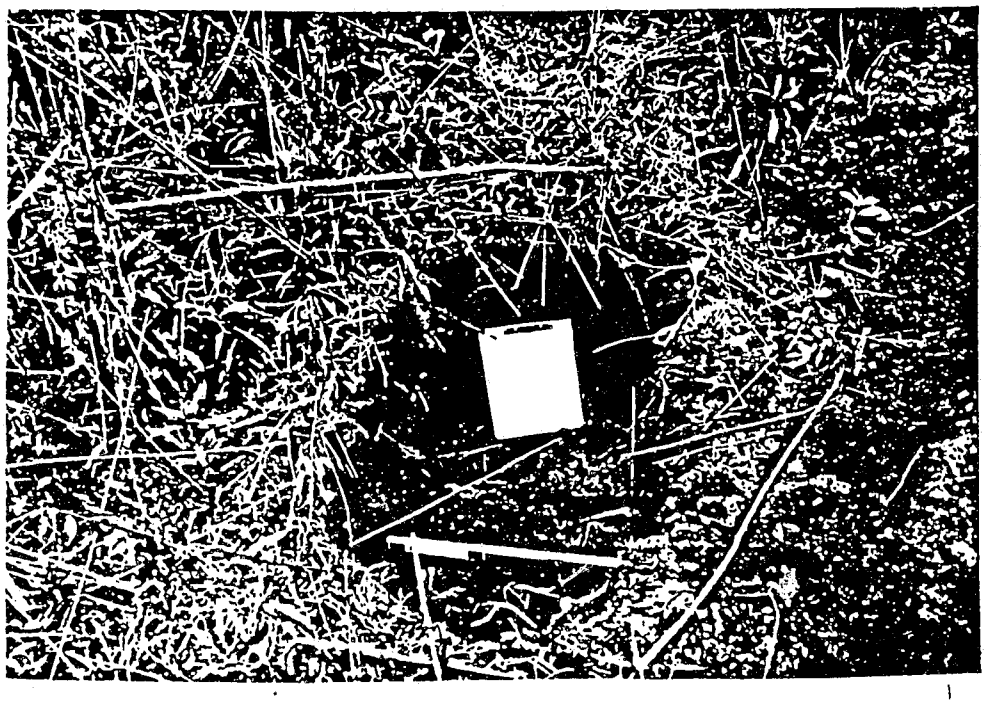
= ASSESSED HOLES

= BACKFILL

AWD 4/2/90

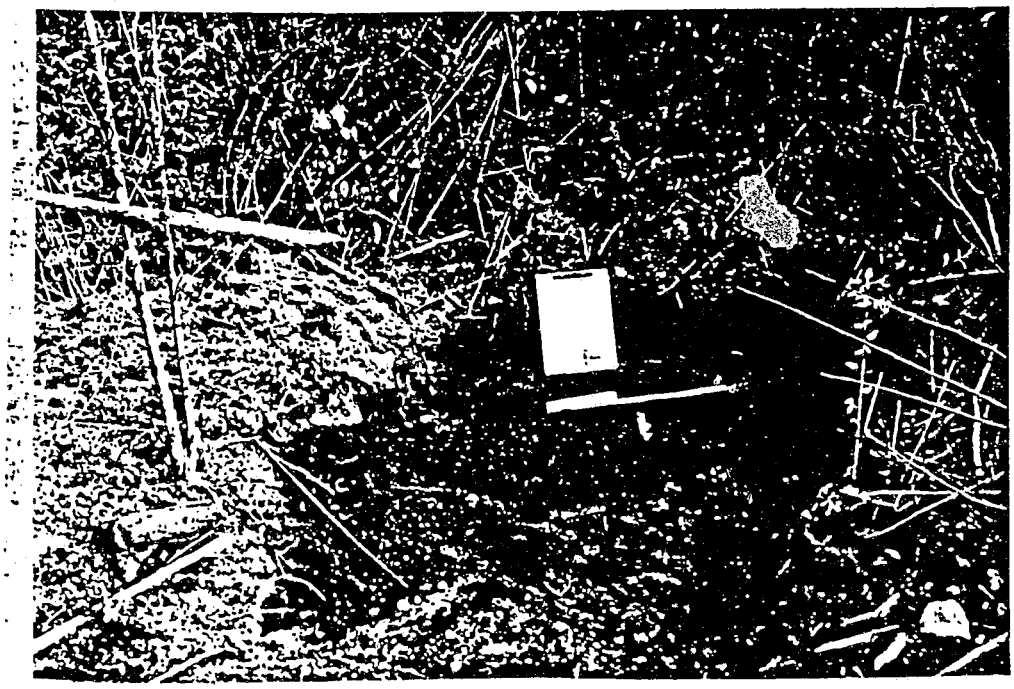
Figure 4

Photographs



Hole 1

Hole 2



THE LOOTING OF A CHEROKEE BURIAL CAVE: THE LAKE HOLE ARPA CASE

CHEROKEE NATIONAL FOREST

Quentin Bass
with Norman Jefferson and Christine Bassett
Forest Archaeologists, Cherokee National Forest

The Lake Hole ARPA case began on March 26, 1990 when the Forest Archaeologist was informed by forest personnel on the Watauga R.D. of the Cherokee National Forest that ~~a~~ an unrecorded cave containing human remains, and apparently in the process of being looted, had been discovered by Roby Phillippi, a Forest Service technician on that district. Quentin Bass and Norman Jefferson met Forest Service Special Agent Jerry Wilson and other Forest Service law enforcement officers at the cave that afternoon. Preliminary investigation indicated that the cave was a burial tomb for multiple Indian burials, that it was in the process of being looted by graverobbers, and that the perpetrators would be back to continue their activities. It was decided to place the cave under 24 hour surveillence in an effort to apprehend those responsible for the vandalism.

On the evening of March 29 Forest Service LEO's and Special Agents arrested three individuals inside the cave with digging equipment. They were: Robert Mains, 36, of Mountain City, Tennessee; Allen Lee Huddler, 27, of Abingdon, Virginia; and Freddie Caudill, 36, of Abingdon, Virginia. All individuals subsequently gave the Forest Service permission to search their houses for evidence. This resulted in the seizure of extensive collections of Native American burial artifacts, numerous parts of protected and threatened and endangered species (American Bald Eagle, Great Horned Owl, Red-Shouldered Hawk, Bengal Tiger/African Lion parts) and parts of numerous Black Bears, as well as drug (marijuana) paraphernalia. Additionally, a bag containing approximately 1/4 pound of marijuana was retrieved from the cave. Mains, Huddler and Caudill were arraigned at Federal District Court in Greeneville, Tennessee on March 30 and released on $5000 bond. It took the Forest Archaeologists in excess of two weeks to number, catalogue and photograph the exhibits seized from their houses. During the interim, Mains, Huddler and Caudill plea bargained with Guy Blackwell and Sara Shults, Assistant United States Attorneys for the Eastern District of Tennessee who were handling the case. Mains plead guilty to felony violation of ARPA (Archaeological Resource Protection Act) and Huddler and Caudill plead guilty to misdemeanor violation of ARPA. Both their pleas and sentences were to be contingent on their future help in apprehending other perpetrators, for it was becoming evident at that point, with further investigations by Special Agents Wilson and Jowers, that other individuals were involved in looting the cave.

Simultaneous with this, further investigations were carried out at the cave to gather additional evidence, determine the cultural affiliation of the burials, and formulate a damage assessment estimate for purposes of prosecution and resource management/restoration. First, a steel gate was installed over the mouth of the cave to secure it. The cave was then formally mapped in detail and a final damage asessment was made. A final minimal damage assessment of $91,000 was submitted to the United States Attorneys.

Further investigation of the cave resulted in the recovery of parts of a minimum of 13 individuals, primarily adult males, but also including at least one child and probably one female. Recovered artifact remains indicated the individuals were adorned with elaborate grave parphernalia which included: marine shell ornaments, pottery, stone tools and copper and iron trade artifacts. These artifacts allowed the Forest Service to determine with confidence that the burials were Cherokee of the protohistoric period (A.D. 1550-1650). This Cherokee affiliation made the cave a cultural resource of extraordinary significance because, up to this point, there has been no evidence, either archaeological or in the written literature, that the Cherokee ever buried their dead in caves; burial in and around the village being the common known form of inhumation. The cave therefore preserved an aspect of Cherokee lifeways about which we were heretofore totally ignorant. As a consequence, its destruction was not simply a case of graverobbing and an offense to all human sensibilities, which it indeed was, but also a clear-cut case of the destruction and theft of part of the cultural heritage of the people of the United States; a part of our cultural heritage which is, as is the case with all archaeological sites, not only non-renewable, but one for the loss of which, and the crime committed, was even greater since this type of site had been previously unrecorded.

Concomitant with these investigations at the cave, Forest Service Special Agent Jerry Wilson continued to follow leads and interview concerned parties. During this period, Robert Mains was contacted by a Newall Charlton of Elizabethton, Tn., who wanted to sell Indian artifacts to Mains. Mains contacted Jerry Wilson about this and Wilson convinced Mains to wear a hidden recording device in order to tape any artifact purchase and any other conversation relevant to the Lake Hole ARPA case. Although no artifacts were purchased, tape recordings were made on two occasions. These not only provided evidence which implicated Charlton, but also a number of other individuals in the vandalism of the cave.

Concurrent with this, Special Agents Wilson and Malcolm Jowers, following information supplied by informants, interviewed Eddy Ray Perry, 41, of Butler, Tn., about his participation in the looting of the cave. After intense questioning by Wilson and Jowers, Perry confessed that he and his two cousins, Montie Pierce, 42, and Johnny Pierce, 38, also of Butler, had participated in looting the cave along with Newall Charlton, 62, Mike Honeycutt, 47, Hampton, Tn. and Ralph Potter, 43, Roan Mtn., Tn..

This combined evidence was given to Guy Blackwell and Sarah Shults who took it before the Federal Grand Jury in Greeneville. The Grand Jury returned a sealed true bill of indictment charging all six individuals with felony violation of ARPA, felony theft of Federal property and felony depredation of Federal property. On 6 June, 1990, all six individuals were arrested and arraigned before Federal Judge Thomas Hull at Federal Court in Greeneville, Tennessee and released on $5,000 bond. Soon after this, Eddy Perry and the Pierce brothers plea bargained and plead guilty to felony ARPA. As with Mains, Huddler and Caudill, the severity of their sentences was contingent upon their cooperation in the prosecution of Honeycutt, Potter and Charlton.

At the time of his arrest, Forest Service Special Agents and LEO's requested permission from Potter to search his house for Indian artifacts which

could be related to the case. Potter gave his permission for the search, but no artifacts of consequence were recovered. However, a total of 18 firearms were recovered from the residence. Since Potter had prior felony convictions (attempted murder, felony assault and battery on two Carter County, Tennessee deputies, etc.) it was a felony for him to possess firearms. Consequently, Potter was also charged on the weapons violation.

The ensuing period before trial was taken up with management of the cave site and the case with other agencies and institutions. This included a series of meetings, communications and reports within the Forest Service, especially with the Regional Office in Atlanta which supplied funding to support the handling of the case on the forest level, regional level law enforcement and cultural resource personnel support, and even support from the geometronics section of the Regional Office whose personnel produced detailed 3-D mapping of the cave. Additionally, the Tennessee State Historic Preservation Officer was apprised of the progress of the case, as required by Federal laws and regulations. As is the policy of Region 8 (Southeastern U.S.), every forest has an Advisory Committee for the Treatment of Human Remains. The committee was consulted to determine the disposition of the human remains and future management of the site. In line with Federal regulations, the committee recommended the damaged areas of the site should be scientifically excavated, the recovered materials analyzed and the human remains reinterred; the mode of reinterment to be decided upon by the Tennessee Commission of Indian Affairs and the Tribal Council of the Eastern Band of Cherokee, Cherokee, North Carolina. Since the burials were determined to be Cherokee, Harley Grant of the Tennessee Commission of Indian Affairs deferred to the wishes of the Cherokee. So, future dispositon of the humans remains from the cave will be determined by the Cherokee in conjunction with the Forest Service.

Between June and September trial was postponed twice. During this period, considerable further effort was spent in preparation of the case for the government. This included the additional compilation of evidence, further investigation of informants, additional investigation of the cave, finalization of the damage assessment and evidence charts and maps and a continuous, close coordination with the Assistant United States Attorney and the Eastern Band of Cherokee Indians.

Finally, Guy Blackwell severed for trial Charlton, Honeycutt and Potter for separate trials, starting with Charlton on October 9, 1990. The entire case became even more complex at the outset of the Charlton trial. First, as soon as the jury was seated, Mike Honeycutt's father, Paul Honeycutt, 67, of Elizabethton, Tennessee, approached one of the jurors and attempted to persuade him not to find Charlton guilty; his reasoning being that if Charlton was found innocent then his son stood less of a chance of being convicted when he went to trial the following week. The juror, frightened by Paul Honeycutt's action, reported the contact to Judge Hull. As a consequence, both Mike Honeycutt and Paul Honeycutt were arraigned before Judge Hull who ordered both detained until after the conclusion of the Charlton trial. Paul Honeycutt was subsequently charged with felony jury tampering and felony obstruction of justice.

Simultaneous with all of this, Ralph Potter failed to appear for a hearing on the felony weapons charge. A warrant was issued for his arrest, but he could not be located. In subsequent contacts with reliable sources, Forest Service Special Agents learned Potter had threatened Perry and one or more of

the Pierce brothers. Potter then appeared at the courthouse the following morning in the company of Perry and the Pierces who were going to testify for the prosecution. His supposed intent was to intimidate all three witnesses from the gallery. Potter was immediately arrested and detained by U.S. Marshals. In a detention hearing the following morning, testimony of Potter's putative threats and coercive behavior were submitted to Judge Tilson. Other supporting evidence was also submitted, including: testimony from a Tennessee Drug Enforcement Task Force agent who stated that Potter had publicly said he intended to kill him (the agent); Potter's previous convictions for violent felonies; and Potter's position as a primary suspect in at least one unsolved murder. After reviewing this evidence, Judge Tilson ordered Potter detained in jail until after the conclusion of the Charlton trial.

The Charlton trial continued well into the next week, being postponed from the previous week due to the lack of preparation on the part of the defense attorney. When the trial did resume, testimony against Charlton included reading of the two damaging secret tape recordings; the testimony of Robert Mains, Eddy Perry and Montie Pierce; and the testimony of many of the Forest Service employees involved in the case. Testimony for the defense was limited to Dr. William Bass, Forensic Anthropologist and Head of the Anthropology Department at the University of Tennessee, who was employed in an unsuccessful effort by the defense to diminish both the archaeological significance of the site and the government's damage assessment. Charlton did not take the stand in his defense. The trial was concluded on the afternoon of October 18 and the jury returned a verdict within two hours. Charlton was found guilty on all three felony counts. Sentencing was set for December 18.

Over the following weekend, Guy Blackwell corresponded with the Justice Department and obtained immunity from prosecution for Charlton from any other charges in the case and associated crimes from which he had not yet been tried (it being known that he had a long history of vandalizing archaeological sites and looting graves, especially on U.S. TVA property). The grant of immunity, coupled with his recent convictions, which lost Charlton his 5th Amendment right not to testify in the future trials, made Charlton a potentially powerful witness for the prosecution for the upcoming Honeycutt and Potter trials. In effect, he was now required to testify as to the involvement of Honeycutt and Potter, for any reluctance to cooperate would result in contempt of court charges, while any prevarications could result in perjury charges.

The following week, preliminary to the Honeycutt trial, Charlton's condition of immunity was filed in court before Judge Hull. The lawyers for Honeycutt and Potter were present, and minutes after Charlton's immunity status was registered with the court, they requested a plea bargain - Honeycutt wishing to plead guilty to misdemeanor violation of ARPA and Potter wishing to plead guilty to misdemeanor violation of ARPA and the felony weapons charge. Guy Blackwell and Sarah Shults discussed the offer with us (Special Agents Malcolm Jowers and Jerry Wilson and myself) and suggested we accept the pleas. Although we all knew Honeycutt could be convicted on at least two felony counts (felony violation of ARPA and felony destruction of government property) we all agreed the pleas should be accepted. This was because subsequent to the Charlton conviction, investigation by Special Agent Wilson had unearthed hard evidence that Perry and the Pierce brothers had lied to the government as to their involvemnt in looting the cave - their actual involvment being much more than they were willing to admit. We had known this all along, but now that we

had hard evidence of their deceit we had to transmit this evidence to the defense attorneys. Perry and the Pierces lying in no way reduced the culpability of Charlton or the remaining defendants, but proof that they were liars damaged ~~the~~ their credibility as witnesses and the government's case against Honeycutt and Potter. As a consequence of this, the defendants' pleas were accepted and sentencing was set for December 18 along with that of Charlton.

On November 1 I went before the Tribal Council of the Eastern Band of Cherokee Indians in Cherokee, North Carolina. I apprised the Council of the history and course of the Lake Hole ARPA case, and asked for their input in management of the site and reburial of the remains. Additionally, I requested their presence and input at the upcoming sentencing hearings. The Council expressed their appreciation for the government's efforts and agreed to attend the sentencings and testify if called upon. The Council also passed a resolution which expressed the Cherokee feelings regarding the Lake Hole ARPA case.

On November 7 Mains, Caudill and Huddler were sentenced. Mains (felony ARPA) was put on supervised probation for two years and banned from the forest for the same period. He was also fined $795.62 (the average cost of scientifically excavating and analyzing a cubic yard of fill in an archaeological site). Huddler and Caudill (misdemeanor ARPA) were given three and two years probation, respectively, also banned from the forest during this period and fined $499. No restitution costs were placed on any of the three.

On November 28 Perry and the two Pierce brothers were sentenced (all felony ARPA). All were given six months imprisonment, three years supervised probation, banned from the forest for that period, required to perform 300 hours of community service and required to pay $3000 each in restitution. No fines were levied since all defendants declared themselves in pauperis.

On December 18 Charlton, Honeycutt and Potter were sentenced. All were ordered to pay a fine of $499 and restitution of $2500. Honeycutt was placed on supervised probation for five years and banned from the forest for that period. Potter was given 6 months imprisonment for the misdemeanor ARPA violation and 16 months imprisonment for the felony weapons violation, both sentences to run concurrently. His probationary period will be determined after his release from prison. Charlton was given 22 months imprisonment and a probationary period to be determined upon his release.

In February 1991 Paul Honeycutt was sentenced to two years supervised probation and fined $5319.84 for jury tampering and felony obstruction of justice. Since he is in ill health, the U.S. Attornies asked for a downward departure in his sentencing.

The Lake Hole ARPA case is remarkable for several reasons. It is important because it is the first trial felony conviction for an ARPA violation outside the Southwest U.S. It is also noteworthy because of the number of convictions and the number of defendants - 10 felony and 4 misdemeanor criminal convictions and all ten defendants were found guilty. The case was an education for all parties concerned and clear evidence that the Forest Service, the Justice Department, the Cherokee and the greater American public wish to preserve and protect their cultural resources. The entire process also made it abundantly clear to all of us that an ARPA case cannot be successfully prosecuted

without the close cooperation of the United States Attorney and Forest Service personnel.

Excavation of the damaged areas of the cave are planned for the Spring/Summer of 1991. After analysis, The human remains will be reburied in the cave by a traditional Cherokee medicine man. I asked the Cherokee Tribal Council if I could attend the ceremony and they have given their permission.