



# RESPONSIBLE METAL DETECTING SELF-CERTIFICATION CLASS

## **METAL DETECTING CLASS: MD 102** **FOR** **METAL DETECTING CLUBS** **OR** **INDEPENDENT DETECTORIST**

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## **METAL DETECTING CLASS (MD 102)**

### **CRITERIA**

The MD 102 class will cover *Ethics* & *where* you *can* & *cannot* metal detect:

Instruction and discussion on Metal Detecting *Ethics*:

- **Ethics**
- **Agreement - Written vs. Verbal Permission**
- **Written Agreement to Metal Detect**
- **Example of Metal Detecting Permission Agreement**
- **Research (old newspapers, library, photos, etc.)**



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### ETHICS FOR RESPONSIBLE METAL DETECTING

- **I will check** Federal, State, County and Local Laws before searching. It is my responsibility to **KNOW** and **UNDERSTAND THE LAW**.
- **I will report** to the proper authorities, individual who enters and or remove artifacts from Federal or State Park / Preserves / Historical Sites.
- **I will never** remove or destroy priceless historical archeological treasures.
- **I will not** enter Cemeteries for the purpose of metal detecting.
- **I will protect** our Natural Resource and Wildlife Heritage.
- **I will not** enter private property without the owner's permission and when possible, such permission will be in writing.
- **I will take care** to refill all holes and try not to leave any damage. (No Coin Pluggers, Shovels, Picks and Gator Diggers in Parks)
- **I will remove and dispose** of any and all trash and litter that I find.
- **I will not destroy or tamper** with any structures on public or private property or what is left of Ghost Towns.
- **I will not contaminate** wells, creeks, or other water supplies.
- **I will not tamper** with signs, maintenance facilities or equipment and leave all gates as found.
- **I will approach and educate** those who do not follow good metal detecting practices.
- **I will not** metal detect in competitive hunts if I am the Hunt Master or plant hunt targets.
- **I will make every effort** to return found property to its rightful owner.
- **I will be** an ambassador for the hobby, be thoughtful, considerate and courteous at all times to others and their property.



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### WRITTEN VS. VERBAL PERMISSION

**Written Agreements with Signatures vs. Verbal Agreements with Handshakes**

**Here are a few + Pros and - Cons**

#### **Verbal Agreements**

- + Simple to Execute**
- Open for Misinterpretation**
- Key Terms May Not Get Defined**
- May not be Enforceable**
- Handshake**
- Room for Misunderstanding**
- Based on the Spoken Words**

#### **Written Agreements**

- + Less Chance for Misinterpretation**
- + Conditions Defined for Both Parties**
- + Written Record of all Conditions**
- + Enforceable**
- + Signatures on Paper**
- + Common Understanding of Terms**
- + Definitions Can Be in Writing**
- + Period of Time Defined**

**Some or all agreements should be written and drawn up by an Attorney**

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### PERMISSION

#### Written Agreements for Metal Detecting Should Cover

- Address of Property, City, County, State, Zip Code
- Identify Portion of Property to be Searched
- Purpose of Agreement (To include Property Definition to be Found)
- Liability Waiver
- How to Treat Found Items
- Property Conditions
- Term Start and End Date
- Termination Definition
- Property Owner and Hobbyist Signatures
- Date and Time

#### Liability Waiver:

Please note the following concerning a liability waiver. Waivers maybe used between individual, however, if there is an injury or other issue that may arise insurance companies could get involved from either party. Insurance Companies will probably not honor any previously agreement made between the parties either oral or in writing.

**Some or all agreements should be written and drawn up by an Attorney**



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### SAMPLE WRITTEN PERMISSION AGREEMENT

I \_\_\_\_\_ **Owner** agree to provide **Hobbyist** \_\_\_\_\_ subject to conditions in this agreement temporary right to enter the property described.

**Property Address:** \_\_\_\_\_, City \_\_\_\_\_, State \_\_\_\_\_, Zip Code \_\_\_\_\_

Description of the property portion that can be entered searched. \_\_\_\_\_

**Purpose:** *Hobbyist* is allowed access to property only for the purpose of metal detecting to locate, dig and recover metal items. (Items maybe coins, iron relics, jewelry, metal / brass buttons and other misc. metal objects.)

**Liability Waiver:** *Hobbyist* will not hold Property *Owner* responsible for any *Hobbyist* loss, damage to equipment or personal injury or for any claim made by others that may arise from items found on *Owners* property.

**Found Items Ownership:** *Hobbyist* will gain ownership to all items found while metal detecting on described property unless otherwise noted. \_\_\_\_\_

**Property Conditions:** *Hobbyist* will leave property in like condition before metal detected to the extent that is practical. All holes made by *Hobbyist* will be filled.

**Term:** Metal Detecting Start Date: \_\_\_\_\_, Time: \_\_\_\_\_ Stop Date: \_\_\_\_\_, Time: \_\_\_\_\_

**Termination:** *Owner* may terminate this agreement at any time unless otherwise noted: \_\_\_\_\_

**Agreed to:** Date: \_\_\_\_\_ Time: \_\_\_\_\_

**Property Owner:** \_\_\_\_\_ Address: \_\_\_\_\_

**Hobbyist:** \_\_\_\_\_ Address: \_\_\_\_\_

**Some or all agreements should be written and drawn up by an Attorney**

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### Research Tips

### RESEARCH (OLD NEWSPAPERS, LIBRARY, PHOTOS, ETC.)

#### Research Options

- E-bay Post Card Photos
- **Google Earth**
- Historical Societies
- **Internet (Site Names, State Archives)**
- **Library: County / City Histories**
- **Local Historians**
- Newspaper Archives
- **Old Maps**
- Old Picture Post Cards
- **Pre-1930s County Atlas**
- State & Local Museums

#### Example of Where to Look:

If the research is for the metal detecting of Old Coins, Relics and Caches then look for the following:

**Pre 1930 in the Country** – Churches, Dance Halls, Homesteads, Lake Parks & Beaches, Schools, Country Stores & Creameries

**Pre 1930 in the Cities** –Fairgrounds, Parks, Railroad Stations, Swim Areas, Social Gathering areas, Old Home Sites

**Remember There Were no Banks in Many Town Until the Late 1910's or Early Teens.**

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### What's Next

This portion of the class will cover **where** you **can** & **cannot** metal detect:

#### Important Federal Acts that Directly Effect Metal Detecting

- 1906 American Antiquities Act
- 1966 National Historical Preservation Act
- 1979 Archaeological Resources Protection Act
- 1990 Native American Graves Protection and Repatriation Act
  
- Where **NOT** to Metal Detect (National Properties)
- National BLM - Bureau of Land Management
- USDA Forest Service - Is it legal to metal detect on Forest Service land?
- USDA Forest Service - Is it legal to collect artifacts or to dig in archaeological sites?
- USDA Forest Service - Isn't there a "treasure hunting" clause in Forest Service laws?
- State (parks, recreation areas, beaches, historical sites, etc.)
- Local Public (parks, schools, public building grounds, beaches, pool areas, etc.)
- Private lands.

*Section (3) The State and the Local Public materials can be tailored to a specific club's location.*



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### 1906 AMERICAN ANTIQUITIES ACT

16 USC 431-433 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.**

Sec. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected: Provided, That when such objects are situated upon a tract covered by a bona-fied unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

Sec. 3. **That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulation as they may prescribe: Provided, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.**

Sec. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.

*Approved, June 8, 1906*



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### 1966 NATIONAL HISTORICAL PRESERVATION ACT

#### ➤ National Historic Preservation Act of 1966 As amended through 2000

Web link: <http://www.mdhtalk.org/law/nhpa.htm>

**The National Historic Preservation Act is legislation to preserve historical and archaeological sites in the U.S. This Act created the National Register for Historic Sites (Places), list of Historic Landmarks, and the creation of the SHPO - State Historic Preservation Offices.**

Section 1 [16 U.S.C. 470 — Short title of the Act]

(a) This Act may be cited as the "National Historic Preservation Act". [Purpose of the Act]

(b) The Congress finds and declares that —

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

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### 1979 ARCHAEOLOGICAL RESOURCES PROTECTION ACT

#### ➤ Archaeological Resources Protection Act of 1979

Web link Full Act: <http://www.mdhtalk.org/law/arpa.htm>

i.e.: “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 American Native lands.

To foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals who have collections of archaeological resources and data that were obtained before the date of the enactment of this Act.”

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### 1990 NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

#### ➤ Native American Graves Protection and Repatriation Act of 1990

Web link to Full Act : <http://www.mdhtalk.org/law/nagppa.htm>

i.e.: “The Native American Graves Protection and Repatriation Act is the primary federal legislation pertaining to graves and human remains in archaeological contexts.

This act establishes definitions of burial sites, cultural affiliation, cultural items, associated and unassociated funerary objects, sacred objects, cultural patrimony, Indian tribes, museums, Native Americans and Native Hawaiians, right of possession and tribal land.

NAGPRA gives guides and priorities concerning the ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after the date of enactment of the act.”

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### WHERE NOT TO METAL DETECT

- National Beaches & Sea Shores
- National Monuments
- National Parks
- National Recreation Areas

Metal Detecting is NOT allowed!!

§ 36 CFR 2.1 [Preservation of natural, cultural and archeological resources.](#)

(a) Except as otherwise provided in this chapter, the following is prohibited:

- (1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:
- (2) Introducing wildlife, fish or plants, including their reproductive bodies, into a park area ecosystem.
- (3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.
- (4) Using or possessing wood gathered from within the park area: Provided, however, That the superintendent may designate areas where dead wood on the ground may be collected for use as fuel for campfires within the park area.
- (5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue, except in designated areas and under conditions established by the superintendent.
- (6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.
- (7) **Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler.**

This paragraph does not apply to:

- (i) **A device broken down and stored or packed to prevent its use while in park areas.**



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### (BLM) NATIONAL BUREAU OF LAND MANAGEMENT

**Some portions of BLM lands are open to metal detecting and some are not. The suggestion is that you contact the local BLM district office to check the status of the BLM land you are interested in.**

**The emphases is that each BLM office will have different resources and information on where and where not to use metal detectors. The response from any given office will not be the same as another office in a different area.**

**Can I go rock hounding, gold panning, use a metal detector?**

**Rock hounding** and recreational mining are permitted activities on public land administered by the Bureau of Land Management. The usual rock hound materials, including agates and stones, may be collected in reasonable quantities for hobby use. Petrified wood collection on BLM lands is limited to 25 pounds plus one piece per day to a maximum of 250 pounds per year. Panning, sluicing, and suction dredging for gold may be arranged through permit at certain areas. **Metal detecting** is a recreational activity that people do to find coins, jewelry, and precious metals. Metal detecting is allowed on BLM lands as long as no artifacts are removed.

**All Archaeological sites are off limits.**

BLM: [Website](#) Web-site: [Title 43 - Public Lands: Interior](#)

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### NATIONAL BUREAU OF RECLAMATION

Established in 1902, the Bureau of Reclamation is best known for the dams, power plants, and canals it constructed in the 17 western states. These water projects led to homesteading and promoted the economic development of the West. Reclamation has constructed more than 600 dams and reservoirs including Hoover Dam on the Colorado River and Grand Coulee on the Columbia River.

Today, we are the largest wholesaler of water in the country. We bring water to more than 31 million people, and provide one out of five Western farmers (140,000) with irrigation water for 10 million acres of farmland that produce 60% of the nation's vegetables and 25% of its fruits and nuts.

423.29 Natural and cultural resources.

(f) You must not possess a metal detector or other geophysical discovery device, or use a metal detector or other geophysical discovery techniques to locate or recover subsurface objects or features on Reclamation lands, except:

(1) When transporting, but not using, a metal detector or other geophysical discovery device in a vehicle on a public road as allowed under applicable Federal, State, and local law;

Bureau of Reclamation: [Website](#)

Bureau of Reclamation: [423.29 Natural and Cultural Resources](#)

Maps for Reclamation Dams: [Web-link](#)



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### USDA FOREST SERVICE

#### Is it legal to metal detect on Forest Service land?

Metal detectors may be used for recreational purposes (hunting for lost jewelry, coins, etc.) on Forest Service land in areas that do not contain or would not reasonably be expected to contain archaeological resources. Normally, developed campgrounds, swimming beaches, and other developed recreation sites are open to recreational metal detecting unless there are archaeological or historical resources present. In such cases, forest supervisors are authorized to close the area to metal detecting and the closure would be posted at the site. However, such closure notices are not practical in all undeveloped areas of a Forest. As a result, it is possible that you may find archaeological sites or artifacts in any area of a National Forest. Archaeological remains on public land are protected from both removal and damage (see the discussions above). If you were to discover such remains, you should leave them undisturbed and notify a Forest Service office. Metal detecting is about finding metal objects, and some of those could be archaeological resources. 36 CFR 296.4 applies to any kind of artifact, no matter what kind of tool is used to find it.

Metal detectors may also be used for mineral prospecting under the General Mining Laws. Forest Service policy allows for the casual collection of rocks and mineral samples on the National Forests. Normally, prospecting with a metal detector does not require a notice of intent or written authorization since it only involves searching for and occasionally removing small rock samples or mineral specimens (36 CFR 228.4(a)). If archaeological remains are found during prospecting, they should also be left undisturbed and reported to a Forest Service office.

Forest Service FAQs: [Web-site](#)

Complete Metal Detecting Regulation: [Metal Detecting Policy](#)

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### USDA FOREST SERVICE

#### Is it legal to collect artifacts or to dig in archaeological sites?

*It is illegal to dig into archaeological sites to recover artifacts for personal or commercial purposes, and to collect artifacts from the surface of a site ([36 CFR 296.4](#)). This includes isolated arrowheads and other artifacts ([36 CFR 261.9](#)). All of these activities seriously compromise our ability to understand when a site was occupied, and what people did there. Many archaeological sites in the U.S. had been damaged or destroyed by 1979, when The Archaeological Resources Protection Act was passed. Its intent is to save those sites that remain, and it has stiff penalties for violators. These include fines up to \$250,000, imprisonment up to 2 years, forfeiture of equipment (including vehicles), and civil penalties equal to the cost of restoration and repair of the damaged sites.*

*You must have a permit to either collect artifacts or to excavate sites for scientific reasons, and to get a permit you must meet archaeological competence standards that demonstrate that you have a research strategy, the ability to interpret and report the results of the work, and a curation agreement with a fully qualified museum ([36 CFR 296.4](#) and 296.6). Such permits are only issued to individuals or institutions that have considerable training and experience in conducting archaeological projects, and can guarantee that they will carry the project through to a final report ([36 CFR 296.8](#)).*

36 CFR Ch. II (7–1–07 Edition) Property: [Web-site Link](#)



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### USDA FOREST SERVICE

#### Isn't there a "treasure hunting" clause in Forest Service laws?

The [Forest Service's Manual \(FSM\) Section 2724.4](#) does make provisions for permitting searches for buried treasure. A treasure trove is defined as "a valuable quantity of money, unmounted gems, or precious worked metal in the form of coins, plate, or bullion of unknown ownership, purposefully hidden, that does not fall under any of the definitions in [36 CFR 296.3](#)." Almost any "treasure trove" would also have scientific value as a source of information about past activities, since most activities associated with treasure troves (such as possible Spanish mining, etc.) are not well understood or documented. As a result, they would be defined as an "archaeological resource" under [36 CFR 296.3](#) and be subject to the same permitting procedures. In addition, FSM 2724.44 (a) notes that a permit does not establish ownership of the trove, which is considered on a case by case basis. It states that "Archaeological resources remain the property of the United States", on behalf of the American people as is the case with all archaeological resources.

#### **Treasure Hunting Clause: 2724.44a - Ownership of Treasure Trove**

The permit does not establish any ownership of a trove; it only authorizes the search activity. In the event the permit holder makes a discovery, the ownership is adjudicated by process of law on a case-by-case basis. Several factors influence the ownership determination. These may include the following:

1. Archaeological resources remain the property of the United States.
2. The true owner of the trove may come forward.
3. The Forest Service cannot determine the tax aspects or interests of other Governmental agencies nor is it possible to determine these aspects in advance.
4. Resolution may include negotiation between the finder and the United States (as landowner) for any non-archaeological portion of the trove.

Permits shall provide only for search and, if there is a discovery, for removal to a repository for safekeeping until determination of ownership. The recovered treasure shall remain in escrow for one year to allow all claimants to come forward and to arrive at legally acceptable settlements.



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**STATE (PARKS, RECREATION AREAS, BEACHES,  
HISTORICAL SITES, ETC.)**

**States with their  
Parks CLOSED to  
Metal Detecting are:**

- **Alabama**
- **Georgia**
- **Kentucky**
- **Louisiana**
- **Minnesota**
- **Nevada**
- **New Mexico**
- **North Carolina**
- **Tennessee**
- **Texas**
- **West Virginia**

**If it is a historical park or site in any sense of the word then consider it off limits.**

**Many states require a metal detecting permit. Check with the state parks department or the park where you intend to visit prior to your planned hunt. Some permits may be available at the park office while others may have to be issued by a regional or state office. A few states charge a fee for the permits.**

**MOST State Ocean / Fresh Water Beaches can be metal detected.**

**State Regulation Webpage: <http://www.mdhtalk.org>**

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### LOCAL PUBLIC (PARKS, SCHOOLS, BEACHES, POOL AREAS, ETC.)

#### City or Park Land:

Many City and County Parks are open to metal detecting, however the trend is toward putting a **permit process in place** or **putting these properties off limits**. If you are new to an area please check the local Parks and Recreation Department in the city you wish to detect.

#### Public School Grounds:

Most Public School grounds are open to metal detecting, however, there are school districts that require a **metal detecting permit** or **putting these properties off limits**. You may want to check with the district school officials before detecting.

**Public Pool** areas near the pool are **usually off-limits due to Liability issues**.

**Public Beaches** are **normally open** to metal detecting.

If there is a historical site present in any sense of the word then consider it off limits.



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**THE SPECIFIC LAWS OF ANY THE STATE FOR THIS CLASS  
SHOULD BE HIGHLIGHTED IN DETAIL HERE WITH ADDITIONAL  
CONTENT.**

- **State Lost and Found Law**
- **State Trespassing Law**
- **State Parks Law or Regulation that Govern Metal Detecting**
- **State Law on Historic Preservation**
- **State Archaeology Law**
- **State Native American Graves Protection Law**
- **State Local and Municipal Code on Metal Detecting**

**If there is a historical site present in any sense of the word then consider it off limits.**



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### **State Lost and Found Law CIVIL CODE SECTION 2080-2080.10**

[Web-link 2080-2080.10](#)

Penal Code 485 PC -- California's law against appropriating (or misappropriating) lost property -- prohibits you keeping property that you find when there are clues identifying its true owner.<sup>1</sup> You are not required to go to extremes to identify and contact the owner. But the law says you must make a reasonable attempt to do so. [Web-link](#)

The Law of Finders-Keepers and What Happens When You Find Buried Treasure

Example: <http://time.com/10118/california-gold-coins-finders-keepers-john-mary/>



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### **State Trespassing Law Penal Code Section 602**

Except as provided in subdivision (u), subdivision (v), subdivision (x), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

- (a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.
- (b) Carrying away any kind of wood or timber lying on those lands.
- (c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.
- (d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.
- (e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

Plus Much More [Web-link to Penal Code Section 602](#)



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### State Parks Law or Regulation that Govern Metal Detecting

According to the California Code of Regulations Metal detecting in California state parks is not expressly forbidden. However, four sections of the law found in title XIV, section 1, prohibit disturbing any plant, animal, geological feature, or archaeological artifact.

People using metal detectors are not allowed to dig up objects unless they obtain permission from the park's district superintendent. All items worth more than \$100 must be turned in to a state park official, and any lost property recovered can be reclaimed by the original owner.

#### § 4306. Plants and Driftwood.

No person shall willfully or negligently pick, dig up, cut, mutilate, destroy, injure, disturb, move, molest, burn, or carry away any tree or plant or portion thereof, including but not limited to leaf mold, flowers, foliage, berries, fruit, grass, turf, humas, shrubs, cones, and dead wood, except in specific units when authorization by the District Superintendent or Deputy Director of Off-Highway Motor Vehicles to take berries, or gather mushrooms, or gather pine cones, or collect driftwood is posted at the headquarters of the unit to which the authorization applies.

#### § 4307. Geological Features.

(a) No person shall destroy, disturb, mutilate, or remove earth, sand, gravel, oil, minerals, rocks, paleontological features, or features of caves.

(b) Rock hounding may be permitted as defined in Section 4301(v).

#### § 4308. Archaeological Features.

No person shall remove, injure, disfigure, deface, or destroy any object of archaeological, or historical interest or value.

TITLE 14. NATURAL RESOURCES DIVISION 3. DEPARTMENT OF PARKS AND RECREATION [Web-link](#)



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## Metal Detecting Class (MD 102)

**THE SPECIFIC METAL DETECTING LAWS OF ANY THE STATE FOR  
THIS CLASS SHOULD BE HIGHLIGHTED IN DETAIL HERE WITH  
ADDITIONAL CONTENT.**

### **State Law on Historic Preservation**

Statutes, Regulations & Administrative Policies Regarding the Preservation & Protection  
of Cultural & Historical Resources [Web-link](#)



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### **State Archaeology Law** [Sustainable Preservation: California's Statewide Historic Preservation Plan, 2013-2017](#)

The vision, goals and objectives outlined in the State Plan can't possibly be achieved by one agency, such as the Office of Historic Preservation, acting alone, or even a few operating in concert.

Rather, it will take the concerted efforts of many individuals and organizations. With that in mind, we thought it would be useful to provide ideas for how you can help support the State Plan based on the "hats" you wear in your life. Below is a list of categories of people--some are traditional preservation partners, and others are not. You probably fit into many of these lists. By using the link for each category, you will be taken to a page with specific activities that you could do in support of the State Plan. For those of you in the preservation community, these lists are made up of the suggested activities included in the State Plan.

As you can see from these lists, there are lots of activities to choose from. If we all took on just one or two of these suggestions each, it would go a long way toward achieving the vision put forward in the plan. Thank you for your help in making this vision a reality.

[http://ohp.parks.ca.gov/?page\\_id=21756](http://ohp.parks.ca.gov/?page_id=21756)



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**State Native American Graves Protection Law** PUBLIC RESOURCES CODE SECTION 5097.9-5097.991 [Web-link to Section 5097.9-5097.991](#)

### Native American Cultural Resources Defined

- Native American cultural resources are evidence of past peoples and cultures identified by a culturally affiliated tribal representative. They can include villages, ceremonial sites, religious sites, and burial sites.
- The culturally affiliated Native American tribe defines its cultural resources. A tribe sometimes may be the only source of information regarding a cultural site.
- Other sources of information may be archaeological sites recorded in the California Historical Resources Information System (CHRIS) and the Native American Heritage Commission (NAHC) Sacred Lands Inventory.
- Examples of sites in the Sacred Lands Inventory include petroglyphs, pictographs, bedrock mortars, rock art, ceremonial places, burial grounds, and historic structures.



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### State Local and Municipal Code on Metal Detecting

[East Bay Regional Parks, CA](#) Requires Permit

[Reno, NV](#) Requires Permit

[Santa Clara County Parks, CA](#) Requires Permit

[San Jose, CA](#) Permit Required

[Sunnyvale, CA](#) Cannot Dig

[Tahoe National Forest - Bureau of Land Management, CA](#) Ok to Detect with Exceptions

[Bureau of Reclamation](#) No Metal Detecting

[List Of Cities](#)



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### METAL DETECTING PRIVATE LANDS

Should acquire permission!! Permission should be in writing.

- Private Schools, Colleges and Academies
- Privately Owned Lands
- Privately Owned Resorts, Parks and Beaches
- Private Lands with Former Public Places on them

*Be A Responsible Metal Detectorist at All Times.*

**If there is any evidence of a historical site present on Private Land then consider it off limits.**

**Private or Public Lands with Human (Indian) Remains Buried or Cemeteries are Usually Covered by State & Federal Law and MUST NOT be Disturbed**

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### SUPPORT SLIDES

- **U.S. Army Corp of Engineers**
- **Archaeological Resources Protection Act of 1979**

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### U.S. ARMY CORP OF ENGINEERS

#### METAL DETECTOR POLICY

**POLICY:** In accordance with the policy established by the U.S. Army Corps of Engineers, each water resource project will have one or more areas open to the public for the recreational use of metal detectors.

A metal detector may be used under the following conditions:

- Only in those areas designated as "open"; all other government land is classified by regulation as "closed."

- Non-identifiable items of nominal value (less than \$25.00) may be kept.

- Identifiable items such as rings, watches, wallets; items of greater than nominal value; and all historical, archaeological, or paleontological items found will be deposited with a Park Ranger or at the nearest Resource Manager's Office.

- Digging shall be limited to hand tools that can be used by one hand only, and are no more than 4 inches wide and 12 inches long.

- Grass and other vegetation may not be removed or disturbed; digging is allowed in bare soil or sand only. All soil disturbed or displaced shall be returned to its original state.

- The destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archeological features, and vegetative growth, is prohibited except when in accordance with written permission of the District Engineer.

- Any person wishing to use a metal detecting device on project lands, should first obtain a list of "open" areas at the nearest Resource Manager's Office or his authorized representative. This list is subject to change.

**ENFORCEMENT:** Failure to conform with these requirements will be grounds for possible prosecution under one or more sections of Title 36, CFR, Part 327.

**INFORMATION:** For additional information or to obtain a copy of Title 36, Rules and Regulations Governing Public Use of Corps of Engineers Water Resources Development Projects, please contact the staff at the Resource Manager's Office, at the U.S. Army Corps of Engineer's lake nearest you.

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### ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

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

*Be it enacted of the Senate and the house of Representatives of the United States of America in Congress assembled,*

#### **SHORT TITLE**

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

#### **FINDINGS AND PURPOSE**

SEC. 2. (a) The Congress finds that-

- (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.



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### ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

#### 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 the 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. Non-fossilized and fossilized pale ontological 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.

(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.



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(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 interest 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.



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### ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

#### EXCAVATION AND REMOVAL

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.



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### ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

(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 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.



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### ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

(2) In the case of any permits for the excavation or removal of any archaeological resources 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 land s. 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 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.

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### ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

#### CUSTODY OF RESOURCES

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.



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## **Metal Detecting Class (MD 102)** **ARCHAEOLOGICAL RESOURCES** **PROTECTION ACT OF 1979**

### **PROHIBITED ACTS AND CRIMINAL PENALTIES**

Sec. 6. (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 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 commerce, any archaeological resource escalated, 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 \$5,000, 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.

(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.

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#### 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 regulation 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.

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(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 subpoenas 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 subpoena 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.



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### **ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979**

#### **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 \$50 0, 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 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 of 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.

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### ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

#### 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.



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### ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

#### **REGULATIONS; INTERGOVERNMENTAL COORDINATION**

Sec 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, 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 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.

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

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### **ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979**

#### **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.

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### **ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979**

#### **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.

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### **ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979**

#### **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.