



TECHNICAL ASSISTANCE

On How to Submit State Metal Detecting Legislation

DRAFT

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Introduction

Metal Detecting is becoming a recognized recreational hobby and has also contributed to learning more about our past through some very important finds. Today, there are more and more battlefield projects in the U.S. that use volunteer metal detectorist. Metal Detectorist with their expertise can be a great help in locating battlefield artifacts.

England passed a Treasure Act in 1996. Since its enactment this act has provided the legal environment for many great historical and valuable metal detecting finds. Evidence of these finds are published almost on a daily bases.

It is time in the U.S. that state metal detecting laws come under review. Some states prohibit metal detecting completely, other states set rigid limitation and a few states have no regulation or law at all just internal DNR memorandum.

So with these thoughts in mind, the following document was written. The focus is on what you need to know and what to consider if you are about to seek change or create new recreational metal detecting state law.

I would like to acknowledge and thank Terry Wright, Metal Detecting Association of Washington <http://www.metaldetectwa.org> for taking the time to share his knowledge about working with state legislators. Terry has been involved with state officials since 1986 concerning metal detecting law. He and a team of metal detectorist from many Washington State Metal Detecting Clubs were instrumental in getting an Act passed in 1996 which is the foundation for today's metal detecting law in Washington State.

Purpose of This Paper

The overall objective of this document is to provide an informative framework that can be used to create, change and submit state legislation for recreational metal detecting. The sole intent is to provide aid and prepare a state metal detecting association or committee as they approach the task of getting metal detecting legislation passed.

All states have direct or indirect laws, regulations, or internal memorandum that may forbid or restrict recreational metal detecting on public lands. The goal of many of these laws is not only to limit metal detecting, but to make recreational metal detecting outright unlawful on state lands, seashores and beaches.

In this document will find one example and up to seven different legislative options that could be used to create metal detecting state legislation. The document will highlight the federal and state barriers to

any metal detecting legislation, list the opposed interested parties, plus provide seven appendices with reference and support materials. Finally, this document should provide a workable blueprint on how to move forward with any metal detecting legislative initiative.

Know Your State Parks

A very important aspect of developing metal detecting legislation is to have a good understanding of the parks that will fall under your legislation. The association or committee taking charge of such an initiative must have first hand knowledge of their state's parks. This means each park's attributes should be well understood by all the members of the association or committee.

What are the Critical Attributes of a State Park?

- Parks with Archaeology Sites
 - Parks with Historical Places
 - Parks with Native American Burial Grounds
 - Parks with Native America Artifact Sites
 - Parks with Specific Geographic Sites
 - Parks with No Disturb Areas
 - Parks On Native American Owned Grounds
 - ✓ Parks with No Archaeology, Historical & Native American Sites
 - ✓ Parks with Designated Swimming Waters and Beaches
 - ✓ Parks with Camping & RV Grounds
 - ✓ Parks with Large Developed Areas (Disturbed Ground)
- ✓ Note: State Parks that have a check mark are going to be the easiest to get permission for metal detecting. Parks with these attributes should not have a lot opposition from Archaeologist, Historians and Native Americans since there are no sensitive areas to these groups.

In creating or changing law you may want to try the simplest approach first - those parks that have the check marked attributes.

The above attribute list should be used to sort the state parks (by name) into the following three categories:

- Parks with archaeology, historical and native American sites
- Parks with geographic sites and no disturbed grounds
- ✓ Parks with designed swimming areas, camping & RV areas, disturbed grounds

If the parks in your state have a combination of these attributes then the parks will most likely require mapping to determine where the Archaeology,

Historical and Native American sites are located before they can be included in any metal detecting regulation. The exception may be to just get the designed swimming locations (beach and water) open first to metal detecting and approach the remaining portion of the park in a later legislation attempt.

What are the Legislative Barriers to Metal Detecting on Public Lands?

During the last century the following Federal legislation was passed with the intent to protect and preserve American's Historical Heritage and provide protection to Native American graves & artifacts. The consequence of these Federal Acts is that many states have emulated or adopted these Acts into State Law. These acts and laws have created artificial barriers to recreational metal detecting. These are not physical barriers but are usually indirect barriers and legal against permitting recreational metal detecting on any state lands.

Just to note here: national land and national monuments are covered by federal law not state law.

Federal Legislation Barrier One: American Antiquities Act of 1906

The American Antiquities Act of 1906 is probably the first piece of federal legislation that has become a barrier to modern day metal detecting on federal lands. This act was written to protect the prehistoric Indian ruins and artifacts but was later interrupted to cover objects of scientific interest allowing presidents to make national moments protected using the 1906 act.

See Appendix A to access a web link to the 1906 Act.

See Appendix C for the complete copy of the 1906 Act.

Federal Legislation Barrier Two: NHPA - National Historic Preservation Act of 1966, as amended through 2000

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.

See Appendix A to access a web link to the 1966 Act.

See Appendix C for the complete copy of the 1966 Act.

Federal Legislation Barrier Three: APRA - Archaeological Resources Protection Act of 1979

The next federal act of importance was the Archaeological Resources Protection Act of 1979. This act protects archaeological resources on federal lands and American Native lands.

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, 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."

The 1979 Act has thirteen sections that cover Definition, Excavation & Removal, Custody of Resources, Prohibited acts & Criminal Penalties, Civil Penalties, Rewards & Forfeiture, Confidentiality, Regulation & Intergovernmental Coordination, Cooperation with Private Individuals, Saving Provisions and Reports.

See Appendix A to access a web link to the 1979 Act.
See Appendix C for the complete copy of the 1979 Act.

Federal Legislation Barrier Four: NAGPRA - Native American Graves Protection and Repatriation Act of 1990

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."

See Appendix A to access a web link to the 1990 Act.
See Appendix C for the complete copy of the 1990 Act.

State Legislation Barrier Five: State and Local Archaeology, Historical Places (site), Native American Protection Laws

The 1906 Antiquities Act, 1966 National Historic Preservation Act, 1997 Archaeological Act and the 1990 Native American Act all have broad reach and cover all federal lands including all the national parks / monuments / seashores. Plus many states have adopted these three Acts in whole or in part into their state code. In some cases states have even modified these laws to cover privately owned land as well as public land. The state law's

definition and complexity will vary from state to state and must be researched, reviewed and well understood before trying to create and submit any state legislation.

State Park Regulation Barrier Six: State Park Regulation on Geographic's

Many states have park regulation similar to this: *Persons may not destroy, damage, or remove a living or dead tree, shrub, or vegetation; disturb any earth, rocks, minerals, natural formations, or historic relics; or destroy, damage, or remove any antlers, skulls, or other parts of animal carcass located on lands owned or leased by the department without written permission from the secretary or a designated agent.* These statements generally are a catch all and may need to be addressed in any new metal detecting legislation.

In Summary: The Federal legislative acts have been applied universally to National Parks / Monuments /Seashores (meaning all national lands not just Historical & Native American lands). There are some exceptions to this statement where BLM- Bureau of Land Management and FS- Forest Service lands are partially open to metal detecting. Going to the local BLM or FS office will usually provide you with the information needed to metal detect the BLM & FS lands.

In the case of State legislative statues they are applied to state lands very much like the federal application of the law to federal lands meaning all state owned lands are covered by the state legislative statues. In a few states the Historical and Native American Laws may be enforced in a more rational - selective matter.

These six Federal & State legislative barriers will directly restrict or limit recreational metal detecting on most public lands. Any new state metal detecting legislative initiative will need to confront these legislative barriers head on.

Again, it will be very important for a metal detecting association or committee to have an excellent understanding of the laws, regulations in your state and be very familiar with the federal acts.

Who May be the Opposed Interested Parties or Key Players to Change?

The organizations or groups which are most interested and generally are opposed to any new effort to pass metal detecting friendly legislative are the following:

- ✓ State Department of Archaeology and Historic Preservation (DAHP)
- ✓ State Historical Preservation Office (SHPO)
- ✓ State Native American Heritage Commission

- ✓ Native American Community
- ✓ Committee on Native American Relations
- State Department Natural Resources (DNR)
- Natural Resources Commission (DNR)
- Parks and Regulations Department

✓ Note: These State Departments usually adhere to the 1996 National Historic Preservation Act, 1997 Federal Archaeological Resource Protection Act, and the 1990 Federal Native American Graves Protection and Repatriation Act.

The state departments or organizations listed above may have different names / titles but will be present in all fifty states

State departments, organizations or commissions usually feel they are entitled to their authority as a result Federal statutes and any challenge to their authority in the form of legislation are not taken lightly.

The expectation should be on the part of any metal detecting association or committee that one or all of these groups will confront any metal detecting legislation. It will be imperative that any group who sponsors a metal detecting legislative bill or act must have a very strong working knowledge of the state and federal laws associated with these departments. This knowledge will be absolutely necessary once involved in the legislative bill process.

Who Must You Get to Know? Any legislative initiative under taken by a metal detecting association or committee will be required to develop a working relationship with the key players. The best way to establish this relationship is to approach the key individuals and ask to have a meeting. This meeting can be the forum for discussing your ideas, get feedback on their position, plus obtain copies of the laws or regulations that their department represents. Using this approach will provide your team with contact information, their position on the subject and copies of the laws you may need to address in new legislation. It will also provide the departments in question with some background as to what your intentions may be and hopefully the beginnings of a positive working relationship.

Establishing a State Metal Detecting Association or Committee

First Issue You Must Consider: Working with a State legislative body is not necessarily a one or two year effort to get legislation passed; it can be much longer. Once the legislation is passed there will continue to be challenges from the opposition either directly or indirectly. So a commitment to keeping up with any new legislation that may appear each year requires a long term association view.

The opposing parties will incrementally make changes to Archaeology, Historical or Indian Burial laws, regulations, processes or state policies that may null and / or void some part or all of your state's metal detecting legislation. By having an active State Metal Detecting Association you will be alerted to change and may be able to effective action before the change can be put in place.

An active Metal Detecting Association means just that ACTIVE. The Association must be in constant contact with all the interested parties and with any legislation that may be submitted each session which could have an effect on the status quo.

Therefore, the recommendation is to set up a state Metal Detecting Association and keep it active. Setting up an association is a long term commitment but should be very rewarding and beneficial to the states metal detecting community. The other option is to set up a short term focused committee for a single new legislative initiative.

The metal detecting association or committee must be the final authority on all decisions, planning, external communication and liaison for any legislation initiative.

An association should be represented (active members) by hobbyists, retailers and club members from across the state. There should be a core group of about five individuals with skills that complement each other. This is so that they are able to backup any core team member that may leave. The association should hold state wide meetings at least once a quarter where all non-active members can be brought up to date and in turn provide real time feedback.

A committee can be assembled from one or two clubs that have a strong desire to change their state's law to be friendlier toward the hobby. This would probably be a short term initiative committee only.

Role of a National Metal Detecting Association? The first impression is to get a National Metal Detecting Association involved in a State metal detecting issue. Let's think about that for a minute. Look at it this way: state legislators do not like the federal government getting involved in their state's affairs. Plus state government officials want to work with their constituents. The same situation applies to a national metal detecting association getting involved with state officials. Keep the national association at a distance let them be indirectly involved. There can be a role for a national association but not in dealing directly with state officials. State officials need to work with their constituents (state association or committee). If a National Metal Detecting Assn has the expertise they can be consultants to the state metal detecting

associate or group. For other National Metal Detecting Assn involvement: see "Support Your Bill with a Communication Campaign".

The Association or Committee Must Handle All the Issue Associated With:

- creating the legislation and legislation support
- identify funding sources and seek donations
- identify and document a supportive state contact list
- identify the legislation sponsors
- determine if a lobbyist may be required (recommendation do not hire)
- identify the need for other professional resources
- create letters and talking points
- establish a website surrounding the initiative
- ✓ long term monitoring of new state legislation
- ✓ maintaining real time contact with the all interested parties
- ✓ hold quarterly communication meetings with association membership
- ✓ Note: Additional Duties of an Association from a Committee

The committee should consist of at least five active members all of whom should be members of metal detecting clubs or metal detecting retailers within the state. The best situation is that all the members come from one or two clubs within the state.

An association should have the same number of active members but the representatives should come from all areas of the state not from just one or two clubs and retailers.

1. Committee Leader: This person should have leadership capabilities, excellent communication skills (verbal and written), meeting skills, computer skills, and have the time necessary for the legislation initiative process. This person may also be the legislative liaison.

2. Member One: This person should have excellent writing skills, take all meeting minutes, draft the legislation, and distribute all material to other committee members. This person should be an expert in using computers and in using computer applications to create the written material and do web searching. This person should have unlimited time available to dedicate towards the initiative.

3. Member Two: This person should be able to handle & manage the funds for the initiative, know how to use some type of spread sheet application, in charge of identifying funding sources and manage fund distribution. They should also be responsible for assembling all external contact list used in the communication support campaign. This person should have very strong computer skills and have unlimited time available to dedicate towards the initiative.

4. Member Three: This person should be responsible for all external communication. They should develop and write all talking points, support letters and phone messages used by the general public to blanket legislators. This person should also manage all methods of external communication to (other clubs, forums, email list, etc). This person should have unlimited time available to dedicate towards the initiative.

5. Member Four: This person should become the committees resource on all the federal and state laws associated with the initiative. Each team member should have a working knowledge but this person should be able to answer most detailed questions and know the opposed party's position. This person must have good communication skills (reading & verbal) and have excellent web searching skills. This person should have unlimited time available to dedicate towards the initiative.

Preparations

Once the association or committee has been set up the next thing is to create a plan with actions and a timeline. This plan can be in outline form but each action of the plan must have assigned owners, a review process and completion dates. A plan may look like this:

- Long-term association or short-term committee decision is made
- Active committee members have been identified.
- Assign committee members their responsibilities & duties based on the members position description.
- Establish frequency of association or committee meetings.
- Develop a mission / objective statement / bench marks (process stages).
- Identify the broad range of task to be undertaken (detailed list).
- Assign committee members to the individual items on the detailed list.
- Create a time line based on the tasks and legislative calendar.
- Designate two members who have the authority to sign checks. (if required)
- May need to consider applying for IRS 501(c)(3) tax exempt status (IRS Form 1023) and receive IRS Determination Letter or advanced ruling letter: www.irs.gov. All organizations that have gross receipts of \$5,000 or more must receive an IRS Determination Letter.
- May need to consider applying / filing for state and local tax exemptions.
- Establish financial management (one member), auditing and internal control process.

Review Current Federal and State laws

In the very beginning a fair amount of time needs to be set aside to read and discuss federal and state laws that will impact any legislation that will be submitted.

Also at this stage the association or committee should identify the interested parties in the state (those most likely to be opposed to your legislation). These parties will probably question in detail and potentially be completely opposed to any metal detecting initiative.

There are some states that have workable metal detecting law and regulation, however, in many of the states there are limitations on how, where and when you can metal detect. In any event these state laws should be reviewed since you may be able to use information from this review to write your legislation plus use other state's answers to metal detecting in your support arguments.

The following category of laws and legislation should be read. Reviewing these Laws will provide guidance for your initiative and in some cases you may want to emulate what another state has already done for metal detecting.

Here is a Suggested List of Federal Acts to Evaluate:

- Review, Read and Discuss the American Antiquities Act of 1906
- Review, Read and Discuss the National Historic Preservation Act of 1966, as amended through 2000
- Review, Read and Discuss U.S. Archaeological Resources Protection Act of 1979
- Federal Native American Graves Protection and Repatriation Act of 1990

Note: See Appendix A to access a web link to these four Acts.
See Appendix C for a complete copy of each of these four Acts.

Here is a Suggested List of State Laws to Evaluate:

- Review, Read and Analyze the State's DNR Regulations
- Review, Read and Analyze the State's Archaeology Law
- Review, Read and Analyze the State's Historical Sites (Places) Law
- Review, Read and Analyze the State's Indian Burial Laws
- Review, Read and Analyze State Law on Found Property

Note: The specific State Law for each of these areas must be located and gathered from within each state. If I were to attach each individual set of state laws to this document it would make the length of document just too great.

There is the U.K. United Kingdom Treasure Act to Consider:

- Review, Read and Discuss the U.K. Treasure Act* (Appendix E)
- Read U.K. Treasure Act Support Documents (Appendix E)

* **Note:** A Web Link to the Treasure Act can be found in Appendix A

Here is a list of metal detecting bills that have been submitted to states since 2007

- 07- HB 1016 Texas Bill **(Failed)**
- 07- SB 5205 Washington Bill **(Failed)**
- 08- SB 6253 Washington Bill-Revised **(Failed)**
- 09- SB 6 Kentucky Bill **(Failed)**
- 09 / 10- Number unknown Wisconsin Bill **(Failed)**
- 10 / 11- SB 432 and AB 636 Wisconsin Bill-Revised **(Pending Submittal)**

Note: Copies of these bills and their legislative support material can be found in Appendix B

This is a short list of State laws that have well defined regulations for Metal Detecting

- **Arkansas** - Some beach detecting with limitations & permit
- **Iowa** - Beach detecting with limitations
- **Nebraska** - Beach detecting with specific guidance
- **New Hampshire** - Beach detecting with guidance
- **Oregon** - Permit required for some parks & not required for other parks
- **South Dakota** - Permit process for detecting
- **Michigan** - List of parks open, partial open and closed to detecting
- **Washington** - Registration process to detect at select parks (Brochure)

Links to most all metal detecting laws for these states can be found on the Metal Detecting Hobby Talk website: <http://www.mdhtalk.org/>.

In Appendix D you will find website links for each of the listed states.

The most impressive states with laws on the list are: Iowa, Oregon, South Dakota, Michigan and Washington.

Legislative Process Steps

The legislation process will be some what different from state to state but all legislative processes will be similar to the seven stages outlined below. Any bill that is submitted will either be started in the House / Senate or may be started in both legislative houses simultaneously.

- Stage One: Bill Filed
- Stage Two: Out of House Committee
- Stage Three: Voted on by House
- Stage Four: Out of Senate Committee
- Stage Five: Voted on by Senate
- Stage Six: Sent to Governor
- Stage Seven: Bill Becomes Law

One important process issue is the need to know when your state's legislation process will start taking bill filing for the upcoming legislative year. Getting your bill into the process early is very important since later you may need to make a bill amendment and time needs to be on your side.

Take a close look at your states house and senate legislators. The house usually represents the districts people's interest while the senate represents the districts. You may want to start your bill in only the senate or house based on the leaning of a specific legislative body. Thereby getting the bill passed in one legislative entity before moving on to the next.

The other option is to start your bill simultaneously in the senate and house.

The recommendation is to start any new bill in both the House and the Senate.

Listed below is the legislative start location of metal detecting bills submitted since 2007

- 07-Texas Bill Started in **House**
- 07-Washington Bill Started in **Senate**
- 08-Washington Bill Starts in **Senate** (Revised Slightly)
- 09-Kentucky Bill Starts in **Senate**
- 09/10-Wisconsin Bill Starts in **Senate**

Important Note: The association or committee may be offered the opportunity to provide a presentation to the legislators as to your bills content and impact. If this opportunity is available you will need support material for your bill's position. Depending on your states legislative process the allocated time may only be three minutes per person speaking. If the situation is similar to that just described; then use this option to get more speaking time. If you would like 45 minutes of speaking time to support your bill you need to get 15 people to sign up to speak on

supporting your bill's position. The other 14 people scheduled to speak should defer their time to just one speaker thus you have 45 minutes.

Once the bill has been filed, it moves to either a House or Senate committee. This will be the first time that other interested parties will be formally exposed to the new legislation.

Expectations should be that a number of challenges will come forward from special interest groups (see: Who are the Interested Parties Section) these groups may be opposed to any change to current state law.

What may take place is that the legislative committee may require an impact analysis report be completed. A portion of this analysis will probably require a detailed fiscal analysis on the implementation cost of the bill and the projected annual maintenance cost.

This Can be Very Important: Once your bill is submitted and starts through the process it is very important to be prepared to support your bill at important junctures by rapidly conducting phone, fax, email and letter writing campaigns to your legislators. The notice or opportunity to do this will be very short so it is absolutely necessary to have your support campaign set up in advance. (See: Support Your Bill with a Communication Campaign)

If a good job of writing the bill has been done, the bill may easily move through the process and be signed into law in one legislative session year. But note this has not happened to any of the bills submitted by Texas, Washington, Kentucky and Wisconsin in the last four years.

In the Case of Washington State: The State Metal Detecting Association of Washington had one success in getting a bill passed 1996. Since that time their situation for metal detecting state lands has been under attack by parties opposed to recreational metal detecting. This has created some uncertainty as to where it is legally ok to detect from year to year.

Locate and Select Legislative Sponsors

If you have set up a State Metal Detecting Association and the active board members come from across the state there are some options. By having active association members come from a number of state legislative districts the association is offered a broader list of potential legislative sponsors. This broader list of potential sponsors provides the opportunity to select someone who may see your initiative more favorably.

The legislative sponsor interview process will:

- help you in selecting the right legislators sponsors
- provide the opportunity to share what is your agenda

- yield what resources are available from the legislator sponsors and how they can help you in drafting the act or bill
- aid in developing a strong working relationship
- provide the necessary process information that must be followed
- identify and share contact information
- obtain a legislative timeline that must be followed to be successful
- gather their thoughts on opposition to your agenda

After selection a final one on one sit-down with your selected legislator sponsors is necessary before you get very far into your initiative.

Locate and Select a Lobbyist (yes or no)

Lobbying is a form of advocacy with the intention of influencing decisions made by government legislators, officials and other individuals, constituents, or groups.

The association or committee options related to lobbying are:

- do not involve a lobbyist in your plans (recommendation)
- be represented by a lobbyist

The association or committee will need to make a decision on whether to hire a lobbyist to support your metal detecting initiative. A **lobbyist** is a person who tries to influence legislation on behalf of special interest (your organization).

The recommendation is not to hire a lobbyist to represent your interest. The reason for this is that your senate and house legislators want to work for their constituents. A lobbyist is usually not considered a constituent instead they are an outside influence (middle man) that represents a constituent.

If you want to move forward with a lobbyist then a simple criteria for selecting the lobbyist would be someone that is very familiar with these groups:

- State Department of Archaeology and Historic Preservation
- State Native American Heritage Commission
- Native American Community
- Committee on Native American Relations
- State Department Natural Resources (DNR)
- Natural Resources Commission (DNR)

Once you have selected the lobbyist the next step is to educate the lobbyist on your initiative and provide them with a very good set of talking points backed up by real examples and data that support your bill. Keep in mind that a lobbyist is expensive, therefore; an aggressive funding campaign will be required.

Exploring Metal Detecting Legislation Options

In this section's text you find seven potential legislative options with examples that could be used for a bill to gain a favorable metal detecting environment for your state. Each one of the options could stand on their own or a number of the options could be combined to fit the need of your association. I have taken the liberty to put together an ideal set of circumstances for a sample bill. This is not in statute language but with a little work could be transformed into the proper text.

All legislation created and submitted should be aggressive to achieve the most desirable outcome for the hobby in your state.

Sample of a Proposed Act or Bill:

The use of metal detectors is permitted subject to the following provisions: Metal detectors may be used year around along the state park shorelines, and in designated swimming beach & water areas. Metal detecting must remain below the vegetation line above the beach with the following exception:

- Metal detectors shall be permitted at state park athletic fields, playgrounds, and 25 feet from picnic tables and pavilions, unless otherwise posted.
- Metal detectors shall be permitted on all disturbed and developed State Park lands.

Metal detectors are limited to portable, hand-held devices and digging equipment is limited to hand tools not exceeding twelve inches in length by four inches in width and sand scoops and sieves not over ten inches in diameter.

Metal detector operators shall wear or carry a litter apron or bag, and all found metal litter must be retained and deposited in an approved trash receptacle.

Operators may keep any items with a nominal value of less than \$50.00. Identifiable items, such as rings, watches, etc., and all other items of value exceeding \$50.00 are to be deposited with the park superintendent.

These provisions apply to all lost and found articles including those found without the aid of a metal detector.

- Money and coinage found whose value is in excess of \$60.00 shall be reported to the park manager or supervisor. (large deposit of coins & cash found in one location only) All single target coin and cash finds do not come under this provision.

All historical, archeological or paleontological items found are to be left undisturbed and their location reported to the park manager / superintendent / ranger.

- Use of metal detectors in State Historical Parks is expressly prohibited except as herein provided.
- If maps of park historical locations are available then other park locations such as swimming areas, developed lands and other disturbed land will be open to metal detecting.
- Owners of lost items may use a metal detector in areas where their use is otherwise prohibited, only upon prior arrangement with the park manager / superintendent / ranger.

Persons using metal detectors shall:

- Observe all laws, regulations, and procedures
- Observe the metal detectors code of ethics (see attachment)
- Never destroy or disturb park facilities, natural features, historical, or archeological resources;
- Conduct themselves with thoughtfulness, courtesy, and consideration for others by not interfering with other recreational activities or allowing any emitted sound that is audible to other park users.

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.
- 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.

Following are options that could also be considered for allowing metal detecting on state public lands.

- **Option One:** Use the U.K. Treasure Law Concept for Metal Detecting Public Lands in the U.S. (See Appendix E)

The ability to get a law similar to the U.K. Treasure Act passed in one of the states would be a great accomplishment. The treasure act would need to be modified to fit the state historical and archaeology requirements but it could be done. Getting it into an act and getting it passed would be very difficult for any state. This effort may take one to two years of background work with all the opposition groups before any Act or Bill is submitted. However, it is an option to consider.

The current Act is divided into the following:

- Meaning of treasure
- Power to alter meaning
- Supplementary
- Ownership of treasure which is found
- Meaning of franchisee
- Treasure vesting
- Jurisdiction of coroners

- Duty of finder to notify coroner
- Procedure for inquests
- Rewards
- Codes of practice (can be found in Appendix E)
- Report on operation of Act

- **Option Two: Detecting All Public Lands**

This option is one which is self explanatory. It means open all state (public lands) to metal detecting with no restrictions.

With all of the current Federal and State laws on the books this option is already null and void but is worthy to note the ideal situation.

- **Option Three: Detecting Disturbed & Developed Public Land Only**

The Oregon State regulation for metal detecting is a good example of a state that allows detecting on developed lands.

(See Appendix D for a link to the Oregon website)

- **Option Four: Detecting Fresh & Salt Water Designated Swimming Areas & Beaches at Select Parks**

Below is the Arkansas State regulation for metal detecting.

(See Appendix D for link to the Arkansas website)

Metal detecting will be allowed only at public swim beaches & waters located at the following parks:

- *List of Parks*

Crowley's Ridge	Daisy	DeGray Lake Resort
Lake Catherine	Lake Charles	Lake Dardanelle
Lake Ouachita	Village Creek	Woolly Hollow

The rules and procedures regarding the use of metal detectors are:

A. Metal detecting may occur from the day after Labor Day through the weekend preceding Memorial Day Sunday through Saturday from 8:00 a.m. to 5:00 p.m.;

B. Metal detectorists must complete a registration form (see attached copy) and have it on their person when metal detecting;

C. Digging implements and hole sizes will be regulated;

D. Items of historical and/or archeological significance will not be removed. Park staff must be contacted immediately upon the discovery of such items;

E. Uncovered "valuables" will be left at the park office until a reasonable time has passed for the original owner to claim the item (30 days per Arkansas Lost and Found laws - Excludes coins in circulation). All persons using metal detectors must complete a found property report before leaving a park. If no claim is made within the thirty days, the item may be collected by the finder.

Effective Until

Persons using metal detectors shall:

A. Observe all laws, regulations, and procedures;

B. Observe the metal detectors code of ethics (see www.fmdac.com);

C. Never destroy or disturb park facilities, natural features, historical, or archeological resources;

D. Conduct themselves with thoughtfulness, courtesy, and consideration for others by not interfering with other recreational activities or allowing any emitted sound that is audible to other park users;

E. Limit digging implements to ice picks, screwdrivers, and probes not to exceed two (2") inches in width and sand scoops not to exceed six (6") inches in width and eight (8") inches in length, containing perforations no less than one-half (1/2") inch in width, to be used only on sand surfaces;

F. Limit any holes dug to six (6") inches maximum depth, refill holes immediately following searches, and restore surfaces to previous conditions;

G. Properly dispose of all found or recovered trash or litter.

REGISTRATION for Metal Detector Use

NAME (First, Middle, Last)

Street Address

City State Zip

I have read and understand the
procedures for using a metal
detector in _____ State Parks.

Signature
Date _____

- **Option Five: Metal Detecting with Permit Requirements**

There could be many variations for state metal detecting permits. Some of these variations are:

- Permits issued by the state (good for: one year, bi-yearly, five years, etc)
- Permits with fees issued by the state
- Permits for certain parks issued by the state
- Permit issue by a local state park manager (daily)
- Permits by site and for certain times or dates

The South Dakota permit process example displays what can result from using a required permit process to metal detect.

(See Appendix D for link to the South Dakota website)

No person may use a metal detector on lands owned, leased, managed, or controlled by the department without written authorization from the site manager.

Metal detector use granted by a permit and will only be allowed if you are Recreational metal detecting on designated swimming beaches.

Department staff performing operations tasks.

Archaeologists performing official research (they must first have a permit from the State Archaeologist before a Department permit can be issued.)

Looking for a lost personal item*. When looking for a lost personal item, the person needs to describe the lost item to the site manager issuing the permit. If the area to be searched is not within a designated swimming beach, digging will not be permitted since the lost item will most likely be above the surface.

METAL DETECTOR PERMIT

Department Area:

Permit issued to: Name:

Address:

City: _____ State: _____ Zip Code: _____

Phone #: Daytime: _____ Evening: _____

Date Issued: _____

Permit Is Valid From: _____ Through: _____

Restrictions on use of metal detectors - Written authorization required. No person may use a metal detector on lands owned, leased, managed, or controlled by the department without written authorization from the site manager or other department representative. Written authorization may include conditions for permitted use specific to the applicable area.

Destruction or removal of natural features prohibited -- Exception. A person may not destroy, damage, or remove a living or dead tree, shrub, or vegetation; disturb any earth, rocks, minerals, natural formations, or historic relics; or destroy, damage, or remove any antlers, skulls, or other parts of animal carcass located on lands owned or leased by the department without written permission from the secretary or a designated agent.

SPECIAL CONDITIONS AND RESTRICTIONS

This permit applies only to the following area _____ and may be used ONLY during the hours of _____. Permits must be carried by the permittee or be available in the vehicle. Permittee must inform department staff in advance before using detectors by either stopping at the office prior to detecting or calling a day in advance to _____.

Tools used for digging are limited to probes not over 6 inches long, one inch wide and one-quarter inch thick. Sand scoop or sieve not over 10 inches in diameter. All excavations shall be returned to their original condition prior to the beginning of new excavations or leaving the area. Holes may only be a maximum of 6" in depth.

A litter apron or bag is to be worn or carried during metal detector use and all litter disposed of in an approved trash container. All found items will be brought to the office for inspection by department staff. The department retains the right to keep anything of historical archeological or culturally significant value. Department staff must approve any exceptions or changes to these restrictions.

Permittee Signature: _____ Date: _____
Department Representative: _____ Date: _____

*Before a permit is issued, the site manager needs to explain the special conditions and restrictions stated on the permit. By the permittee signing the permit, they acknowledge the limitations and restrictions set forth by the permit.

• **Option Six: Detecting Select State Public Lands (Parks)**

The Michigan State regulation is the example used for this option.

(See Appendix D for a link to the Michigan website)

Park Regulation

Metal detecting is recognized as a legitimate recreation activity when it is conducted in ways that do not damage the natural and cultural resources in Michigan State Parks nor violate applicable state statutes. Any items found must be reviewed by park staff and may be retained for further investigation.

- List of Entire Parks Open for Metal Detecting
- List of Entire Parks Closed for Metal Detecting
- List of Parks with designated Metal Detecting areas (maps are provided)

See the complete regulation by going to the Michigan website or a copy can be found in Appendix D.

- **Option Seven: Detecting Select State Public Lands by using a Registration Process**

Another good example is Washington State and their procedure for metal detecting State Parks.

(See Appendix D for a link to the Washington website)

In Appendix D you will find a Washington State Metal Detecting Brochure with the registration form, parks listing and the law for Washington State.

Finally Create the Legislation Metal Detecting Act or Bill

- Outline your metal detecting act or bill (Consider Disturbed and Non-Disturbed Lands, Designated Fresh & Salt Water Swimming areas & Beaches, Permits, Registration, Park Exceptions, other limitations)
- Check the outline against the example provided and other state laws
- Revise your outline to meet your objectives
- Review what the special interest groups may be opposed to in your legislation. These group's may be: Native Americans, Archaeologist, Historians
- Finalize & document why these groups may be opposed to the legislation

Write the Legislation

Take your Act or Bill's outline and add the necessary language to fill out your wants and musts. Once you are satisfied with the content; it needs to be written in legislative language before the bill is

submitted. Most often your legislative sponsors can perform this task for you.

Also:

- Create a talking point presentation to support the legislation
- Document supporting detail for the legislation

Submit the Legislation

Support Your Bill with a Communication Campaign

There will be a need to provide support for your bill with a solid communication campaign to the state’s senators and legislators. Such a campaign may be necessary at a number of different times as the bill moves through the legislative process steps. Examples are: once the bill is ready for a vote in a committee, or has moved from the committee to a legislative body for a vote. These are the occasions to blanket the senators or legislators with a solid communication program.

To have an effective support campaign for your bill the committee will need to create contact lists for: USPS letter writing, fax letters, email letters and phone calls. This campaign will require generating lists of people who are willing to write, Fax, Email and make Phone Calls. Each of these campaign methods may have a different list of supporters.

The table below lists three separate sources of support for any campaign.

Communications Support Campaign Table

	State Assn	National Assn	Other National Sources
USPS Letter	Only		
Fax Letter	Only		
Email	All	All	All
Phone Call	Only		
Petition	None	None	None

1st: The main support must come from the state itself. Support from the state association sources should blanket legislators by writing letters, fax letters, email letters and make phone calls. In the case of state constituent support: return addresses, phone area codes and fax numbers indicate the support is coming from the state. State legislators want to hear from their constituents on legislation they are working on.

2nd: A National Metal Detecting Assn can provide support by only emailing to state legislators. The reason for this is that emails are not associated to a city, state, country, area code or zip code, therefore;

there is no way for legislators to know if the email is from a state constituent or from someone in another state. The sender should always have their full name at the bottom of the email letter but no address or phone number nor state or country identification.

3rd: Support can also be solicited from other clubs (metal detecting, prospecting, rock & mineral, bottle, coin, plus forums, etc.) from across the country. The same rules apply to this support group as applies to the National Metal Detecting Assn support. (email letters only)

This approach will take some work to create the required support network. In the three categories outlined there will need to be a good deal of advanced work done.

To make any support campaign effective you will need pre-written letters. In the case of a phone campaign you will need talking points that can be used in actual conversation or by leaving a message.

This Communication campaign is very important and will put pressure on legislators to pass a check point. The lack of a good support campaign will cause your legislation to fail. This requires work, work, and more work and is not a one time support event.

I discourage using a petition since you can not control the message from people who sign the petition. One bad petition input can have very negative results on your efforts.

Controlling the message to your legislators from your supporters is very important. The message needs to be supportive with a couple of good reasons why it is important for the legislators to support the bill.

Conclusion

This is a first attempt at writing a technical paper on how to make state laws friendlier towards recreational metal detecting. I am sure that many will find this paper too difficult with too much detail and others may find it lacking on some subject matter; just remember this is a first pass.

I will revisit this paper in a couple of months and I am sure there will be changes. I am looking forward to feedback so I can improve the paper with the next version.

I sincerely believe this paper will, at least, take some of the learning curve away from creating and submitting state metal detecting legislation.

I believe information provided in this paper may also be of benefit to anyone that is considering the need to tackle a local issue (city, county, school district) on metal detecting.

There is no better time to take action and review your states law on metal detecting. Get it changed so the hobby can be enjoyed by all.

Page 28 Appendix A: Guide to Federal Acts



American Antiquities Act of 1906

<http://www.nps.gov/history/local-law/anti1906.htm>

National Park E-History concerning the American Antiquities Act of 1906

<http://www.nps.gov/history/history/hisnps/npshistory/antiq.htm>

National Historic Preservation Act of 1966, as amended through 2000

<http://www.achp.gov/NHPA.pdf>

Antiquities Act: A Century of Historic Preservation

<http://www.blm.gov/heritage/adventures/menu/media/history.pdf>

U.S. Archaeological Resources Protection Act of 1979

<http://www.nps.gov/archeology/tools/Laws/arpa.htm>

But Wait, There's More, ARPA Q & A

http://www.fws.gov/historicpreservation/employeeTraining/pdfs/CRO_ARPA_33-36.pdf

Native American Graves Protection and Repatriation Act of 1990

<http://www.nps.gov/nagpra/mandates/25USC3001etseq.htm>

Indian Burial and Sacred Grounds Watch,

<http://www.ibsgwatch.imagedjinn.com/index.htm>

Cornell University Law School, Chapter 1B—Archaeological Resources Protection

http://www.law.cornell.edu/uscode/html/uscode16/usc_sup_01_16_10_1B.html

Cornell University Law School, 470ee. Prohibited acts and criminal penalties

http://www.law.cornell.edu/uscode/html/uscode16/usc_sec_16_0000470--ee000-.html

Cornell University Law School, Chapter 1—National Parks, Military Parks, Monuments, and Seashores

http://www.law.cornell.edu/uscode/html/uscode16/usc_sup_01_16_10_1.html

U.K. Treasure Act of 1996,

http://www.opsi.gov.uk/acts/acts1996/ukpga_19960024_en_1

Book: Metal Detecting and Archaeology

Edited by Suzie Thomas

Edited by Peter Stone

Book: Archeological Resource Protection by Sherry Hutt, Martin E. McAllister, Elwood W. Jones

An extremely accessible guide to understanding and using the Archaeological Resources Protection Act of 1979. It includes an overview of problems in the U.S., discussion of the provisions for criminal and civil prosecution and a step-by-step explanation of how an archeological crime is investigated and prosecuted.

Page 30: Appendix B: Purpose State Metal Detecting Legislation

Page 31: 2007 Purposed Texas Legislation (Failed)

Page 33: 2007 Purposed Washington State Legislation (Failed)

Page 34: 2008 Purposed Washington State Legislation Revised from 2007 (Failed)

Page 36: 2010 Purposed Kentucky Legislation (Failed)

Page 37: 2010 Purposed Wisconsin Legislation (Failed)

Page 37: 2011 Purposed Wisconsin Legislation Revised from 2010 (Pending)



Appendix B Continued

Presented to the 2007 Texas Legislation Bill 1016

By: Hopson H.B. No. 1016

A BILL TO BE ENTITLED

AN ACT relating to allowing recreational metal detecting in designated areas of state parks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 191.0525, Natural Resources Code, is amended by adding Subsection (j) to read as follows:

(j) This section does not apply to recreational metal detecting in designated areas of state parks.

SECTION 2. Subchapter B, Chapter 13, Parks and Wildlife Code, is amended by adding Section 13.1021 to read as follows:

Sec. 13.1021. REGULATION OF RECREATIONAL METAL DETECTING IN STATE PARKS.

(a) The department shall allow recreational metal detecting in designated areas of state parks subject to rules adopted by the commission.

(b) This section does not authorize the removal from state park land of any object, implement, or artifact the removal of which is prohibited under Chapter 191, Natural Resources Code.

Fiscal Note for Texas 1016

SECTION 3. This Act takes effect September 1, 2008.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 9, 2007

TO: Honorable Harvey Hilderbran, Chair, House Committee on Culture, Recreation, & Tourism

FROM: John S. O'Brien, Director, Legislative Budget Board

IN HB1016 by Hopson (Relating to allowing recreational metal detecting in **RE:** designated areas of state parks.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1016, As Introduced: a negative impact of (\$460,800) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.
 General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$230,400)
2009	(\$230,400)
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from GENERAL REVENUE FUND 1
2008	(\$230,400)
2009	(\$230,400)
2010	\$0
2011	\$0
2012	\$0

Fiscal Analysis

The bill would amend the Parks and Wildlife Code to allow recreational metal detecting in designated areas of state parks subject to rules adopted by the Texas Parks and Wildlife Commission. The bill would specify that addition of the new language would not authorize removal of any objects subject to the Natural Resources Code (Antiquities Code). The bill would take effect September 1, 2008.

Methodology

This estimate assumes the Texas Parks and Wildlife Department (TPWD) would incur additional costs to conduct archeological surveys to ensure appropriate areas are designated for metal detecting. This estimate assumes: (1) metal detecting will not be allowed on any historical sites or leased parks, leaving a total of 64 parks that would be impacted by the bill. Surveys for half of the parks would be initiated in fiscal year 2008 and the remainder in fiscal year 2009; (2) surveys will cover an average of 50 acres per park; (3) current market rate for intensive archeological surveys is \$144/acre. Contracted surveys in this estimate would cost

\$230,400 in fiscal year 2008 and fiscal year 2009. To the extent the bill would result in additional park revenue from visitors engaged in metal detecting who otherwise would not have visited a state park, any positive fiscal implication to the State is not anticipated to be significant. This estimate assumes existing park staff in each of the surveyed parks could supervise the activities of persons engaged in recreational metal detecting

(to ensure they remain within designated areas and to check that individuals are not leaving the area/park with items of archeological significance).

Local Government Impact

No fiscal implication to units of local government is anticipated.

Appendix B Continued

SENATE BILL 5205

Presented to the **2007 Washington State Regular Session**

By Senators Sheldon and Morton

Read first time 01/12/2007. Referred to Committee on Natural Resources, Ocean & Recreation.

AN ACT Relating to metal detectors in state parks; adding new sections to chapter 79A.05 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** It is the intent of the legislature that those significant historic archaeological resources on state park lands that are of importance to the history of our state, or its communities, be protected for the people of the state. At the same time, the legislature also recognizes that the recreational use of metal detectors in state parks is a legitimate form of recreation that can be compatible with the protection of significant historic archaeological resources.

NEW SECTION. **Sec. 2.** A new section is added to chapter 79A.05 RCW to read as follows:

(1) By September 1, 2008, the commission shall open all developed and disturbed areas of state parks for the recreational use of metal detectors. Developed and disturbed areas are further defined as campgrounds, parking areas, boat launches, and similar areas that have been subject to capital development or future capital development by SB 5205 state parks, that would not retain any archaeological information,

and that have been verified by the department of archaeology and historic preservation.

(2) The legislature directs that on state park lands, historic archaeological resources, as defined in RCW 27.53.030, be managed in such a way that the integrity of those properties not be diminished. Metal detectors may be used on state park lands that do not meet the definition of historic archaeological resources.

(3) All federal lands leased to state parks are exempt from metal detecting.

(4) Any items discovered of historic archaeological significance must be turned in to the state through the commission.

NEW SECTION. **Sec. 3.** A new section is added to chapter 79A.05 RCW to read as follows:

(1) If the commission determines that all developed or disturbed areas of a park must be exempted from metal detecting because of its historic archaeological resources, the commission must, by December 1, 2008, submit a brief report to the appropriate standing committees of the legislature as to how they and a professional archaeologist made this determination.

(2) It is the intent of this section to not allow blanket exemptions but to ensure the preservation for the public of proven historic archaeological resources.

2007 Washington SB 5205 - DIGEST

Declares an intent that those significant historic archaeological resources on state park lands that are of importance to the history of our state, or its communities, be protected for the people of the state. At the same time, the legislature also recognizes that the recreational use of metal detectors in state parks is a legitimate form of recreation that can be compatible with the protection of significant historic archaeological resources. Provides that, if the commission determines that all developed or disturbed areas of a park must be exempted from metal detecting because of its historic archaeological resources, the commission must, by December 1, 2008, submit a brief report to the appropriate standing committees of the legislature as to how they and a professional archaeologist made this determination. Declares it is the intent of this act to not allow blanket exemptions but to ensure the preservation for the public of proven historic archaeological resources.

2007 Washington SB 5202 Fiscal Notes Summary [Site Link](#)

2008 Washington Bill

2008 Washington SB 6253 (Revised 2007 Bill 5205)

State of Washington 60th Legislature 2008 Regular Session
By Senators Sheldon and Shin
Read first time 01/14/08. Referred to Committee on Natural Resources,
Ocean & Recreation.

AN ACT Relating to metal detectors in state parks; adding new sections to chapter 79A.05 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. It is the intent of the legislature that those significant historic archaeological resources on state park lands that are of importance to the history of our state, or its communities, be protected for the people of the state. At the same time, the legislature also recognizes that the recreational use of metal detectors in state parks is a legitimate form of recreation that can be compatible with the protection of significant historic archaeological resources.

NEW SECTION. Sec. 2. A new section is added to chapter 79A.05 RCW to read as follows:

(1) By September 1, 2009, the commission shall open all developed and disturbed areas of state parks for the recreational use of metal detectors. Developed and disturbed areas are further defined as campgrounds, parking areas, boat launches, and similar areas that have been subject to capital development or future capital development by p. 1 SB 6253 state parks, that would not retain any archaeological information, and that have been verified by the department of archaeology and historic preservation.

(2) The legislature directs that on state park lands, historic archaeological resources, as defined in RCW 27.53.030, be managed in such a way that the integrity of those properties not be diminished. Metal detectors may be used on state park lands that do not meet the definition of historic archaeological resources.

(3) All federal lands leased to state parks are exempt from metal detecting.

(4) Any items discovered of historic archaeological significance must be turned in to the state through the commission.

13 NEW SECTION. Sec. 3. A new section is added to chapter 79A.05 RCW to

read as follows:

(1) If the commission determines that all developed or disturbed areas of a park must be exempted from metal detecting because of its historic archaeological resources, the commission must, by December 1, 18 2009, submit a brief report to the appropriate standing committees of the legislature as to how they and a professional archaeologist made this determination.

(2) It is the intent of this section to not allow blanket exemptions but to ensure the preservation for the public of proven historic archaeological resources.

2008 Washington SB 6253 - DIGEST

Provides for the opening of developed and disturbed areas of state parks to the recreational use of metal detectors.

2008 Washington SB 6253 Fiscal Notes Summary [Site Link](#)

Appendix B Continued

SB 6 - D. Seum, P. Clark

Presented to the 2010 Kentucky Legislation

AN ACT relating to metal detectors in state parks.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Create a new section of KRS Chapter 148 to define "metal detector" and "unimproved area", and to limit the use of metal detectors in state parks to unimproved areas; and amend KRS 148.991 to provide a penalty for violation.

SECTION 1. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Metal detector" means any device that senses the presence of metals; and

(b) "Unimproved area" means any area that has not been changed through artificial means, but does not include a sand beach used for swimming.

(2) A person may not use a metal detector in unimproved areas of a state park.

Section 2. KRS 148.991 is amended to read as follows:

(1) Any person who violates subsection (2) of KRS 148.051 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100), or imprisoned in jail for not less than one (1) day nor more than ten (10) days or both.

(2) Any person who violates KRS 148.029 or Section 1 of this Act shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100).

(3) Whoever violates, fails, neglects or refuses to obey any provision of KRS 148.610 to 148.780, or regulation, or order of the commissioner may be compelled to comply with or obey the same by injunction, mandamus, or other appropriate remedy; and provided, further, that whoever violates, fails, neglects, or refuses to obey any provision of KRS 148.610 to 148.780, or regulation, or order of the commissioner shall be punished by a fine of not more than fifty dollars (\$50) for each day of such violation.

(4) Any person who violates any provision of KRS 148.290 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100).

(5) Any person who violates KRS 148.290(3), (4), or (5) governing golf cart-type vehicles, all-terrain vehicles, and horse trailers, including administrative regulations promulgated pursuant to that statute, forfeits the rights and privileges, as granted by the commission, of using the vehicle or trailer on State Horse Park property. The executive director of the State Horse Park shall ensure that vehicles or trailers in violation are impounded to the nearest licensed tow company. The owner or operator of such a vehicle or trailer shall pay any and all expenses related to the vehicle's or trailer's towing and impoundment.

Appendix B Continued

Purposed Wisconsin Bill for 2011 Session.

SB 432 and AB 636 Substitute Amendment Language

Shallow water means the part of the lake that is no deeper than 6 feet

Land open for searching means previously disturbed land, campsites occupied by the metal detectorists or that are vacant, and other areas designated by the Wisconsin Metal Detector Advisory Committee.

Items of archeological significance are defined as meeting all of the following criteria

1. 125 years or older

2. Is part of the physical record of an indigenous or other past culture found in the state or waters of the state;
3. Is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary byproducts
4. Archeological objects do not include cash and coins.

The Department may not prohibit a person from using a metal detector in shallow water sandy beaches or on land open for searching if all of the items in (1) a-g are met.

(1) The individual has a valid Wisconsin Recreational Metal Detecting License (Create Recreational Metal Detecting License issued by DNR and available where fishing and hunting licenses are sold \$20.00 annual fee. Individual must get a certificate of training from an approved metal detecting training program to be eligible for a recreational metal detecting license (certificates of training are valid for 5 years; those providing the training may not charge more than a nominal fee for materials) and complies with all of the following:

(a) No item which is, or appears to be of historical or archaeological significance, may be removed from the site at which it was found. Any such find shall be immediately reported to park personnel, and the area in which the find occurred shall not be disturbed further.

(b) Never destroy or adversely disturb historical or archeological resources.

(c) Never destroy or adversely disturb park facilities or natural features.

(d) The person uses a tool for retrieval on land that is no more than 3 inches wide, or a scoop specifically designed for recovery in sand or water that is no more than 10 inches in diameter.

(e) Properly dispose of all found or recovered trash and litter.

(f) Personally identifiable items must be turned in to park office or DNR staff and if the owner is not found within 60 days the found property will be returned to the finder if requested.

(g) Conduct themselves with thoughtfulness, courtesy and consideration

for others, and not interfere with other recreational activities. An operator shall not allow any emitted metal detector sound audible to other park users.

The Department of Natural Resources, in cooperation with the State historical Society, shall establish a Recreational Metal Detecting Advisory Committee comprised of one representative of each of the state metal detecting clubs (6), The president of the Wisconsin archeological Society, The President of the Wisconsin Archeological Survey, one member of the Conservation Congress, and 4 members representing Wisconsin Native American tribes. The committee would be charged with:

- Identifying and approving other DNR/ Stewardship land available for detecting (open property)
- Establish a program for archeologists and licensed metal detectorists to conduct volunteer archeological surveys on state land under the direction and oversight of the state archeologists or their authorized agents.
- Make a recommendation to the legislature by March of 2011 for increased protection of Native American cultural heritage including old copper complex/culture.
- Establish criteria for metal detector training certificates and approve groups/individuals approved for providing the training program to receive a recreational metal detecting license. The Committee shall be formed no later than 2 months after enactment of the legislation and their initial list of open properties formalized no later than April of 2011. The committee shall then meet at least biannually to add or remove property from the list and establish potential volunteer surveys.

Fine for violating 44.47 (7) 2. or removing items defined in 1. (a) or violating 1. (b) above would be not less than \$2000.00 or more than \$10,000 per occurrence.

Page 40: Appendix C: Federal Legislative Acts



Page 41: American Antiquities Act of 1906

Page 42: National Historic Preservation Act of 1966,
As amended through 2000

Page 84: Archaeological Resources Protection Act of 1979

Page 92: Native American Graves Protection and Repatriation Act of 1990

Appendix C

American Antiquities Act of 1906

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

Appendix C Continued

National Historic Preservation Act of 1966,
As amended through 2000
[With annotations]
[This Act became law on October 15, 1966 (Public Law 89-665; 16 U.S.C. 470 et seq.). Subsequent amendments to the Act include Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, Public Law 96-515, Public Law 98-483, Public Law 99-514, Public Law 100-127, Public Law 102-575, Public Law 103-437, Public Law 104-333, Public Law 106-113, Public Law 106-176, Public Law 106-208, and Public Law 106-355. This description of the Act, as amended, tracts the language of the United States Code except that (in following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code. This description also excludes some of the notes found in the Code as well as those sections of the amendments dealing with completed reports. Until the Code is updated through the end of the 106th Congress, the Code citations for Sections 308 and 309 are speculative.]

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes.

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.

Section 2 [16 U.S.C. 470-1 – Declaration of policy of the Federal Government]

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to –

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments;

(3) administer federally owned, administered, or controlled

prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of non-federally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

TITLE I

Section 101 [16 U.S.C. 470a(a) – National Register of Historic Places, expansion and maintenance]

(a) (1) (A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture.

Notwithstanding section 1125(c) of Title 15 [of the U.S. Code], buildings and structures on or eligible for inclusion on the National Register of Historic Places (either individually or as part of a historic district), or designated as an individual landmark or as a contributing building in a historic district by a unit of State or local government, may retain the name

historically associated with the building or structure. [National Historic Landmarks, designation]

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 1980 [the date of enactment of the National Historic Preservation Act Amendments of 1980], shall be deemed to be included on the National Register as of their initial listing for purposes of this Act. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat.666) [16 U.S.C. 461 to 467]; except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register. [Criteria for National Register and National Historic Landmarks and regulations]

(2) The Secretary in consultation with national historic and archaeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for

–

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nomination, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List. [Nominations to the National Register]

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b) of this section, shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) of this section for inclusion on the National Register. Subject to paragraph (6), any property nominated under this paragraph or under section 110 (a)(2) of this Act shall be included

on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

[Nominations from individuals and local governments]

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b) of this section. The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determinations shall be made within ninety days from the date of nomination unless the nomination is appealed under paragraph

(5). [Appeals of nominations]

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection. [Owner participation in nomination process]

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of

such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property. [Regulations for curation, documentation, and local government certification]

(7) The Secretary shall promulgate, or revise, regulations

(A) ensuring that significant

prehistoric and historic artifacts, and associated records, subject to section 110 of this Act [16 U.S.C. 470h-2], the Act of June 27, 1960 (16 U.S.C. 469c), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historic architectural and engineering records within the Library of Congress; and

(C) certifying local governments, in accordance with subsection (c) (1) of this section and for the allocation of funds pursuant to section 103 (c) of this Act [16 U.S.C. 470c(c)]. [Review threats to eligible and listed properties and recommend action]

(8) The Secretary shall, at least once every 4 years, in consultation with the Council and with State Historic Preservation Officers, review significant threats to properties included in, or eligible for inclusion on, the National Register, in order to –

(A) determine the kinds of properties that may be threatened;

(B) ascertain the causes of the threats; and

(C) develop and submit to the President and Congress recommendations for appropriate action.

[16 U.S.C. 470a(b) – State Historic Preservation Programs]

(b) (1) The Secretary, in consultation with the National

Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program – [Designation of the State Historic Preservation Officer (SHPO)]

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes; [Designation of the State Review Board]

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register. [Review of State programs]

(2) (A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of this Act, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this Act.

(B) If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this Act, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this Act, until the program is consistent with this Act, unless the Secretary determines that the program will be made consistent with this Act within a reasonable period of time.

(C) The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

(D) At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system –

(i) establishes and maintains substantially similar accountability standards; and

(ii) provides for independent professional peer review.

The Secretary may also conduct periodic fiscal audits of State programs approved under this section as needed and shall ensure that such programs meet applicable accountability standards.

[SHPO responsibilities]

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to –

(A) in cooperation with Federal and State agencies, local governments,

and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;

(B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

(C) prepare and implement a comprehensive statewide historic preservation plan;

(D) administer the State program of Federal assistance for historic preservation within the State;

(E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(G) provide public information, education, and training, and technical assistance in historic preservation;

(H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c) of this section;

(I) consult with the appropriate Federal agencies in accordance with this Act on –

(i) Federal undertakings that may affect historic properties; and

(ii) the content and sufficiency of any plans developed to protect,

manage, or to reduce or mitigate harm to such properties; and

(J) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

[Arrangements with nonprofit organizations]

(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

[Approval of existing programs]

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of –

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or
 B) three years after October 30, 1992 [the date of the enactment of the National Historic Preservation Act Amendments of 1992]. [Contracts or cooperative agreements with State Historic Preservation Officers]

(6) (A) Subject to subparagraphs (C) and (D), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing such Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State –

- (i) Identification and preservation of historic properties.
- (ii) Determination of the eligibility of properties for listing on the National Register.
- (iii) Preparation of nominations for inclusion on the National Register.

(iv) Maintenance of historical and archaeological data bases.

(v) Evaluation of eligibility for Federal preservation incentives. Nothing in this paragraph shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

(B) The Secretary may enter into a contract or cooperative agreement under subparagraph

(A) only if –

(i) the State Historic Preservation Officer has requested the additional responsibility;

(ii) the Secretary has approved the State historic preservation program pursuant to subsection (b) (1) and (2) of this section;

(iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;

(iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to such contract or cooperative agreement; and

(v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

(C) For each significant program area under the Secretary's authority, the Secretary shall

establish specific conditions and criteria essential for the assumption by State Historic Preservation Officers of the Secretary's duties in each such program.

(D) Nothing in this subsection shall have the effect of diminishing the preservation programs and activities of the National Park Service.

[16 U.S.C. 470a(c) – Certification of local governments]

(c) (1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer, in accordance with section 103(c) of this Act [16 U.S.C. 470c(c)], of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government –

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

(B) has established an adequate and qualified historic preservation review commission by State or local legislation;

(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b) of this section;

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties

for nomination to the National Register; and

(E) satisfactorily performs the responsibilities delegated to it under this Act. Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section. [Participation of certified local governments in National Register nominations]

(2) (A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the state Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to subsection (a) of this subsection. The State may expedite

such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to subsection (a) of this section. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

(3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provision of section 103 (c) of this Act [16 U.S.C. 470c(c)], and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable. [Definitions]

(4) For the purposes of this section the term –

(A) "designation" means the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government; and

(B) "protection" means a local review process under State or local law for proposed demolition of, changes to, or other action that may

affect historic properties designated pursuant to this subsection. [16 U.S.C. 470a(d) – Establish program and regulations to assist Indian tribes]

(d) (1) (A) The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their particular historic properties. The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

(B) The program under subparagraph (A) shall be developed in such a manner as to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this section to conform to the cultural setting of tribal heritage preservation goals and objectives. The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each tribe's chief governing authority.

(C) The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (A) by not later than October 1, 1994.

[Indian Tribes may assume State

Historic Preservation Officer functions]

(2) A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b) (2) and (b) (3) of this section, with respect to tribal lands, as such responsibilities may be modified for tribal programs through regulations issued by the Secretary if –

(A) the tribe's chief governing authority so requests;

(B) the tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide;

(C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

(D) the Secretary determines, after consultation with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106 of this Act), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program –

(i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (C);

(ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer; and

(iii) that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with subsections (b) (2) and (b) (3)

of this section; and

(E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D), the Secretary approves the plan.

(3) In consultation with interested Indian tribes, other Native American organizations and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) of this Act with respect to tribal programs that assume responsibilities under paragraph (2).

(4) At the request of a tribe whose preservation program has been approved to assume functions and responsibilities pursuant to paragraph (2), the Secretary shall enter into contracts or cooperative agreements with such tribe permitting the assumption by the tribe of any part of the responsibilities referred to in subsection (b) (6) of this section on tribal land, if –

(A) the Secretary and the tribe agree on additional financial assistance, if any, to the tribe for the costs of carrying out such authorities;

(B) the Secretary finds that the tribal historic preservation program

has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this Act; and

(C) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by –
 (i) the tribe's traditional cultural authorities;
 (ii) representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and
 (iii) the interested public.

(5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106 of this Act, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations. [Traditional religious and cultural properties may be eligible for listing in the National Register]

(6) (A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

(B) In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that

attaches religious and cultural significance to properties described in subparagraph (A).

(C) In carrying out his or her responsibilities under subsection (b)(3) of this section, the State Historic Preservation Officer for the State of Hawaii shall –

(i) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate such property to the National Register;

(ii) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for such property; and

(iii) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate such property to the National Register and to carry out the cultural component of such preservation program or plan.

[16 U.S.C. 470a(e) – Grants to States]

(e) (1) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act. [Grants to the National Trust]

(2) The Secretary may administer grants to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 927) [16 U.S.C. 468], consistent with the purposes of its charter and this Act. [Direct grants for threatened National Historic Landmarks, demonstration projects,

training, and displacement prevention]

(3) (A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108 of this Act. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer

–
(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance,

(ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties,

(iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation, and

(iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district. [Grants or loans to Indian tribes and non-profit ethnic or minority organizations for preserving cultural heritage]

(B) The Secretary may also, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing

ethnic or minority groups for the preservation of their cultural heritage.

(C) Grants may be made under subparagraph (A) (i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 104 of this Act.

[Grants for religious properties]

(4) Grants may be made under this subsection for the preservation, stabilization, restoration, or rehabilitation of religious properties listed in the National Register of Historic Places, provided that the purpose of the grant is secular, does not promote religion, and seeks to protect those qualities that are historically significant. Nothing in this paragraph shall be construed to authorize the use of any funds made available under this section for the acquisition of any property referred to in the preceding sentence.

[Direct grants to Indian tribes and Native Hawaiian organizations]

(5) The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this Act as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified.

Federal funds available to a tribe or Native Hawaiian organization may be used as matching funds for the purposes of the tribe's or organization's conducting its responsibilities pursuant to this section. [Direct grants to Micronesia, Marshall Islands, and Palau]

(6) (A) As a part of the program of matching grant assistance from the

Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note), the Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled "Joint Resolution to approve the 'Compact of Free Association' between the United States and Government of Palau, and for other purposes" (48 U.S.C. 1681 note). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

(B) The amounts to be made available to the Micronesian States shall be allocated by the Secretary on the basis of needs as determined by the Secretary. Matching funds may be waived or modified.

[16 U.S.C. 470a(f) – Prohibition on compensating intervenors]

(f) No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this Act.

[16 U.S.C. 470a(g) – Guidelines for Federal agency responsibilities]

(g) In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110 of this Act.

[16 U.S.C. 470a(h) – Preservation standards for federally owned properties]

(h) Within one year after December 12, 1980 [the date of enactment of the National Historic Preservation Act Amendments of 1980], the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

[16 U.S.C. 470a(i) – Technical advice]

(i) The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to

the general public including students.

[16 U.S.C. 470a(j) – Develop and implement a comprehensive preservation education and training program]

(j) (1) The Secretary shall, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, develop and implement a comprehensive preservation education and training program.

(2) The education and training program described in paragraph (1) shall include –

(A) new standards and increased preservation training opportunities for Federal workers involved in preservation-related functions;

(B) increased preservation training opportunities for other Federal, State, tribal and local government workers, and students;

(C) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs; and

(D) coordination of the following activities, where appropriate, with the National Center for Preservation Technology and Training –

(i) distribution of information on preservation technologies;

(ii) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and

(iii) support for research, analysis, conservation, curation, interpretation, and display related to preservation.

Section 102 [16 U.S.C. 470b(a) – Grant requirements]

(a) No grant may be made under this Act –

(1) unless application therefore is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) [16 U.S.C. 4601-4];

(3) for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 101(b)(3) of this Act in any one fiscal year;

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable. Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources.

Notwithstanding any other provision of law, no grant made pursuant to

this Act shall be treated as taxable income for purposes of the Internal Revenue Code of 1986 [Title 26 of the U.S. Code].

[16 U.S.C. 470b(b) – Waiver for the National Trust]

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States.

[16 U.S.C. 470b(c*) – State limitation on matching]

[*Technically, subsection (c) was repealed and replaced by two subsection “d”s]

(c*) No State shall be permitted to utilize the value of real property obtained before October 15, 1966

[the date of approval of this Act], in meeting the remaining cost of a project for which a grant is made under this Act. [16 U.S.C. 470b(d) – Availability of funds]

(d) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such. [16 U.S.C. 470b(e) – Administrative Costs]

(e) The total administrative costs, direct and indirect, charged for carrying out State projects and programs may not exceed 25 percent of the aggregate costs except in the case of grants under section 101(e) (6) of this Act.

Section 103 [16 U.S.C. 470c(a) – Basis for apportionment of grants]

(a) The amounts appropriated and made available for grants to the States for the purposes of this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

[16 U.S.C. 470c(b) – Apportionment basis, notice, reapportionment, etc.]

(b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate. The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection. The Secretary shall analyze and revise as necessary the method of apportionment. Such method and any revision thereof shall be published by the Secretary in the Federal Register.

[16 U.S.C. 470c(c) – Requirements for certified local government pass-through subgrants]

(c) A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this Act shall be transferred by the State, pursuant to the requirements of this Act, to local governments

which are certified under section 101(c) of this Act for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds \$65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 101(c) of this Act. [16 U.S.C. 470c(d) – Guidelines for State distribution to certified local governments]

(d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) of this section to insure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c) of this section, nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments.

Section 104 [16 U.S.C. 470d(a) – Insured loans for National Register]

(a) The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register. [16 U.S.C. 470d(b) – Requirements]

(b) A loan may be insured under this section only if –

- (1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;
 - (2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;
 - (3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;
 - (4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;
 - (5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;
 - (6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and
 - (7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work. [Interest rates] The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.
- [16 U.S.C. 470d(c) – Limitation on loan authority]
- (c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to

section 108 of this Act and subsections (g) and (i) of this section, as in effect on December 12, 1980 [the date of the enactment of the Act], but which has not been appropriated for any purpose. [16 U.S.C. 470d(d) – Assignability and effect]

(d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

[16 U.S.C. 470d(e) – Method of payment for losses]

(e) The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

[16 U.S.C. 470d(f) – Protection of Government's financial interests; foreclosure]

(f) In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure

adequate protection of the financial interests of the Federal Government. The Secretary may –

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under this title; and

(2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g) of this section.

[16 U.S.C. 470d(g) – Conveyance of foreclosed property]

(g) (1) In any case in which a historic property is obtained pursuant to subsection (f) of this section, the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

(2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 108 of this Act and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

[16 U.S.C. 470d(h) – Fees]

(h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 108 of this Act and subsection (g) of this section, and shall remain available in such fund until appropriated by the

Congress to carry out the purposes of this Act.

[16 U.S.C. 470d(i) – Loans to be considered non-Federal funds]

(i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

[16 U.S.C. 470d(j) – Appropriation authorization]

(j) Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e) of this section.

[16 U.S.C. 470d(k) – Prohibition against acquisition by Federal Financing Bank]

(k) No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

Section 105 [16 U.S.C. 470e

Recordkeeping]

The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature

of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. **Section 106 [16 U.S.C. 470f** – Advisory Council on Historic Preservation, comment on Federal undertakings] The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Section 107 [16 U.S.C. 470g – Exemption of White House, Supreme Court, and Capitol] Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Section 108 [16 U.S.C. 470h – Establishment of Historic Preservation Fund; authorization for appropriations] To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter

referred to as the "fund") in the Treasury of the United States. There shall be covered into such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980 and \$150,000,000 for fiscal year 1981 and \$150,000,000 for each of fiscal years 1982 through 2005, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 1338), and/or under section 7433(b) of Title 10, notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, That appropriations made pursuant to this paragraph may be made without fiscal year limitation.

Section 109 [16 U.S.C. 470h-1(a) - Donations to the Secretary]

(a) In furtherance of the purposes of this Act, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 101 of this Act, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

[16 U.S.C. 470h-1(b) - Expenditure of donated funds]

(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

[16 U.S.C. 470h-1(c) - Transfer of funds donated for the National Park Service]

(c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act. **Section 110**

[16 U.S.C. 470h-2(a) - Federal agencies' responsibility to preserve and use historic properties]

(a) (1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency in accordance with Executive Order

No. 13006, issued May 21, 1996 (61 Fed. Reg. 26071). Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g) of this Act, any preservation, as may be necessary to carry out this section. [Each Federal agency to establish a preservation program to protect and preserve historic properties in consultation with others]

(2) Each Federal agency shall establish (unless exempted pursuant to Section 214) of this Act, in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure -

(A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 of this Act and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be

potentially affected by agency actions are given full consideration in planning;

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and
(E) that the agency's procedures for compliance with section 106 of this Act -

(i) are consistent with regulations issued by the Council pursuant to section 211 of this Act;

(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(c)).

[16 U.S.C. 470h-2(b) - Recordation of historic properties prior to demolition]

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or

demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a) of this Act, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

[16 U.S.C. 470h-2(c) – Designation of Federal agency preservation officers]

(c) The head of each Federal agency shall, unless exempted under section 214 of this Act, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(h) of this Act.

[16 U.S.C. 470h-2(d) – Conduct of agency programs consistent with Act]

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

[16 U.S.C. 470h-2(e) – Transfer of surplus Federal historic properties]

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans

to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

[16 U.S.C. 470h-2(f) – Federal undertakings affecting National Historic Landmarks]

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

[16 U.S.C. 470h-2(g) – Preservation activities as an eligible project cost]

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit. [16 U.S.C. 470h-2(h) – Preservation awards program]

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed \$1,000 and provide citations for special achievements to officers and employees of Federal, State, and

certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

[16 U.S.C. 470h-2(i) – Applicability of National Environmental Policy Act]

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

[16 U.S.C. 470h-2(j) – Disaster waivers]

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

[16 U.S.C. 470h-2(k) – Anticipatory demolition]

(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106 of this Act, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur,

unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

[16 U.S.C. 470h-2(l) – Documentation of Federal agency Section 106 decisions]

(l) With respect to any undertaking subject to section 106 of this Act which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement pursuant to regulations issued by the Council, the head of such agency shall document any decision made pursuant to section 106 of this Act. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 of this Act memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts.

Section 111 [16 U.S.C. 470h-3(a) – Lease or exchange of Federal historic property]

(a) Notwithstanding any other provision of law, any Federal agency after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will

adequately insure the preservation of the historic property.

[16 U.S.C. 470h-3(b) – Use of proceeds]

(b) The proceeds of any lease under subsection (a) of this section may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

[16 U.S.C. 470h-3(c) – Management contracts]

(c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and in sure adequate preservation of historic property.

Section 112 [16 U.S.C. 470h-4(a) – Each Federal agency is to protect historic resources through professionalism of employees and contractors]

(a) Each Federal agency that is responsible for the protection of historic resources, including

archaeological resources pursuant to this Act or any other law shall ensure each of the following –

(1) (A) All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

(B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after October 30, 1992, [the date of enactment of the 1992 Amendments to this Act] for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved. [Maintaining permanent databases]

(2) Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential

users pursuant to such regulations as the Secretary shall promulgate. [16 U.S.C. 470h-4(b) – Secretary to promulgate guidelines to owners about protecting and preserving historic resources]

(b) In order to promote the preservation of historic resources on properties eligible for listing in the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to –

(1) provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance, about the need for protection of such resources, and the available means of protection;

(2) encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources; [Encourage protection of Native American cultural items and properties]

(3) encourage the protection of Native American cultural items

(within the meaning of section 2 (3) and (9) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001

(3) and (9))) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and [Conduct archeological excavations to meet Federal standards, allow

access to artifacts for research, consult with Indian tribe or Native Hawaiian organization if related items likely]

(4) encourage owners who are undertaking archaeological excavations to –

(A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;

(B) donate or lend artifacts of research significance to an appropriate research institution;

(C) allow access to artifacts for research purposes; and

(D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2) (B) or (C) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(a)(2) (B) and (C)), given notice to and consult with such Indian tribe or Native Hawaiian organization.

Section 113 [16 U.S.C. 470h-5(a) – Study to report ways to control illegal trafficking in]

(a) In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities.

[16 U.S.C. 470h-5(b) – Consultation]

(b) In conducting the study described in subsection (a) of this section the Secretary shall consult with the Council and other Federal agencies that conduct, cause to be

conducted, or permit archaeological surveys or excavations or that have responsibilities for other kinds of antiquities and with State Historic Preservation Officers, archaeological, architectural, historical, conservation, and curatorial organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

[16 U.S.C. 470h-5(c) – Report]
 (c) Not later than 18 months after October 30, 1992 [the date of enactment of this section], the Secretary shall submit to Congress a report detailing the Secretary's findings and recommendations from the study described in subsection (a) of this section.

[16 U.S.C. 470h-5(d) – Funding authorization]
 (d) There are authorized to be appropriated not more than \$500,000 for the study described in subsection (a) of this section, such sums to remain available until expended.

TITLE II

Section 201 [16 U.S.C. 470i(a) – Advisory Council on Historic Preservation; membership]

(a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation which shall be composed of the following members:

- (1) a Chairman appointed by the President selected from the general public;
- (2) the Secretary of the Interior;
- (3) the Architect of the Capitol;
- (4) the Secretary of Agriculture and the heads of four other agencies of

the United States (other than the Department of the Interior), the activities of which affect historic preservation, designated by the President;

- (5) one Governor appointed by the President;
- (6) one mayor appointed by the President;
- (7) the President of the National Conference of State Historic Preservation Officers;
- (8) the Chairman of the National Trust for Historic Preservation;
- (9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archaeology, and other appropriate disciplines;
- (10) three at-large members from the general public, appointed by the President; and
- (11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.

[16 U.S.C. 470i(b) – Designees]
 (b) Each member of the Council specified in paragraphs (2) through (8) other than (5) and (6) of subsection (a) of this section may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

[16 U.S.C. 470i(c) – Term of office]
 (c) Each member of the Council appointed under paragraph (1), and

under paragraphs (9) through (11) of subsection (a) of this section shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member may not serve more than two terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

[16 U.S.C. 470i(d) – Vacancies]
 (d) A vacancy in the Council shall not affect its powers, but shall be filled not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before December 12, 1980 [the enactment of the National Historic Preservation Act Amendments of 1980], shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after December 12, 1980 [the enactment of the National Historic Preservation Act Amendments of 1980].

[16 U.S.C. 470i(e) – Vice Chairman]
 (e) The President shall designate a Vice Chairman, from the members appointed under paragraphs (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

[16 U.S.C. 470i(f) – Quorum]
 (f) Nine members of the Council shall constitute a quorum.

Section 202 [16 U.S.C. 470j(a) – Duties of Council]

(a) The Council shall –
 (1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;
 (2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;
 (3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;
 (4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;
 (5) encourage, in cooperation with appropriate public and private agencies and institutions, training

and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act; and

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities. [16 U.S.C. 470j(b) - Annual and special reports]

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

Section 203 [16 U.S.C. 470k - Information from agencies] The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive

branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title of the Act; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

Section 204 [16 U.S.C. 470l - Compensation of members] The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive \$100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

Section 205 [16 U.S.C. 470m(a) - Executive Director]
 (a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

[16 U.S.C. 470m(b) - General Counsel and other attorneys]

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint

such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

[16 U.S.C. 470m(c) – Appointment and compensation of staff]

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5 [United States Code]: Provided, however, That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of Title 5 [United States Code].

[16 U.S.C. 470m(d) – Appointment and compensation of additional personnel]

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949 [chapter 51 and

subchapter III of chapter 53 of Title 5, U.S. Code].

[16 U.S.C. 470m(e) – Expert and consultant services]

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5 [United States Code]. [16 U.S.C. 470m(f) – Financial and administrative services]

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: Provided, That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 5514(b)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 1513(d), 1514) shall apply to appropriations of the Council: And provided further, That the Council shall not be required to prescribe such regulations.

[16 U.S.C. 470m(g) – Use of funds, personnel, facilities, and services]

(g) Any Federal agency may provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the agency, with such funds, personnel, facilities,

and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. Any funds provided to the Council pursuant to this subsection must be expended by the end of the fiscal year following the fiscal year in which the funds are received by the Council. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

Section 206 [16 U.S.C. 470n(a) - International Centre for the Study of the Preservation and Restoration of Cultural Property; authorization]
 (a) The participation of the United States as a member of the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

[16 U.S.C. 470n(b) - Members of official delegation]
 (b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United

States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.
 [16 U.S.C. 470n(c) - Authorization for membership payment]

(c) For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: Provided, That no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessment shall begin in fiscal year 1981, but shall include earlier costs.

Section 207 [16 U.S.C. 470o - Transfer of personnel, funds, etc. to the Council] So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act [Pub. L. 94-422, September 28, 1976].

Section 208 [16 U.S.C. 470p - Rights of Council employees] Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all rights, benefits, and privileges pertaining thereto held prior to such transfer.

Section 209 [16 U.S.C. 470q – Exemption from Federal Advisory Committee Act] The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of subchapter II of chapter 5 and chapter 7, of Title 5 [U.S. Code] [the Administrative Procedure Act (80 Stat. 381)] shall govern the operations of the Council.

Section 210 [16 U.S.C. 470r – Direct Submission to the Congress] No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

Section 211 [16 U.S.C. 470s – Regulations for Section 106; local government participation] The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act in its entirety. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to

undertakings referred to in section 106 of this Act which affect such local governments.

Section 212 [16 U.S.C. 470t(a) – Council appropriation authorization]
 (a) The Council shall submit its budget annually as a related agency of the Department of the Interior. There are authorized to be appropriated for purposes of this title not to exceed \$4,000,000 for each fiscal year 1997 through 2005.

[16 U.S.C. 470t(b) – Concurrent submission of budget to Congress]
 (b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources.

Section 213 [16 U.S.C. 470u – Reports from Secretary at request of Council] To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

Section 214 [16 U.S.C. 470v – Exemptions for Federal activities from provisions of the Act] The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the

requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

Section 215 [16 U.S.C. 470v-1 – Reimbursement from State and local agencies, etc.] Subject to applicable conflict of interest laws, the Council may receive reimbursements from State and local agencies and others pursuant to agreements executed in furtherance of the purposes of this Act.

TITLE III

Section 301 [16 U.S.C. 470w – Definitions] As used in this Act, the term –

- (1) "Agency" means agency as such term is defined in section 551 of title 5 [United States Code].
- (2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau.
- (3) "Local government" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.
- (4) "Indian tribe" or "tribe" means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional

Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(5) "Historic property" or "historic resource" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.

(6) "National Register" or "Register" means the National Register of Historic Places established under section 101 of this Act.

(7) "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including –

- (A) those carried out by or on behalf of the agency;
- (B) those carried out with Federal financial assistance;
- (C) those requiring a Federal permit license, or approval; and
- (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

(8) "Preservation" or "historic preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and

education and training regarding the foregoing activities, or any combination of the foregoing activities.

(9) "Cultural park" means a definable area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "Historic conservation district" means an area which contains

- (A) historic properties,
- (B) buildings having similar or related architectural characteristics,
- (C) cultural cohesiveness, or
- (D) any combination of the foregoing.

(11) "Secretary" means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(12) "State Historic Preservation Review Board" means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B) of this Act -

- (A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),
- (B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture, and

(C) which has the authority to -

- (i) review National Register nominations and appeals from nominations;

- (ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

- (iii) provide general advice and guidance to the State Historic Preservation Officer; and

- (iv) perform such other duties as may be appropriate.

(13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B) of this Act, and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among -

- (A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture, or related disciplines, to the extent such professionals are available in the community concerned, and
- (B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.

(14) "Tribal lands" means -

- (A) all lands within the exterior boundaries of any Indian reservation; and

(B) all dependent Indian communities.

(15) "Certified local government" means a local government whose local historic preservation program has been certified pursuant to section 101(c) of this Act.

(16) "Council" means the Advisory Council on Historic Preservation established by section 201 of this Act.

(17) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(18) "Native Hawaiian organization" means any organization which –
 (A) serves and represents the interests of Native Hawaiians;
 (B) has as a primary and stated purpose the provision of services to Native Hawaiians; and
 (C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians. The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.

Section 302 [16 U.S.C. 470w-1 – Authority to expend funds for purposes of this Act] Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, except to the extent appropriations legislation expressly provides otherwise.

Section 303 [16 U.S.C. 470w-2(a) – Donations to Secretary; money and personal property]

(a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this Act and shall hold, use, expend, and administer the same for such purposes.

[16 U.S.C. 470w-2(b) – Donations of less than fee interests in real property]

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

Section 304 [16 U.S.C. 470w-3(a) – Confidentiality of the location of sensitive historic resources]

(a) The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may –

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic resources; or
- (3) impede the use of a traditional religious site by practitioners.

[16 U.S.C. 470w-3(b) – Access Determination]

(b) When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a) of this section, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

[16 U.S.C. 470w-3(c) – Consultation with the Advisory Council]

(c) When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f) of this Act, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b) of this section.

Section 305

[16 U.S.C. 470w-4 – Attorneys' fees]

In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.

Section 306 [16 U.S.C. 470w-5(a) – National Center for the Building Arts]

(a) In order to provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building which exemplifies the great achievements of the building arts in the United States, the Secretary and the

Administrator of the General Services Administration are authorized and directed to enter into a cooperative agreement with the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor, for the operation of a National Museum for the Building Arts in the Federal Building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. Such museum shall –

(1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;

(2) foster educational programs relating to the history, practice and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;

(3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;

(4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and

(5) encourage contributions to the building arts.

[16 U.S.C. 470w-5(b) – Cooperative agreement]

(b) The cooperative agreement referred to in subsection (a) of

this section shall include provisions which –

- (1) make the site available to the Committee referred to in subsection (a) of this section without charge;
- (2) provide, subject to available appropriations, such maintenance, security, information, janitorial and other services as may be necessary to assure the preservation and operation of the site; and
- (3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this Act.

[16 U.S.C. 470w-5(c) – Grants to Committee]

(c) The Secretary is authorized and directed to provide matching grants-in-aid to the Committee referred to in subsection (a) of this section for its programs related to historic preservation. The Committee shall match such grants-in-aid in a manner and with such funds and services as shall be satisfactory to the Secretary, except that no more than \$500,000 may be provided to the Committee in any one fiscal year.

[16 U.S.C. 470w-5(d) – Site renovation]

(d) The renovation of the site shall be carried out by the Administrator with the advice of the Secretary. Such renovation shall, as far as practicable –

- (1) be commenced immediately,
- (2) preserve, enhance, and restore the distinctive and historically authentic architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and
- (3) retain the availability of the central court of the building, or portions thereof, for appropriate public activities.

[16 U.S.C. 470w-5(e) – Annual report]

(e) The Committee shall submit an annual report to the Secretary and the Administrator concerning its activities under this section and shall provide the Secretary and the Administrator with such other information as the Secretary may, from time to time, deem necessary or advisable.

[16 U.S.C. 470w-5(f) – Definition of "building arts"]

(f) For purposes of this section, the term "building arts" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archaeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades, and crafts.

Section 307 [16 U.S.C. 470w-6(a) – Effective date of regulations]

(a) No final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

[16 U.S.C. 470w-6(b) – Congressional disapproval of regulations]

(b) The regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as

follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of _____, which regulation was transmitted to Congress on _____," the blank spaces therein being appropriately filled.

[16 U.S.C. 470w-6(c) – Inaction by Congress]

(c) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

[16 U.S.C. 470w-6(d) – Definitions]

(d) For the purposes of this section-

(1) continuity of session is broken only by an adjournment sine die; and
 (2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

[16 U.S.C. 470w-6(e) – Effect of Congressional inaction]

(e) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an

expression of approval of such regulation.

Section 308 [16 U.S.C. 470w-7(a) – National historic light station program]

(a) In order to provide a national historic light station program, the Secretary shall –

(1) collect and disseminate information concerning historic light stations, including historic lighthouses and associated structures;

(2) foster educational programs relating to the history, practice, and contribution to society of historic light stations;

(3) sponsor or conduct research and study into the history of light stations;

(4) maintain a listing of historic light stations; and

(5) assess the effectiveness of the program established by this section regarding the conveyance of historic light stations.

[16 U.S.C. 470w-7(b) – Conveyance of Historic Light Stations]

(b) (1) Not later than 1 year after the date of the enactment of this section, the Secretary and the Administrator shall establish a process and policies for identifying, and selecting, an eligible entity to which a historic light station could be conveyed for education, park, recreation, cultural, or historic preservation purposes, and to monitor the use of such light station by the eligible entity.

(2) The Secretary shall review all applications for the conveyance of a historic light station, when the agency with administrative jurisdiction over the historic light station has determined the property

to be 'excess property' as that term is defined in the Federal Property Administrative Services Act of 1949 (40 U.S.C. 472(e)), and forward to the Administrator a single approved application for the conveyance of the historic light station. When selecting an eligible entity, the Secretary shall consult with the State Historic Preservation Officer of the State in which the historic light station is located.

(3) (A) Except as provided in subparagraph (B), the Administrator shall convey, by quitclaim deed, without consideration, all right, title, and interest of the United States in and to the historic light station, subject to the conditions set forth in subsection (c) after the Secretary's selection of an eligible entity. The conveyance of a historic light station under this section shall not be subject to the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) or section 416(d) of the Coast Guard Authorization Act of 1998 (Public Law 105-383).

(B) (i) Historic light stations located within the exterior boundaries of a unit of the National Park System or a refuge within the National Wildlife Refuge System shall be conveyed or sold only with the approval of the Secretary.

(ii) If the Secretary approves the conveyance of a historic light station referenced in this paragraph, such conveyance shall be subject to the conditions set forth in subsection (c) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.

(iii) If the Secretary approves the sale of a historic light station referenced in this paragraph, such sale shall be subject to the conditions set forth in subparagraphs (A) through (D) and (H) of subsection (c)(1) and subsection

(c)(2) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.

(iv) For those historic light stations referenced in this paragraph, the Secretary is encouraged to enter into cooperative agreements with appropriate eligible entities, as provided in this Act, to the extent such cooperative agreements are consistent with the Secretary's responsibilities to manage and administer the park unit or wildlife refuge, as appropriate.

[16 U.S.C. 470w-7(c) – Terms of Conveyance]

(c) (1) The conveyance of a historic light station shall be made subject to any conditions, including the reservation of easements and other rights on behalf of the United States, the Administrator considers necessary to ensure that –

(A) the Federal aids to navigation located at the historic light station in operation on the date of conveyance remain the personal property of the United States and continue to be operated and maintained by the United States for as long as needed for navigational purposes;

(B) there is reserved to the United States the right to remove, replace, or install any Federal aid to navigation located at the historic

light station as may be necessary for navigational purposes;

(C) the eligible entity to which the historic light station is conveyed under this section shall not interfere or allow interference in any manner with any Federal aid to navigation, nor hinder activities required for the operation and maintenance of any Federal aid to navigation, without the express written permission of the head of the agency responsible for maintaining the Federal aid to navigation;

(D) the eligible entity to which the historic light station is conveyed under this section shall, at its own cost and expense, use and maintain the historic light station in accordance with this Act, the Secretary of the Interior's Standards for the Treatment of Historic Properties, 36 CFR part 68, and other applicable laws, and any proposed changes to the historic light station shall be reviewed and approved by the Secretary in consultation with the State Historic Preservation Officer of the State in which the historic light station is located, for consistency with 36 CFR part 800.5(a)(2)(vii), and the Secretary of the Interior's Standards for Rehabilitation, 36 CFR part 67.7;

(E) the eligible entity to which the historic light station is conveyed under this section shall make the historic light station available for education, park, recreation, cultural or historic preservation purposes for the general public at reasonable times and under reasonable conditions;

(F) the eligible entity to which the historic light station is conveyed

shall not sell, convey, assign, exchange, or encumber the historic light station, any part thereof, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including but not limited to any lens or lanterns, unless such sale, conveyance, assignment, exchange or encumbrance is approved by the Secretary;

(G) the eligible entity to which the historic light station is conveyed shall not conduct any commercial activities at the historic light station, any part thereof, or in connection with any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, in any manner, unless such commercial activities are approved by the Secretary; and

(H) the United States shall have the right, at any time, to enter the historic light station conveyed under this section without notice, for purposes of operating, maintaining, and inspecting any aid to navigation and for the purpose of ensuring compliance with this subsection, to the extent that it is not possible to provide advance notice.

(2) Any eligible entity to which a historic light station is conveyed under this section shall not be required to maintain any Federal aid to navigation associated with a historic light station, except any private aids to navigation permitted under section 83 of title 14, United States Code, to the eligible entity.

(3) In addition to any term or condition established pursuant to this subsection, the conveyance of a historic light station shall include

a condition that the historic light station, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including but not limited to any lens or lanterns, at the option of the Administrator, shall revert to the United States and be placed under the administrative control of the Administrator, if –

(A) the historic light station, any part thereof, or any associated historic artifact ceases to be available for education, park, recreation, cultural, or historic preservation purposes for the general public at reasonable times and under reasonable conditions which shall be set forth in the eligible entity's application;

(B) the historic light station or any part thereof ceases to be maintained in a manner that ensures its present or future use as a site for a Federal aid to navigation;

(C) the historic light station, any part thereof, or any associated historic artifact ceases to be maintained in compliance with this Act, the Secretary of the Interior's Standards for the Treatment of Historic Properties, 36 CFR part 68, and other applicable laws;

(D) the eligible entity to which the historic light station is conveyed, sells, conveys, assigns, exchanges, or encumbers the historic light station, any part thereof, or any associated historic artifact, without approval of the Secretary;

(E) the eligible entity to which the historic light station is conveyed, conducts any commercial activities at the historic light station, any part thereof, or in conjunction with any associated historic artifact,

without approval of the Secretary; or

(F) At least 30 days before the reversion, the Administrator provides written notice to the owner that the historic light station or any part thereof is needed for national security purposes.

[16 U.S.C. 470w-7(d) – Description of Property]

(d) (1) The Administrator shall prepare the legal description of any historic light station conveyed under this section. The Administrator, in consultation with the Commandant, United States Coast Guard, and the Secretary, may retain all right, title, and interest of the United States in and to any historical artifact, including any lens or lantern, that is associated with the historic light station and located at the light station at the time of conveyance. Wherever possible, such historical artifacts should be used in interpreting that station. In cases where there is no method for preserving lenses and other artifacts and equipment in situ, priority should be given to preservation or museum entities most closely associated with the station, if they meet loan requirements.

(2) Artifacts associated with, but not located at, the historic light station at the time of conveyance shall remain the personal property of the United States under the administrative control of the Commandant, United States Coast Guard.

(3) All conditions placed with the quitclaim deed of title to the historic light station shall be construed as covenants running with the land.

(4) No submerged lands shall be conveyed under this section.

[16 U.S.C. 470w-7(e) – Definitions]

(e) For purposes of this section:

(1) The term "Administrator" shall mean the Administrator of General Services.

(2) The term "historic light station" includes the light tower, lighthouse, keepers dwelling, garages, storage sheds, oil house, fog signal building, boat house, barn, pumphouse, tramhouse support structures, piers, walkways, underlying and appurtenant land and related real property and improvements associated therewith; provided that the 'historic light station' shall be included in or eligible for inclusion in the National Register of Historic Places.

(3) The term "eligible entity" shall mean:

(A) any department or agency of the Federal Government; or

(B) any department or agency of the State in which the historic light station is located, the local government of the community in which the historic light station is located, nonprofit corporation, educational agency, or community development organization that –
(i) has agreed to comply with the conditions set forth in subsection (c) and to have such conditions recorded with the deed of title to the historic light station; and

(ii) is financially able to maintain the historic light station in accordance with the conditions set forth in subsection (c).

(4) The term "Federal aid to navigation" shall mean any device, operated and maintained by the United States, external to a vessel or aircraft, intended to assist a

navigator to determine position or safe course, or to warn of dangers or obstructions to navigation, and shall include but not be limited to, a light, lens, lantern, antenna, sound signal, camera, sensor, electronic navigation equipment, power source, or other associated equipment.

(5) The term "Secretary" means the Secretary of the Interior.

Section 309 [16 U.S.C. 470w-8(a) – Historic Light Station Sales]

(a) In the event no applicants are approved for the conveyance of a historic light station pursuant to section 308, the historic light station shall be offered for sale. Terms of such sales shall be developed by the Administrator of General Services and consistent with the requirements of section 308, subparagraphs (A) through (D) and (H) of subsection (c)(1), and subsection (c)(2). Conveyance documents shall include all necessary covenants to protect the historical integrity of the historic light station and ensure that any Federal aid to navigation located at the historic light station is operated and maintained by the United States for as long as needed for that purpose.

[16 U.S.C. 470w-8(b) – Net sale proceeds]

(b) Net sale proceeds from the disposal of a historic light station –

(1) located on public domain lands shall be transferred to the National Maritime Heritage Grant Program, established by the National Maritime Heritage Act of 1994 (Public Law 103-451) within the Department of the Interior; and

(2) under the administrative control of the Coast Guard shall be credited to the Coast Guard's Operating Expenses appropriation account, and shall be available for obligation and expenditure for the maintenance of light stations remaining under the administrative control of the Coast Guard, such funds to remain available until expended and shall be available in addition to funds available in the Operating Expense appropriation for this purpose. There are hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out this Act.

TITLE IV

Section 401 [16 U.S.C. 470x - National initiative to coordinate and promote research, distribute information and provide training about preservation skills and technologies] The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial.

Section 402 [16 U.S.C. 470x-1- Definitions]

For the purposes of this title -
 (1) The term "Board" means the National Preservation Technology and Training Board established pursuant to section 404 of this Act.
 (2) The term "Center" means the National Center for Preservation Technology and Training established pursuant to section 403 of this Act.

(3) The term "Secretary" means the Secretary of the Interior.

Section 403 [16 U.S.C. 470x-2(a) - Establish a National Center for Preservation Technology and Training]

(a) There is hereby established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

[16 U.S.C. 470x-2(b) - Purposes of Center]

(b) The purposes of the Center shall be to -

- (1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;
- (2) develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;
- (3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;
- (4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and
- (5) cooperate with related international organizations including, but not limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property,

and the International Council on Museums.

[16 U.S.C. 470x-2(c) – Programs]

(c) Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 405 of this Act.

[16 U.S.C. 470x-2(d) – Executive Director]

(d) The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

[16 U.S.C. 470x-2(e) – Assistance from Secretary]

(e) The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

Section 404 [16 U.S.C. 470x-3(a) – Establish a Preservation Technology and Training Board]

(a) There is established a Preservation Technology and Training Board.

[16 U.S.C. 470x-3(b) – Duties]

(b) The Board shall –

(1) provide leadership, policy advice, and professional oversight to the Center;

(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

(3) submit an annual report to the President and the Congress.

[16 U.S.C. 470x-3(c) – Membership]

(c) The Board shall be comprised of –

(1) The Secretary, or the Secretary's designee;

(2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and

(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archaeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

Section 405 [16 U.S.C. 470x-4(a) – Grants for research, information distribution and skill training]

(a) The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution and skills training in all the related historic preservation fields.

[16 U.S.C. 470x-4(b) – Grant Requirements]

(b) (1) Grants provided under this section shall be allocated in such a fashion to reflect the diversity of the historic preservation fields and shall be geographically distributed.

(2) No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.

(3) The total administrative costs, direct and indirect, charged for carrying out grants under this

section may not exceed 25 percent of the aggregate costs.

[16 U.S.C. 470x-4(c) – Eligible applicants]

(c) Eligible applicants may include Federal and non-Federal laboratories, accredited museums, universities, non-profit organizations; offices, units, and Cooperative Park Study Units of the National Park System, State Historic Preservation Offices, tribal preservation offices, and Native Hawaiian organizations.

[16 U.S.C. 470x-4(d) – Standards]

(d) All such grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

[16 U.S.C. 470x-4(e) – Authorization of appropriations]

(e) There is authorized to be appropriated to carry out this section such sums as may be necessary.

Section 406 [16 U.S.C. 470x-5(a) – Center may accept grants, donations, and other Federal funds; may enter into contracts and cooperative agreements]

(a) The Center may accept –
 (1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and
 (2) transfers of funds from other Federal agencies.

[16 U.S.C. 470x-5(b) – Contracts and cooperative agreements]

(b) Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center's

responsibilities under this title of the Act.

[16 U.S.C. 470x-5(c) – Authorization of appropriations] (c) There are authorized to be appropriated such sums as may be necessary for the establishment, operation, and maintenance of the Center. Funds for the Center shall be in addition to existing National Park Service programs, centers, and offices.

Section 407 [16 U.S.C. 470x-6 – Improve use of existing NPS centers and regional offices] In order to improve the use of existing National Park Service resources, the Secretary shall fully utilize and further develop the National Park Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of such centers and offices within the National Park Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties.

[Addendum]

[National Historic Preservation Act Amendments of 1980, Public Law 96-515, December 12, 1980, 94 Stat. 3000 This addendum contains related legislative provisions enacted in the National Historic Preservation Act Amendments of 1980 but that are not part of the National Historic Preservation Act.]

Section 401 [16 U.S.C. 470a-1(a) – International activities and World Heritage Convention]

(a) The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October

26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

[16 U.S.C. 470a-1(b) – Nominations of properties to World Heritage List]

(b) The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may be so nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any such nomination, the Secretary shall notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

[16 U.S.C. 470a-1(c) – Concurrence of non-Federal property]

(c) No non-Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination.

Section 402 [16 U.S.C. 470a-2 – International Federal activities affecting historic properties] Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.

Appendix C Continued

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.

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.

(3) The term "public lands" means-

(A) lands which are owned and administered by the Unit (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.

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.

(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.

(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 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 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

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.

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. 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 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.

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.

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.

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

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.

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.

Appendix C Continued

Native American Graves Protection and Repatriation Act of 1990

PUBLIC LAW 101-601--NOV. 16, 1990
 NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT [104 STAT. 3048
 PUBLIC LAW 101-601--NOV. 16, 1990]
 Public Law 101-601
 101st Congress
 An Act
 Nov.16,1990

[H.R. 5237]

To provide for the protection of Native American graves, and for other purposes.

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

Native American Graves Protection and Repatriation Act. Hawaiian Natives. Historic preservation. 25 USC 3001 note. 25 USC 3001.

SECTION 1. SHORT TITLE. This Act may be cited as the "Native American Graves Protection and Repatriation Act".

SEC. 2. DEFINITIONS.

For purposes of this Act, the term-

(1) "**burial site**" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains **are deposited**.

(2) "**cultural affiliation**" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an **identifiable earlier group**.

(3) "**cultural items**" means human remains and-

(A) "**associated funerary objects**" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in

the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) **"unassociated funerary objects"** which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) **"sacred objects"** which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) **"cultural patrimony"** which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native

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American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the

individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) "Federal agency" means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) "Federal lands" means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971.

(6) "Hui Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) "museum" means any institution or State or local government agency (including any institution of higher learning) that receives Federal

funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) "Native Hawaiian organization" means any organization which--

(A) serves and represents the interests of Native Hawaiians,
(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as

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applied in section 7(c), result in a Fifth Amendment taking by the United States as determined by the United States Claims Court pursuant to 28 U.S.C. 1491 in which event the "right of possession" shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) "Secretary" means the Secretary of the Interior.

(15) "tribal land" means--

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.

25 USC 3002. SEC 3. OWNERSHIP.

(a) NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.--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 this Act shall be (with priority given in the order listed)--

(1) in the case of Native American human remains and associated

funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony--

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered; Claims.

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe--

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph

(1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

Regulations.

(b) UNCLAIMED NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.--Native American cultural items not claimed under subsec-

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(a) shall be disposed of in accordance with regulations promulgated by the Secretary- in consultation with the review committee established under section 8,-Native American groups, representatives of museums and the scientific community.

(c) INTENTIONAL EXCAVATION AND REMOVAL OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.--The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if--

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (93 Stat. 721; 16 U.S.C. 470aa et seq.) which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and

(4) proof of consultation or consent under paragraph (2) is shown.

(d) INADVERTENT DISCOVERY OF NATIVE AMERICAN REMAINS AND OBJECTS.--(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands- after the date of enactment of this Act shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall

be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) 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 with respect to any land managed by such other Secretary or agency head.

(e) RELINQUISHMENT.--Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

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SEC. 4. ILLEGAL TRAFFICKING.

(a) ILLEGAL TRAFFICKING.--Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

" 1170. Illegal Trafficking in Native American Human Remains and Cultural Items

"(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second

or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

"(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both."

(b) TABLE OF CONTENTS.--The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1170. Illegal Trafficking in Native American Human Remains and Cultural Items."

Museums. 25 USC 3003. SEC. 5.
INVENTORY FOR HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS.

(a) IN GENERAL.--Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b) REQUIREMENTS.--(1) The inventories and identifications required under subsection (a) shall be--

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after the date of enactment of this Act, and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8.

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term "documentation" means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be

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construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

(c) EXTENSION OF TIME FOR INVENTORY.--Any museum which has

made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B). The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

(d) NOTIFICATION--(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

(2) The notice required by paragraph (1) shall include information--
 (A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains

or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who

Federal Register, publication shall publish each notice in the Federal Register.

(e) INVENTORY.--For the purposes of this section, the term "inventory" means a simple itemized list that summarizes the information called for by this section.

25 USC 3004. SEC. 6. SUMMARY FOR UNASSOCIATED FUNERARY OBJECTS, SACRED OBJECTS, AND CULTURAL PATRIMONY.

Museums.

(a) IN GENERAL.--Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

(b) REQUIREMENTS.-- (1) The summary required under subsection (a) shall be--

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native

Hawaiian organization officials and traditional religious leaders; and

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(C) completed by not later than the date that is 3 years after the date of enactment of this Act.

(2) Upon request, Indian Tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

25 USC 3005. SEC. 7. REPATRIATION.

(a) REPATRIATION OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS POSSESSED OR CONTROLLED BY FEDERAL AGENCIES AND MUSEUMS.--

(1) If, pursuant to section 5, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with

respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5, or the summary pursuant to section 6, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) and, in the case of unassociated funerary objects, subsection (c), such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e), sacred objects and objects of cultural patrimony shall be expeditiously returned where--

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable

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lineal descendants of said member or the lineal descendent, upon notice, have failed to make a claim for the object under this Act.

(b) SCIENTIFIC STUDY.--If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

(c) STANDARD OF REPATRIATION.--If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated

funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

(d) SHARING OF INFORMATION BY FEDERAL AGENCIES AND MUSEUMS.--Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

(e) COMPETING CLAIMS.--Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

(f) MUSEUM OBLIGATION.--Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are

inconsistent with the provisions of this Act.

25 USC 3006. SEC. 8. REVIEW COMMITTEE.

(a) ESTABLISHMENT.--Within 120 days after the date of enactment of this Act, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7.

(b) MEMBERSHIP--(1) The Committee established under subsection (a) shall be composed of 7 members,
(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;
(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and
(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

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(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) RESPONSIBILITIES.--The committee established under subsection a) shall be responsible for-

- (1) designating one of the members of the committee as chairman;
- (2) monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;
- (3) upon the request of any affected party, reviewing and making findings related to-
 - (A) the identity or cultural affiliation of cultural items, or
 - (B) the return of such items;
- (4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;
- (5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

(d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act.

(e) RECOMMENDATIONS AND REPORT.--The committee shall make the recommendations under paragraph (c) (5) in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

(f) ACCESS.--The Secretary shall ensure that the committee established under subsection (a) and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

(g) DUTIES OF SECRETARY.--The Secretary shall--

Regulations.

(1) establish such rules and regulations for the committee as may be necessary, and

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(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

(h) ANNUAL REPORT.--The committee established under subsection (a) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

(i) TERMINATION.--The committee established under subsection (a) shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

Museums. SEC. 9. PENALTY. 25 USC 3007.

(a) PENALTY.--Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

(b) AMOUNT OF PENALTY.--The amount of a penalty assessed under subsection (a) shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors--

(1) the archaeological, historical, or commercial value of the item involved;

(2) the damages suffered, both economic and noneconomic, by an aggrieved party, and

(3) the number of violations that have occurred.

(c) ACTIONS TO RECOVER PENALTIES.-- If any museum fails to pay courts. an assessment of a civil penalty pursuant

Courts. to a final order of the Secretary that has been issued under subsection (a) and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) SUBPOENAS.--In hearings held pursuant to subsection (a), subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

25 USC 3008. SEC. 10. GRANTS.

(a) INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS.--The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

(b) MUSEUMS.--The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6.

25 USC 3009. SEC. 11. SAVINGS PROVISIONS.

Nothing in this Act shall be construed to--

(1) limit the authority of any Federal agency or museum to--

(A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

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Links Only



Iowa - Beach detecting with limitations

http://www.iowadnr.gov/parks/rules_regs/metal_detectors.html

Nebraska - Beach detecting with specific guidance (001.14C)

[http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Game and Parks Commission/Title-163/Chapter-5.pdf](http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Game_and_Parks_Commission/Title-163/Chapter-5.pdf)

New Hampshire - Beach detecting with guidance (Res 7301.19 & 20)

http://www.gencourt.state.nh.us/rules/state_agencies/res7300.html

Oregon - Permit require for & permit not required for detecting

http://www.oregon.gov/OPRD/PARKS/GoPlay/metal_detecting.shtml

Copy also available in Appendix D

Page 107: South Dakota - Permit process for detecting

<http://gfp.sd.gov/state-parks/docs/metal-detector-application.pdf>

Page 108: Arkansas - Some beach detecting with limitation & permit

<http://www.adptfoi.com/Parks/PD3225%20Recreational%20Metal%20Detecting.pdf>

Page 109: Michigan - List of Parks open, partial and closed to detecting

http://www.michigan.gov/dnr/0,1607,7-153-10365_10883-97922--,00.html

Page 112: Washington - Registration process to detect at select parks (Brochure)

<http://www.parks.wa.gov/parks/Metal%20Detecting%20brochure.pdf>

Appendix D

Example of South Dakota's Permit Process

Metal Detectors in State Parks
 No person may use a metal detector on lands owned, leased, managed, or controlled by the department without written authorization from the site manager. Metal detector use granted by a permit and will only be allowed if you are Recreational metal detecting on designated swimming beaches.

Department staff performing operations tasks.

Archaeologists performing official research (they must first have a permit from the State Archaeologist before a Department permit can be issued.) Looking for a lost personal item*. When looking for a lost personal item, the person needs to describe the lost item to the site manager issuing the permit. If the area to be searched is not within a designated swimming beach, digging will not be permitted since the lost item will most likely be above the surface.

*Before a permit is issued, the site manager needs to explain the special conditions and restrictions stated on the permit. By the permittee signing the permit, they acknowledge the limitations and restrictions set forth by the permit.

**SOUTH DAKOTA GAME, FISH & PARKS
 METAL DETECTOR PERMIT**

Department Area:

 Permit issued to: Name:

Address: _____
 City: _____ State: _____ Zip
 Code: _____
 Phone #: Daytime: _____ Evening: ____
 Date Issued: _____
 Permit Is Valid From: _____
 Through: _____

41:03:01:29. Restrictions on use of metal detectors - Written authorization required. No person may use a metal detector on lands owned, leased, managed, or controlled by the department without written authorization from the site manager or other department representative. Written authorization may include conditions for permitted use specific to the applicable area.

41:03:01:05. Destruction or removal of natural features prohibited -
 Exception. A person may not destroy, damage, or remove a living or dead tree, shrub, or vegetation; disturb any earth, rocks, minerals, natural formations, or historic relics; or destroy, damage, or remove any antlers, skulls, or other parts of animal carcass located on lands owned or leased by the department without written permission from the secretary or a designated agent. However, a person participating in religious activities in Bear Butte State Park or recreation areas and lakeside use areas adjacent to the Missouri River may use grasses and forbs taken from the park.

SPECIAL CONDITIONS AND RESTRICTIONS
 This permit applies only to the following area _____ and _____

may be used ONLY during the hours of ___. Permits must be carried by the permittee or be available in the vehicle. Permittee must inform department staff in advance before using detectors by either stopping at the office prior to detecting or calling a day in advance to

_____. Tools used for digging are limited to probes not over 6 inches long, one inch wide and one-quarter inch thick. Sand scoop or sieve not over 10 inches in diameter. All excavations shall be returned to their original condition prior to the beginning of new excavations or leaving the area. Holes may only be a maximum of 6" in depth. A litter apron or bag is to be worn or carried during metal detector use and all litter disposed of in an approved trash container. All found items will be brought to the office for inspection by department staff. The department retains the right to keep anything of historical, archeological or culturally significant value. Department staff must approve any exceptions or changes to these restrictions.

Permittee Signature: _____ Date: _____
Department Representative: _____ Date: _____

GFPR-P&R-290-03/03

Appendix D

Example of Arkansas Metal Detecting Law by Park

Metal detecting will be allowed only at public swim beaches & waters located at the following parks:

- *List of Parks*
- Crowley's Ridge
- Daisy
- DeGray Lake Resort
- Lake Catherine
- Lake Charles
- Lake Dardanelle
- Lake Ouachita
- Village Creek
- Woolly Hollow

The rules and procedures regarding the use of metal detectors are:

A. Metal detecting may occur from the day after Labor Day through the weekend preceding Memorial Day Sunday through Saturday from 8:00 a.m. to 5:00 p.m.;

B. Metal dectectorists must complete a registration form (see attached copy) and have it on their person when metal detecting;

C. Digging implements and hole sizes will be regulated;

D. Items of historical and/or archeological significance will not be removed. Park staff must be contacted immediately upon the discovery of such items;

E. Uncovered "valuables" will be left at the park office until a

reasonable time has passed for the original owner to claim the item (30 days per Arkansas Lost and Found laws - Excludes coins in circulation). All persons using metal detectors must complete a found property report

before leaving a park. If no claim is made within the thirty days,

the item may be collected by the finder.

Effective Until Persons using metal detectors shall:

A. Observe all laws, regulations, and procedures;

B. Observe the metal detectors code of ethics (see www.fmdac.com);

C. Never destroy or disturb park facilities, natural features, historical, or archeological resources;

D. Conduct themselves with thoughtfulness, courtesy, and consideration for others by not interfering with other recreational activities or allowing any emitted sound that is audible to other park users;

E. Limit digging implements to ice picks, screwdrivers, and probes not to exceed two (2") inches in width and sand scoops not to exceed six (6") inches in width and eight (8") inches in length, containing perforations no less than one-half (1/2") inch in width, to be used only on sand surfaces;

F. Limit any holes dug to six (6") inches maximum depth, refill holes immediately following searches, and restore surfaces to previous conditions;

G. Properly dispose of all found or recovered trash or litter.

REGISTRATION for Metal Detector Use

_____ I
 have read and understand the
 NAME (First, Middle, Last)
 procedures for using a metal
 _____ de
 tector in _____ State Parks.
 Street Address _____

 City State Zip
 Signature

 Date

Appendix D

Example of Michigan Metal Detecting Law by Park

Metal Detecting in State Parks

Metal detecting is recognized as a legitimate recreation activity when it is conducted in ways that do not damage the natural and cultural resources in Michigan State Parks nor violate applicable state statues. Any items found must be reviewed by park staff and may be retained for further investigation.

Entire park open:

- Brimley State Park
- Grand Haven State Park
- Lakeport State Park
- Mears State Park
- Traverse City State Park

Parks with designated areas (maps are provided on the linking pages):



- Algonac State Park
- Aloha State Park
- Bald Mountain Recreation

- Area
- Baraga State Park

Bay City State Park
 Bewabic State Park
 Brighton Recreation Area
 Cheboygan State Park
 Clear Lake State Park
 Craig Lake State Park
 Duck Lake State Park
 Grand Mere State Park
 Harrisville State Park
 Hartwick Pines State Park
 Hayes State Park
 Highland Recreation Area
 Hoeft State Park
 Hoffmaster State Park
 Holland State Park
 Holly Recreation Area
 Indian Lake State Park
 Ionia Recreation Area
 Island Lake Recreation Area
 Lake Gogebic State Park
 Lake Hudson Recreation Area
 Ludington State Park
 Metamora-Hadley Recreation Area
 Mitchell State Park
 Muskegon State Park
 Negwegon State Park
 Orchard Beach State Park
 Ortonville Recreation Area
 Otsego Lake State Park
 Petoskey State Park
 Pinckney Recreation Area
 Pontiac Lake Recreation Area
 Porcupine Mountains Wilderness
 State Park
 Proud Lake Recreation Area
 Rifle River Recreation Area
 Saugatuck Dunes State Park
 Seven Lakes State Park
 Silver Lake State Park
 Sleeper State Park
 Sleepy Hollow State Park
 South Higgins Lake State Park
 Sterling State Park
 Tawas Point State Park
 Twin Lakes State Park
 Van Buren State Park
 Van Riper State Park

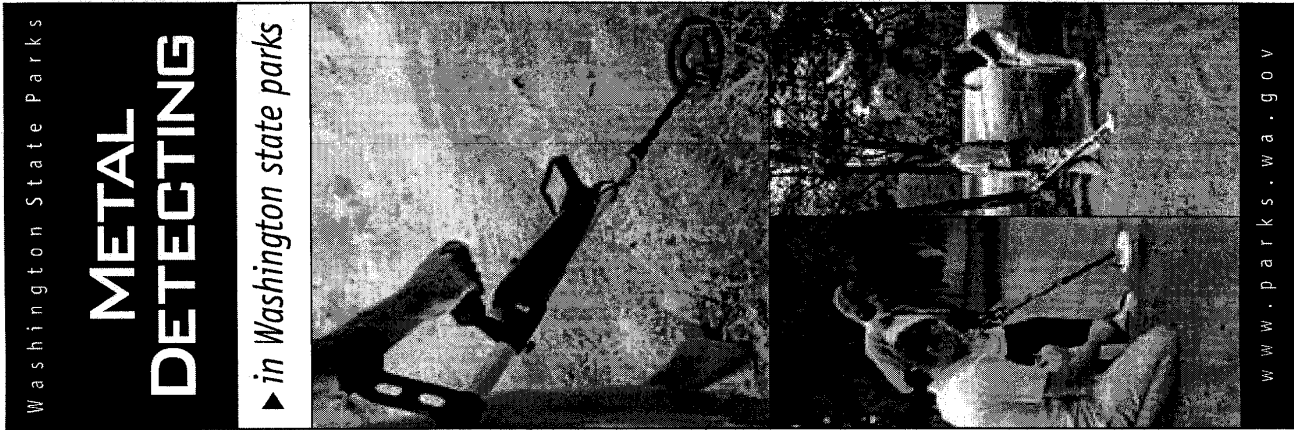
Warren Dunes State Park
 Waterloo Recreation Area
 Wilderness State Park
 Wilson State Park
 Yankee Springs Recreation Area
 Young State Park

Parks closed to metal detecting:

Agate Falls Scenic Site
 Bass River Recreation Area
 Bond Falls Scenic Site
 Burt Lake State Park
 Cambridge Junction Historic State
 Park
 Coldwater Lake State Park
 Dodge #4 State Park
 Father Marquette Memorial Scenic
 Site
 Fayette Historic State Park
 Fisherman's Island State Park
 Fort Custer Recreation Area
 Fort Wilkins Historic State Park
 Hart-Montague Trail State Park
 Interlochen State Park
 Kal-Haven Trail State Park
 Lakelands Trail State Park
 Laughing Whitefish Falls Scenic
 Site
 Leelanau State Park
 Maybury State Park
 Meridian-Baseline State Park
 McLain State Park
 Muskallonge Lake State Park
 Newago State Park
 North Higgins Lake State Park
 Onaway State Park
 Palms Book State Park
 Port Crescent State Park
 Sanilac Petroglyphs Historic State
 Park
 Straits State Park
 Sturgeon Point Scenic Site
 Tahquamenon Falls State Park
 Thompson's Harbor State Park
 Van Buren Trail State Park
 Wagner Falls Scenic Site

Warren Woods State Park
William G. Milliken State Park and
Harbor
Wells State Park
Wetzel State Recreation Area
Fred Meijer White Pine Trail State
Park

Metal Detecting Association of Washington
<http://www.metaldetectwa.org>



Washington State Parks

METAL DETECTING

► in Washington state parks

W W W . P A R K S . W A . G O V

REGISTRATION for Metal Detector Use

► Before detecting, please complete registration form and deliver to park staff. If park staff is not available, please deposit in pay station.

Name _____ Telephone number _____

Address (City, State, Zip Code) _____

Park where detecting _____ Date of detecting _____ Number of people in party _____

► I, and members of my party, have read and understand the summary of rules for use of metal detectors in state parks.

Signature _____ Date _____

Washington State Parks and Recreation Commission

P.O. Box 42650
 Olympia, WA 98504-2650
 (360) 902-8500
www.parks.wa.gov



Commission members:
 Patricia T. Lantz Joe Teller
 Fred Olson Cecilia Vogt
 Rodger Schmitt Lucinda S. Whaley
 Elliot Scull

Agency director: Rex Derr
 All Washington state parks are developed and maintained for the enjoyment of all people.

To request this brochure in an alternative format, please call (360) 902-8844 or the Washington Telecommunications Relay Service at (800) 833-6388. P&R 45-30100-4 (06/10)

The following parks allow registered metal detector use.

Detecting areas vary in each park. Before detecting, please contact park staff and refer to the posted informational map. You may obtain informational maps online at www.parks.wa.gov/parks/maps/

List is subject to revision

- Alta Lake
- Battle Ground Lake
- Bay View
- Belfair
- Birch Bay
- Bogachiel
- Bridgeport
- Bridle Trails
- Brooks Memorial
- Camano Island
- Cape Disappointment
- Conconully
- Crown Point
- Daroga
- Dash Point
- Deception Pass
- Fay Bainbridge
- Fields Spring
- Fort Flagler
- Grayland Beach*
- Griffiths-Friday*
- Haley Property
- Ike Kinswa
- Illahee
- Joemma Beach
- Kanaskat-Palmer
- Kitsap Memorial
- Kopachuck
- Lake Chelan
- Lake Easton
- Lake Sammamish
- Lake Sylvia
- Lake Wenatchee
- Larrabee
- Lewis and Clark
- Lewis and Clark Trail
- Lincoln Rock
- Millersylvania
- Moran
- Mount Spokane
- Mystery Bay
- Nolte
- Ocean City*
- Paradise Point
- Perrygin Lake
- Penrose Point
- Potholes
- Rainbow Falls
- Rasar
- Riverside
- Rockport
- Saint Edward
- Saltwater
- Scenic Beach
- Schafer
- Sequim Bay
- Shine Tidelands
- South Whidbey
- Steamboat Rock
- Sun Lakes
- Tolmie
- Triton Cove
- Twanoh
- Twenty-five Mile Creek
- Twin Harbors*
- Wanapum
- Westhaven*
- Westport Light*
- Yakima Sportsman

* Denotes parks within the Seashore Conservation Area. Metal detecting is allowed between the ocean water's edge and the mean high tide line.

WELCOME TO WASHINGTON STATE PARKS

► Please follow the established rules while detecting in Washington state parks. This will ensure that parks remain open to hobbyists and facilities and resources are protected. Contact park staff for additional information.



A Summary of Rules

- The use of metal detectors is permitted only within specified portions of approved state parks.
- Users shall not destroy park facilities, natural features or historical or archaeological resources. No item appearing to be of historical or archaeological significance, remaining from either early pioneer or military activity or from Native American presence, may be removed from where it was found. You must report immediately any such find to a park employee, and you must not further disturb the area in which the find occurred.
- Users must properly dispose of all found or recovered litter.
- For group detecting events, please request a special recreation event application.
- Metal detecting is allowed between the ocean water's edge and the mean high tide line along the Washington coast.



Lost and Found Property

Please be aware that a "loser" of an item may still own that item and that the act of finding and recovering an item does not convey ownership rights to the finder. The Lost and Found Property Statute establishes provisions for recovery and retention of lost items.

- Coins in circulation are not subject to this statute
- You must turn in found property to park staff and complete a Found Property Report, which tracks the disposition of the materials. Failure of the finder to comply with requirements of the law will result in the materials being disposed of as unclaimed property.
- If the owner is not found within specified time limits, the found property will be released to the finder, provided that all official proceedings which involve the property are completed and the finder has complied with all requirements.
- Contact park staff for further information about the Lost and Found property statute.

Washington Administrative Code 352-32-235 governs the use of metal and is stated below:

- "The use and operation of metal detectors, as well as the removal of small contemporary materials, is permitted within selected state parks as designated by the director or designee, in accordance with all commission direction on land management, and subject to the conditions and limitations specified.
- (1) The use of metal detectors is permitted only within specified portions of approved state parks as posted for public reference. Metal detecting may be allowed in an approved campsite occupied by the registered metal detector user and in unoccupied campsites within approved campgrounds.
 - (2) The use of metal detectors within a state park shall be limited to daylight hours that the park has posted as "open." No use shall be allowed during periods of seasonal or emergency park closure, except where otherwise posted.
 - (3) Any person wishing to use a metal detector shall so indicate to park personnel at the park where the use is to



occur, by complying with the registration process provided for such purpose.

- (4) Exceptional uses of metal detectors in state parks may be allowed through the issuance of a special recreation event application, available from the agency.
- (5) This section does not apply to commission employees while engaged in the performance of their duties.
- (6) Persons operating metal detectors in state parks and state park areas shall:
 - (a) Observe all laws and regulations.
 - (b) Never destroy or disturb park facilities, natural features, or historical or archeological resources. No item which is, or appears to be of historical or archaeological significance, may be removed from the site at which it was found. Any such find shall be immediately reported to park personnel, and the area in which the find occurred shall be closed.
 - (c) Limit digging implements to ice picks, screwdrivers and probes not to exceed two inches in width and sand scoops not to exceed six inches in width and eight inches in length, containing perforations no less than one-half inch in width, to be used only on sand surfaces. Any holes dug shall be limited to six inches maximum depth and shall be immediately refilled and the surface restored to its earlier condition.
 - (d) Properly dispose of all found or recovered trash and litter.
 - (e) Conduct themselves with thoughtfulness, courtesy and consideration for others, and not interfere with other recreational activities. An operator shall not allow any emitted metal detector sound audible to other park users.
 - (7) Any violation of this section is an infraction under chapter 7.84 RCW.

Page 115: U.K. 1996 Treasure Act

[http://www.finds.org.uk/documents/treasure act.pdf](http://www.finds.org.uk/documents/treasure%20act.pdf)

or

[http://www.opsi.gov.uk/acts/acts1996/ukpga 19960024 en 1](http://www.opsi.gov.uk/acts/acts1996/ukpga_19960024_en_1)



Page 118: Code of Practice for Responsible Metal Detecting in England and Wales

<http://www.ncmd.co.uk/docs/CofP1.pdf>

Support Articles:

Page 120: The Independent, UK January 14, 2007

Website: [Treasure trove: Metal-detecting finds up by 20 per cent in a year - This Britain, UK - The Independent](#)

Page 121: Finders keepers? by Farrer & Co LLP Amy Wilson

United Kingdom

February 19 2010

Website: [Lexology - Finders keepers?](#)

Page 123: From The Times November 20, 2008

Website: <http://www.timesonline.co.uk/tol/news/uk/article5192991.ece>

Paydirt at last after 40 years of prospecting for gold

By Laura Dixon and Ben Hoyle

Page 125: Archaeology

Website: [Gold and silver jewellery among surge in finds by metal detector sleuths | UK news | The Guardian](#)

'Unsung heroes of heritage' extolled for unearthing hoard of treasure Gold and silver jewellery among surge in finds by metal detector sleuths by Maev Kennedy The Guardian, Thursday 18 January 2007 Article history

Page 127: Treasure Valuation Committee agree £3.285 million valuation for the Staffordshire Anglo-Saxon Hoard

[http://www.britishmuseum.org/the_museum/news and press releases/press releases/2009/staffordshire hoard valuation.aspx](http://www.britishmuseum.org/the_museum/news_and_press_releases/press_releases/2009/staffordshire_hoard_valuation.aspx)

Appendix E: U.K. Treasure Act and

U.K. Treasure Act

*Information for finders of treasure
(England and Wales)**Introduction and background*

The Treasure Act 1996 replaced the common law of treasure trove in England, Wales and Northern Ireland. On 1 January 2003, the definition of Treasure was extended, as set out below.

Provided on these pages is a summary of the main points of this Act; further information will be found in the Treasure Act Code of Practice, which can be downloaded (free of charge) from the Department for Culture, Media and Sport's website at www.culture.gov.uk from the British Museum's Treasure Registrar, and from your Local Finds Liaison Officer, (see www.finds.org.uk) or through the National Council for Metal Detecting.

Metal detectorists are strongly advised to obtain a copy of the Code of Practice which, among other things, contains guidance for detectorists, sets out guidelines on rewards, gives advice on the care of finds and has lists of useful addresses.

What Objects Qualify as Treasure?

The following finds are Treasure under the act, if found after 24th September 1997 (or in the case of category 2 if found after January 1 2003):

1. Any metallic object other than a coin, provided that at least 10 per cent by weight of metal is precious metal (that is, gold or silver) and

Support Articles

that it is at least 300 years old when found, if the object is of prehistoric date it will be

Treasure provided any part of it is precious metal.

2. Any group of two or more metallic objects of any composition of prehistoric date that comes from the same find (see below)

3. All coins from the same find provided that they are at least 300 years old when found (but if the coins contain less than 10 per cent of gold or silver there must be at least ten of them). Only the following groups of coins will normally be regarded as coming from the same find: (a) hoards that have been deliberately hidden, (b) smaller groups of coins, such as the contents of purses, that may have been dropped or lost, and (c) votive or natural deposits.

4. Any object, whatever it is made of, that is found in the same place as, or had previously been together with, another object that is Treasure.

5. Any object that would previously have been treasure trove, but does not fall within the specific categories given above. Only objects that are less than 300 years old, that are made substantially of gold or silver, that have been deliberately hidden with the intention of recovery and whose owners or heirs are unknown will come into this category.

Note: An object or coin is part of the 'same find' as another object or coin if it is found in the same place as, or had been previously together with. the other object. Finds may have become scattered

since they were originally deposited in the ground.

What objects do not Qualify as Treasure?

The following types of finds are not Treasure: Objects whose owners can be traced. Un-worked natural objects, including human and animal remains, even if they are found in association with Treasure. Objects from the foreshore which is a wreck. Single coins found on their own. Groups of coins lost one by one over a period of time.

If you are in any doubt, it is always safest to report your find. your local Finds Liaison Officer will be glad to record all archaeological objects that you find.

What should I do if I find something that may be treasure?

You must report all finds of treasure to the coroner for the district in which they are found either:- within 14 days after the day on which you made the find -- or -- within 14 days after the day on which you realized that the find might be treasure (for example, as a result of having it identified) *The obligation to report finds applies to everyone, including archaeologists.*

How do I report a find of treasure?

Very simply. You may report your find to the coroner in person, by letter, telephone or fax. The coroner or his officer will send you an acknowledgement and tell you where you should deposit your find. The Code of Practice has a list of coroners contact details. Finds made

from a few areas for which a Treasure franchise operates, (the Duchies of Lancaster and Cornwall , the Corporation of London and the City of Bristol) should be reported to the coroner in the normal way.

Where will I have to take my find?

In each Coroner's district, there is a local agreement between the Coroner, the Finds Liaison Officer (FLO), local government archaeological officers (in Wales , the Regional Archaeological Trusts) and local or national museums, about where Treasure finds should be deposited. From December 2003, a national network of FLO's will have been established across the whole of England and Wales . The FLO's will then be the main point of contact for Treasure finds.

The Finds Liaison Officer (FLO), museum or local government archaeological officer receiving the find will give you a receipt. They will need to know exactly where you made the find, (wherever possible to the equivalent of a six-figure national grid reference). However, in official dealings, a parish address or else a four-figure national grid reference (one square kilometer) will be used, whilst a more general location description may be used for a particularly sensitive find. You and the landowner should keep the find-site location confidential.

The body or individual receiving the find will notify the Sites and monuments Record as soon as possible (if that has not already happened), so that the site where the find was made can be investigated by archaeologists if necessary. a list of Sites and Monuments Records is

included in the Code of practice.

What if I do not report a find of Treasure?

The penalty for not reporting a find that you believe or there is good evidence for believing to be Treasure, without a reasonable excuse, is imprisonment for up to three months, a fine of up to £5,000 (level 5), or both. You will not be breaking the law if you do not report a find because you did not at first recognize that it may be Treasure, but you should report it once you realize this.

What happens if a find is not Treasure?

If the find is not treasure, the museum curator or archaeological body will inform the Coroner who may then decide that the find should be returned to you without the holding of an inquest.

What happens if the find is Treasure?

If the Finds Liaison Officer, museum curator or archaeologist believes that the find may be Treasure, they will inform the British Museum, or the National Museum and Galleries of Wales. They will then decide whether they or any other museum wishes to acquire it from the Crown.

If no museum wishes to acquire the find from the Crown, the Secretary of State will disclaim it. When this happens, the Coroner will notify the landowner that the object is to be returned to you, after 28 days, unless the landowner objects. If the landowner objects, the Coroner will retain the find until you and the landowner have resolved

any dispute.

What if a museum wants to acquire my find?

The Coroner will hold an inquest to decide whether the find is Treasure. you, the site occupier, and the landowner will be invited to attend, and will be able to question witnesses at the inquest. Treasure inquests will be held without a jury.

If the find is declared Treasure then it will be taken to the British Museum or the National Museum and Galleries of Wales so that it can be valued by the Treasure Valuation Committee.

How is a fair market value for a Treasure find arrived at?

Any Treasure find, that a museum wishes to acquire, is valued by the Treasure Valuation Committee which consists of independent experts. The Committee will commission a valuation from one or more experts drawn from the antiquities or coin trades. You, the landowner and the acquiring museum, will have the option to comment on this valuation, and/or to send in a separate valuation for the Committee to consider. The Committee will inspect the find and arrive at a valuation. If you are then dissatisfied with the Committee's valuation, you can ask for the Committee to review it, in the light of written evidence that you want the Committee to see. If you are still dissatisfied, you can then appeal to the Secretary of State.

What if the Coroner or National Museum loses or damages my find?

They are required to take

responsible steps to ensure that this does not happen but, if it does, you should be compensated.

Who is eligible to a share of the valuation?

This is set out in detail in the Code of Practice.

to summarize:

The finder who has obtained permission to be on the land from its owner, and acted in good faith. The person or organization which holds the freehold of the land.

The person who occupies the particular site as a tenant of the owner.

Who is not eligible to a share of the valuation?

An archaeologist who makes a Treasure find.

A finder or a landowner who acted in bad faith, and not in accordance with the Code of Practice, may expect a reduced share of the valuation, or none at all.

How long will it take before I receive my reward?

The target should be that the period between the find being received by the Coroner, or by the organization to whom he has directed that the find be delivered, and the payment of any ex gratia reward should not be longer than twelve months (provided no challenges are made to valuations), although it may be necessary to exceed this period in exceptional cases such as large hoards of coins, or finds that present particular difficulties.

For further advice about Treasure

National Council for Metal Detecting
General Secretary
Tel: 01709 868521
Email: trevor.austin@ncmd.co.uk

British Museum Treasure Registrar
Tel: 020 7323 8611

Department for Culture Media and Sport Culture Property Unit Treasure Section
Tel: 020 7211 6181
Fax: 020 7211 6170

British Museum Portable Antiquities Scheme
Tel: 020 7323 8611
Email: info@finds.org.uk

For Treasure Publications Information Centre
Tel: 020 7211 6200

Information taken from the leaflet "The Treasure Act" Printed in the UK for the Department for Culture, Media and Sport

Code of Practice for Responsible Metal Detecting in England and Wales

Being responsible means:

Before you go metal-detecting

1. Not trespassing; before you start detecting obtain permission to search from the landowner/occupier, regardless of the status, or perceived status, of the land. Remember that all land has an owner. To avoid subsequent disputes it is always advisable to get permission and agreement in writing first regarding the ownership of any finds

subsequently discovered (see www.cla.org.uk / www.nfuonline.com).

2. Adhering to the laws concerning protected sites (e.g. those defined as Scheduled Monuments or Sites of Special Scientific Interest: you can obtain details of these from the landowner / occupier, Finds Liaison Officer, Historic Environment Record or at www.magic.gov.uk). Take extra care when detecting near protected sites: for example, it is not always clear where the boundaries lie on the ground.

3. You are strongly recommended to join a metal detecting club or association that encourages co-operation and responsive exchanges with other responsible heritage groups. Details of metal detecting organisations can be found at www.ncmd.co.uk / www.fid.newbury.net.

4. Familiarising yourself with and following current conservation advice on the handling, care and storage of archaeological objects (see www.finds.org.uk).

While you are metal-detecting

5. Wherever possible working on ground that has already been disturbed (such as ploughed land or that which has formerly been ploughed), and only within the depth of ploughing. If detecting takes place on undisturbed pasture, be careful to ensure that no damage is done to the archaeological value of the land, including earthworks.

6. Minimising any ground disturbance through the use of suitable tools and by reinstating any excavated

material as neatly as possible. Endeavour not to damage stratified archaeological deposits.

7. Recording find spots as accurately as possible for all finds (i.e. to at least a one hundred metre square, using an Ordnance Survey map or hand-held Global Positioning Systems (GPS) device) whilst in the field. Bag finds individually and record the National Grid Reference (NGR) on the bag. Findspot information should not be passed on to others. 8. Respecting the Country Code (leave gates and property as you find them and do not damage crops, frighten animals, or disturb ground nesting birds, and dispose properly of litter: see www.countrysideaccess.gov.uk).

After you have been metal-detecting

9. Reporting any finds to the relevant landowner/occupier; and (with the agreement of the landowner/occupier) to the Portable Antiquities Scheme, so the information can pass into the local Historic Environment Record. Both the Country Land and Business Association (www.cla.org.uk) and the National Farmers Union (www.nfuonline.com) support the reporting of finds. Details of your local Finds Liaison Officer can be found at www.finds.org.uk, e-mail info@finds.org.uk or phone 020 7323 8611.

10. Abiding by the provisions of the Treasure Act and Treasure Act Code of Practice (www.finds.org.uk), wreck law (www.mcga.gov.uk) and export licensing (www.mla.gov.uk). If you need advice your local Finds

Liaison Officer will be able to help you.

11. Seeking expert help if you discover something large below the ploughsoil, or a concentration of finds or unusual material, or wreck remains, and ensuring that the landowner/occupier's permission is obtained to do so. Your local Finds Liaison Officer may be able to help or will be able to advise of an appropriate person. Reporting the find does not change your rights of discovery, but will result in far more archaeological evidence being discovered.

12. Calling the Police, and notifying the landowner/occupier, if you find any traces of human remains.

13. Calling the Police or HM Coastguard, and notifying the landowner/occupier, if you find anything that may be a live explosive: do not use a metal-detector or mobile phone nearby as this might trigger an explosion. Do not attempt to move or interfere with any such explosives.

U.K. Treasure Supporting Articles

The Independent, UK January 14, 2007
Website: [Treasure trove: Metal-detecting finds up by 20 per cent in a year - This Britain, UK - The Independent](#)

Treasure trove: Metal-detecting finds up by 20 per cent in a year
By Marie Woolf, Political Editor

For most treasure seekers the promising glint of a gold coin in

the garden has turned out on closer inspection to be a rusting bottle top. However, a report to be published this week will show that more buried treasure than ever is being reported found in the UK by amateur archaeologists armed with metal detectors.

The number of reported valuable finds has increased by nearly 20 per cent in the last year, with discoveries including iron age and medieval hoards, Roman coins and exquisite examples of Anglo-Saxon jewellery.

The official report will show that thousands of finds are being reported each year and that 506 discoveries were significant enough to be declared as treasure trove. The remarkable increase has caused huge excitement among museums and in government.

David Lammy, the minister of culture, said that metal detectorists who spend days scanning newly ploughed fields in the hope that a beep will lead them to buried treasure, are doing a huge service to Britain's cultural life.

"Metal detectorists are the unsung heroes of the UK's heritage. Thanks to the responsible approach they display in reporting finds and the systems we have set up to record them, more archaeological material is available for all to see at museums or to study online," he said.

The finds have included a £100,000 hoard of five golden armlets and bracelets dating from 1300BC which

were discovered in Berkshire. Archaeologists were also excited by the discovery of an early medieval pendant in West Shropshire by amateur archaeologists Glyn and Glenys Jones in November 2004.

The gold pendant, composed of a well-polished garnet surrounded by a border of small garnets set over waffle-patterned gold, dates from the 7th century. It is thought to have been strung with other pendants on a necklace belonging to a person of high status. It was similar to pieces of jewellery found in Anglo-Saxon cemeteries in Kent. Metal detectors can be used with the permission of landowners but are banned on scheduled archaeological sites such as Stonehenge.

The rise in the number of reported finds follows a change in the law in 1997 which has required buried treasure to be reported. The increase from 79 treasure finds in 1997 has led to a huge increase in the number of artefacts being offered to museums. The new rules offer an incentive to metal detectorists to declare the treasure because they will gain half of the proceeds of its sale.

If it is officially declared as treasure by the local coroner, the proceeds are split between the owner of the land where the artefact was found and the finder. In 2001, Chris Bradshaw shared in a £250,000 reward after he found a Bronze Age golden cup in Kent.

Dr Roger Bland, head of portable antiquities and treasure at the British Museum, said treasure

seekers not only turned up surprising finds, they also often revealed entirely unknown sites to archaeologists.

But not all the discoveries have made the treasure seeker's fortune. One man made just £25 from a fragment of a silver finger ring dating from 100AD.

Finders keepers? by Farrer & Co LLP
Amy Wilson
United Kingdom
February 19 2010
Website: [Lexology - Finders keepers?](#)

The chances are that most of us dreamed of finding buried treasure as a child. For some, the search remains an active one and the treasure distinctly more than a dream. Just take, for example, the recent find of the Staffordshire Hoard, the largest collection of Anglo-Saxon treasure ever found, which attracted a reward of £3.28 million, shared between the finder and the landowner.

So what exactly is treasure and who owns it when it is found? Following the replacement of the common law of treasure trove, the answers are now found in the Treasure Act 1996 ("the Act").

What is treasure?

The Act provides a detailed description of what constitutes treasure:

1. All objects, other than coins, which are at least 300 years old and contain at least 10% gold or silver;

2. All coins from the same find, provided they are at least 300 years old (if they contain less than 10% gold or silver, there must be at least 10 coins in the same find);

3. All objects, whatever they are made of, found in association with an object classified as treasure;

4. Prehistoric metal objects (i.e. Iron Age and older), where there are at least two objects in the same find; and

5. Objects that are less than 300 years old and made substantially of gold or silver, which have been deliberately hidden with the intention of recovery.

Objects are considered to be part of the "same find", if found in the same place, or if they had previously been together but were subsequently scattered. Objects are not treasure if their owners or heirs can be traced, if they are unworked natural objects, or if they come from a shipwreck.

Duties owed by the finders of treasure

Most treasure is discovered by metal detectorists, searching other people's land. Metal detectorists should follow the Metal Detecting Code of Conduct, which encourages them to seek permission before entering any land and to report any finds in accordance with the Act.

Under the Act, all finds of treasure must be reported to the coroner for the district, either within 14 days after the day on which the treasure

was found or within 14 days after the finder realises the find might be treasure. Failure to report a find without reasonable excuse is a criminal offence and carries a penalty of up to three months in prison and/or a fine of up to £5,000. In most cases, when a find is reported the coroner will hold an inquest to decide whether or not the find is treasure.

What happens if the find is treasure?

All objects which qualify as treasure are deemed to belong to the Crown. All such finds are reported to the British Museum, or the National Museums and Galleries of Wales, to decide whether a museum wishes to acquire the treasure from the Crown.

If a museum acquires the treasure, the Secretary of State must decide whether an ex gratia reward should be paid for the treasure. Typically, rewards are set at the market value of the find. Who gets the reward depends on a number of factors, including whether the finder is trespassing or has permission to be on the land. The important point for landowners is that the Secretary of State has the discretion to follow the terms of any agreement that exists between the finder and the landowner/occupier (see below) as to the proportions of the reward they should receive.

What happens if treasure is not acquired by a museum?

If no museum wishes to acquire the treasure, the Secretary of State is

able to renounce the Crown's ownership of it. If this happens, the coroner will give landowners/occupiers 28 days' notice that he intends to return the find to the finder. If the landowner/occupier raises an objection to this, the coroner will retain the find until the dispute is resolved between the parties. The coroner has no power to decide the legal ownership of the find.

Instead, ownership rights may be established by the common law of "finders". This determines that a finder who takes possession of property irretrievably lost by its former owner acquires ownership of that property. However, this is subject to the rule that a person with possession of land has possession of everything attached to or underneath that land. Therefore, in most cases of metal detecting, where the finds are usually buried, the find will belong to the landowner/occupier. For the avoidance of doubt, however, it is recommended that landowners/occupiers have a written agreement with finders (see below) setting out who is entitled to keep the find in the event that this happens.

What happens if the find is not treasure?

If an object is found not to be treasure, it will be returned by the coroner following the same procedure as set out above. In the absence of an agreement, the common law will establish ownership as described above.

Advice for landowners

Any landowners who give permission to people to search their land are strongly recommended to have a written agreement setting out the following:

- the terms on which finders may use the land;
- the duty of finders to notify any finds to the Coroner and to the landowner;
- the ownership of treasure, including how any reward should be divided between the landowner and the finder; and what happens to artefacts which are determined not to be treasure.

Where land is tenanted, the landowner should also ensure that the tenancy agreement reserves full rights to the landowner to grant such permission. A written agreement cannot supersede the terms of the Act, but is useful in determining the points above in the case of a dispute. Many major landowners already use standard metal detecting licences for this purpose. However, if you do not currently have a written agreement and are interested in adopting one, this is something with which Farrer & Co can assist

From The Times November 20, 2008

Website:

<http://www.timesonline.co.uk/tol/news/uk/article5192991.ece>

Paydirt at last after 40 years of prospecting for gold

By Laura Dixon and Ben Hoyle

Maurice Richardson spent 40 years hunting for treasure in the fields of Nottinghamshire, unearthing little but pieces of scrap and the

odd coin. Then one rainy day, using his metal detector to look for parts of a Second World War aircraft, he stumbled across the most expensive single find in recent history.

Mr Richardson, a 59-year-old tree surgeon, discovered a gold and silver torc, a necklace of eight twisted metal strands valued at £350,000 and dating from AD200 to 50BC.

The find near Newark - in a part of the country that has yielded few items of that age and value - has prompted archaeologists to rethink the importance of the entire region 2,000 years ago. It also provided Mr Richardson with a £175,000 windfall (by law the other half of the money for a treasure find goes to the landowner, in this case Trinity College, Cambridge).

The British Museum, which published the latest Treasure Annual Report yesterday, has seen a big increase in the number of finds: 749 were reported last year, compared with 665 in 2006. They credit the Treasure Act - which since it came into force in 1996 has meant that treasure hunters are compensated for their finds - and the growing number of local historians with metal detectors.

According to Barbara Follett, the Culture Minister, since the Act came into effect there has been a tenfold increase in the numbers of artefacts reported.

James Robinson, the curator of medieval collections at the British Museum, said: "The way the system

works now is a massive incentive for people to go out and find things. The number of items found seems to be getting bigger and bigger every year."

Michael Lewis, the deputy head of portable antiquities and treasure at the museum, said that treasure hunters were an invaluable local resource. "Metal detectors go to parts of the country and fields where archaeologists wouldn't normally go," he said. "There's a lot of tremendous information that finders are telling us about the past."

Mr Lewis said he suspected that a lot of treasure hunters were pursuing their hobby "to get away from their wives", but for others it was a way of life and a way of finding and preserving the past.

For Mr Richardson, metal detecting has been a lifelong hobby and finding something of value was merely a bonus. "Week after week after week we go into the fields and find nothing. You look and look for things like this and you read about other people finding them, but it never happens to you. It's not about the money, but the fact that it has been saved for the nation.

"I once found something that looked really interesting - gold - and when I dug it up it was the end of a curtain rail. You find a lot of little pieces but 90 per cent of it is just interesting," he said.

The necklace, which weighs 2lb and is made of a gold and silver mix called electrum, is one of the best

Iron Age torcs found in the past 50 years in Britain. Glyn Hughes, senior collections officer at Newark Sherwood museum services, who bought the necklace, said: "When we first saw it we were speechless. It was one of those once-in-a-lifetime moments. What is significant is what it tells us about the Iron Age - what it tells us about north Nottinghamshire."

Under the Act, any gold, silver and groups of coins more than 300 years old have to be reported to the local coroner. If the treasure is bought by the British Museum or a local museum, the proceeds are split, with half going to the finder and half to the landowner.

According to the report, the East and South East are the best places to find treasure, with Norfolk, Suffolk and Kent the top spots last year. Metal detectors cost from £70. Mr Robinson's machine was from the top of the range, and cost £1,200.

Other discoveries in the collection include a hoard of 3,600 Roman coins found at a building site in Snodland, Kent, a medieval silver seal containing the only surviving miniature portrait of the emperor who succeeded Hadrian, Antoninus Pius, and a 7th-century piece - probably part of a necklace - that was found in Essex and is worth £3,000.

Archaeology

Website: [Gold and silver jewellery among surge in finds by metal detector sleuths | UK news | The Guardian](#)

'Unsung heroes of heritage' extolled for unearthing hoard of treasure Gold and silver jewellery among surge in finds by metal detector sleuths by Maev Kennedy The Guardian, Thursday 18 January 2007 Article history

A Roman copper-alloy figurine of a hound, found by Alan Rowe as he used a metal detector on the Isle of Wight, is displayed at the British Museum in London. Photograph: Kirsty Wigglesworth/AP

A missing gold finial from the Sedgeford torc, excavated almost in its entirety more than 40 years ago, and a stash of Viking silver bracelets that may have helped finance an attack on Dublin were among a glittering hoard of treasure disclosed yesterday, the discovery of amateurs and their metal detectors.

The culture minister, David Lammy, yesterday called metal detectorists "the unsung heroes of the UK's heritage", a phrase that will cause a sharp intake of breath among some archaeologists who still regard them as little better than legalised looters.

However, in most parts of the country a truce is in place, with archaeologists and hobbyists working together, a code of conduct agreed by both sides. The amateurs, in fact, are often called in to help at excavation sites, valued for their equipment and expertise at telling a buried coin from a can ring-pull.

The outcome has been a spectacular increase in reported finds, with finds of "treasure", gold and silver, and bronze hoards - which, by law, must be reported - having risen by almost a fifth, from 426 finds to 506. Finds regarding voluntarily reported historic objects are also up, by 45%, from 39,933 in 2004, to 57,566 for the past year.

"We now have a situation without parallel in Europe," said Neil MacGregor, director of the British Museum, which reported the finds yesterday. "Without doubt these finds are rewriting history."

It is the less valuable finds which often put flesh on the bones of history for archaeologists. A beautiful little bronze dog, dating from the 4th century and still shiny from years of being stroked, was found by Alan Rowe, a children's books illustrator, who relaxes by taking his metal detector out into the fields near his home on the Isle of Wight.

The dog is valued at about £500. But it tells Frank Basford, an archaeologist who records finds on the island, that a superstitious Roman - with good reason, as the empire started to crumble around him - crossed that field, carrying an amulet probably bought at a shrine to the god Nodens, where the faithful believed the lick of temple dogs would cure their ailments and protect them. The field was surveyed but no evidence was found of a shrine or building: the dog probably just fell out of a pocket with a hole.

Battered box

The Viking silver, made up of a twisted silver rod, 21 bracelets, and a single heavy silver ingot, was found in the remains of a battered lead box. Steve Reynoldson, who discovered it in a field in Cheshire, had been at the weekend rally of a metal detecting club, on land that had yielded nothing more exciting than a few medieval pennies. He found scraps of lead about a foot below the turf. The first piece of silver appeared near the river Gowy, which is little more than a puddle now but in the 10th century was probably deep enough for Viking boats.

The bracelets so closely resemble silver items from the spectacular Cuerdale Viking hoard - 8,600 pieces found by workmen near Preston in 1840 and now in the British Museum - that tests will be done to see if they came from the same workshop. The bracelets were made in Dublin, a Viking town from which Irish chieftains drove the Scandinavians in 902. It took them 12 years to take the settlement back.

Rob Philpott, head of archaeology at Liverpool Museum, believes the silver might have been brought across the Irish sea to the Vikings on Merseyside to pay for mercenaries to help in the attack. There was also no sign of a building at this site. Mr Philpott believes the hoard may have been buried under a long gone tree, by someone who meant to go back for it. "Who knows what happened? They were very lively times."

Mr Reynoldson will get half the £28,000 reward, the remainder goes to the landowner. The silver will be on permanent public display in the region where it was found.

Cow bone

The famous Sedgeford torc, found in 1965, has now been reunited with its lost part, thanks again to the work of amateur detectorists. The torc was lost in equally interesting times, with the Romans on the doorstep and rival local and invading tribes jostling for power in East Anglia.

A heavy Iron Age necklace made about 2,100 years ago, of 25 metres of twisted gold and silver alloy wire, the torc had been missing one of its beautifully decorated finials - until Easter 2004 when Steve Hammond, out walking with a metal detector, found it, about 400 metres from the site of the necklace itself.

Sedgeford is now the centre of a local history and archaeology project, which is one of the largest training programmes in the country. Its members have made some sensational finds; in 2003 they found gold coins stashed away in an old cow bone.

The torc finial alone was valued at £65,000 - more than 10 times what the British Museum had to pay to acquire the torc itself under the old treasure law back in the 1960s.

Fabulous finds Best places to hunt

Metal detectors may only be used with the permission of the landowner, and are banned on ancient monument sites. Treasure finds of gold, silver and ancient copper hoards must by law be reported, and voluntary reporting of all historic finds is urged. Most low-value finds will be returned to the finders.

· Thames

Every low tide exposes thousands of pieces of flotsam and jetsam on the banks of the river, mostly modern rubbish but occasionally major finds, including medieval gold rings, Bronze Age shields and swords, and a purse of Tudor coins probably lost by somebody getting off a ferry.

· Kent

Landing sites of the Romans and other invaders. One of the most spectacular finds of recent years, the 3,500-year-old Ringlemere gold cup, was found near Ramsgate by an amateur who spotted ploughed-out remains of a burial mound in a field which was regarded as of no historic significance.

· Hampshire and Wiltshire

Rich in late Roman villa sites: a retired florist found a kilo of pure gold jewellery which was Roman but dating from before the conquest, scattered across a ploughed field near Winchester.

· Isle of Wight

One of the most rapidly eroding coastlines in Britain throws up finds after every storm, from dinosaur bones to Bronze Age cooking pots.

Treasure Valuation Committee agree £3.285 million valuation for the Staffordshire Anglo-Saxon Hoard http://www.britishmuseum.org/the_museum/news_and_press_releases/press_releases/2009/staffordshire_hoard_valuation.aspx

The Treasure Valuation Committee (TVC) met at the British Museum on 25 November 2009 to discuss the valuation for the Staffordshire Anglo-Saxon Hoard, the largest hoard of Anglo-Saxon gold ever found. The committee of independent advisors have deemed the Treasure to be worth £3.285million. They will recommend this valuation to the Secretary of State for formal approval of the reward. This figure will be split equally between the finder (Terry Herbert) and the landowner (Fred Johnson). The landowner, the finder and the two museums which hope to acquire the hoard, Birmingham Museum & Art Gallery and the Potteries Museum & Art Gallery, Stoke-on-Trent, have all approved the valuation.

Chairman of the TVC, Professor Norman Palmer CBE said "The task of valuing this hoard required the Treasure Valuation Committee to analyse a very large amount of information in order to arrive at a fair market price, and I am personally indebted to my fellow members whose energy and expertise made this result possible in so short a time. I would also like to pay tribute to the immense amount of hard work put in by our four outside expert valuers and the secretariat. All finders of Treasure can take encouragement that the most valuable Treasure find ever made was dealt

with so speedily and yet so scrupulously by all parties concerned, given that the hoard was discovered only in July. It is of course immensely important that this extraordinary hoard is acquired for public benefit and I know that the two museums are anxious to raise the funding to keep the hoard in the West Midlands as soon as they can."

The fundraising campaign will now begin for the joint acquisition of the hoard by Birmingham Museum and Art Gallery and the Potteries Museum, Stoke-on-Trent. All relevant parties are fully in support of this joint acquisition and for the hoard to be displayed in the West Midlands.

Highlights of the hoard are currently on display in Room 37 at the British Museum. A book 'The Staffordshire Hoard' has been recently published by the British Museum Press, priced £4.99 with £1 going to the appeal fund for acquisition. A selection of objects from the hoard will go on display at the Potteries Museum & Art Gallery, Stoke-on-Trent from 13 February to 7 March 2010.

The Treasure Valuation Committee is a committee of independent experts appointed by the Secretary of State for Culture, Media and Sport to advise the Minister on the valuations of finds of Treasure which museums wish to acquire. There are eight members chosen for their expertise in the objects that come before the Committee and they represent the different groups that have an interest in Treasure -

finders, museums, archaeologists and the trade.

For further information or to speak to members of the Treasure Valuation Committee or the Treasure Department please call the British Museum on 020 7323 8394 / 8522

Notes to editors

On 5 July 2009, Terry Herbert was using a metal detector in a Staffordshire field when he began to unearth gold objects. It was a stupendous discovery, the largest hoard of Anglo-Saxon gold ever found, glittering in the sun-light for the first time in 1400 years. Highlights of the hoard are currently on display at the British Museum in Room 37. More information

Made up of over 1500 objects, the hoard contains some of the finest Anglo-Saxon craftsmanship and artistry ever seen. This, the first book on the hoard, tells the remarkable story of the discovery, describes the fascinating collection of objects it contains, and offers an initial interpretation of the treasure and its significance. Close-up photographs show the intricate details of these amazing objects, which include fittings from the hilts of swords, fragments from helmets, Christian crosses and magnificent pieces of garnet work. Details of all these objects can be found at <http://www.staffordshirehoard.org.uk> /

The members of the Committee are:
Professor Norman Palmer, CBE
(Chairman), Mr Trevor Austin,

Professor Ian Carradice, Mr John Cherry, Mr Peter Clayton, Dr Jack Ogden, Dr Tim Pestell and Mrs May Sinclair.

Page 130: Appendix F: Archaeology
Glossary

Absolute dating: Dates expressed as specific units of scientific measurement, such as days, years, centuries, or millenia; absolute determinations attempt to pinpoint a discrete, known time interval.

Adze: A tool, typically made from stone, that was presumed to be used like a modern woodworker's chisel to work wood.

Anthropology: the comparative study of human culture, behavior and biology and how these change through time.

Archaeology: a method for studying past human culture based on material evidence (artifacts and sites)

Archaic Stage: In Alabama, the stage when early Native Americans lived in small, semi-nomadic bands and survived by hunting, fishing, and foraging for wild foods.

Artifact: any object made, modified or used by humans. Usually this term refers to portable objects.

Atlatl: a tool used to throw spears faster and with more accuracy, also known as a spear thrower. It consists of a short pole with a handle at one end and a hook for engaging the spear in the other.

Awl: a small pointed hand tool used for piercing holes in leather, wood and other materials.

Celt: A thin, ungrooved axe with a sharp edge used for cutting or

chopping. Probably hafted into a wooden handle.

Chiefdom: Societies headed by important individuals with unusual ritual, political, or entrepreneurial skills. The societies tend to be kin-based, but is more hierarchical, with power concentrated in the hands of powerful kin leaders, who are responsible for the redistribution of resources.

Chronology: The arrangement of events or periods of time in the order in which they occurred.

Chunkey: This game was played by almost all of the southeastern Indians, with some variation. All of the games made use of a smooth stone disk, usually with concave sides, and two long slender poles were used. Usually only two persons played at one time, but the onlookers wagered on the game. The idea of the game was to start the stone disk rolling along a smooth piece of ground, after which the two players threw their poles after it, with the idea of either hitting the stone, or coming as near as possible to it, when the stone came to a rest.

Context: the relationship artifacts have to one another and the situation in which they are found.

Contact period: refers to the period from A.D. 1500 to 1750. Within this broad framework, initial Native American and European contacts, whether through people, things, or ideas, occurred at different times throughout the state.

Core: A piece of stone that is worked ("knapped"). Cores sometimes serve merely as sources for raw materials; they can also serve as functional tools.

Cosmological: one's view of the universe.

Culture: the set of learned beliefs, values, styles and behaviors, generally shared by members of a society or group.

Diagnostic artifact: an item that is indicative of a particular time and/or culture group

Direct historical approach: learning about the past by studying sites and cultures of a known time and working backwards, applying it to older sites; working from the present into the past.

Distribution: A spatial or temporal array of objects or events.

Descendent: Proceeding by hereditary derivation from an ancestor.

Effigy: An object bearing the likeness of an animal or human.

Ethnographic analogy: inferring the use or meaning of an ancient site or artifact based on observations and accounts of its use by living people.

Excavate: the principal method of data acquisition in archaeology, involving the systematic uncovering of archaeological remains through the removal of the deposits of soil and the other material covering them and accompanying them.

Excavation unit: an area of excavation on an archaeological site; most often archaeologists dig in square meters.

Experimental archaeology: a method of studying artifacts by making and using replicas of them.

Feature: a human-made disturbance in the ground, such as a pit or basin; it is often marked by a distinct stain in the soil.

Flake: A thin piece of stone removed from a larger piece with a hammer (usually made of antler or stone). Flakes have sharp edges and were sometimes used as cutting implements.

Gorget: An ornament worn on the chest, suspended around the neck.

Graver: A small tool with a sharp tip that was used to engrave bone, stone, wood or other materials.

Hammerstone: A stone, usually a rounded hard river pebble that shows battering scars resulting from repeated use as a hammer or platform in the flaking process.

History: The study of past events and culture based on written records.

Law of Superposition: The geologic principle stating that in any pile of sedimentary rocks that have not been disturbed by folding or overturning, each bed is older than the layers above and younger than the layers below.

Lithic: Relating to stone.

Looting: To steal, or illegally take, artifacts from an archaeological site; the act of which destroys the evidence archaeologists need to learn from the site.

Megafauna: Large beast, now extinct that roamed Alabama after the last ice age; examples include giant bison, mastodon, woolly mammoth, giant ground sloth, and peccary.

Midden: an area used for trash disposal, a deposit of refuse.

Mississippian stage: In Alabama, the cultural period usually marked by the formation of large settlements around mounds, the use of shell tempered pottery, increased reliance on cultivating crops, such as maize, and the organization of the people into a chiefdom.

Net Sinker: (also "net weight", "sinker"): a rock used to submerge a fishing net. May be grooved, notched or perforated.

Nomadic: a way of life in which a group of people have no permanent residence, but move from place to place.

Observation: the act of recognizing a fact or occurrence, or the record obtained by such an act.

Paleoindian stage: In Alabama, the first recognized cultural period in the region, usually marked by the appearance of projectile points such as Clovis or Dalton. Paleoindians

are characterized as nomadic hunters of megafauna.

Paleontologist: The study of the forms of life existing in prehistoric or geologic times, as represented by the fossils of plants, animals, and other organisms.

Palisade: A walled enclosure built around a village or town, a stockade.

Permanent village: A settlement that is continuously occupied by people throughout the year.

Petroglyph: a design chiseled or chipped out of a rock surface

Phase: An archaeological construct possessing traits sufficiently characteristic to distinguish it from other units similarly conceived; spatially limited to roughly a locality or region and chronologically limited to a relatively brief interval of time.

Pictograph: a design painted on a rock surface.

Postmold: A circular soil discoloration caused by decay of a wooden post where it had been buried upright in the ground.

Pottery: A ceramic item or material made of hard clay, usually in the form of a vessel.

Prehistory: The period of human experience prior to written records; in the Americas prehistory refers to the period before Europeans and their writing systems arrived, covering at least 12,000 years.

Preserve: To keep safe or protected from harm.

Primary source: an original diary, letter, or other document written by someone.

Profile: a section, or exposure of the ground, showing depositional or developmental strata or horizons.

Projectile point: A pointed implement (usually made of chipped stone) that was attached to the end of a spear or an arrow. This is a general term that includes both spear heads and arrowheads.

Relative dating: Dates expressed relative to one another (for instance earlier, later, more recent, after Noah's flood, and so forth).

Rock art: A general term for the pecking, incising, or painting of designs onto rock surfaces.

Rock shelter: a shallow cave or rock overhang large enough to have allowed human occupancy at some time.

Scientific method: The principles and empirical processes of discovery and demonstration considered characteristic of or necessary for scientific investigation, generally involving the observation of phenomena, the formulation of a hypothesis concerning the phenomena, experimentation to demonstrate the truth or falseness of the hypothesis, and a conclusion that validates or modifies the hypothesis.

Scraper: A stone tool designed for used in scraping hides, bones and other similar materials in the preparation of food, clothing and shelter. A small stone blade with uniface flaking.

Secondary source: an account or summary of a historical event not based on direct observation.

Sedentary: Remaining or living in one area; not migratory.

Sherd: a piece of broken prehistoric or historic pottery or glass. (Pronounced to rhyme with "herd.")

Site: A place where human activities occurred and material evidence of these activities is left.

Stage: Represents a designation of time that is much larger than a phase. In Alabama there are four Prehistoric stages: Paleoindian, Archaic, Woodland, and Mississippian.

Steatite: A type of stone that is soft and easily carved; also called soapstone.

Steward: one who acts to preserve and/or protect archaeological sites or artifacts.

Stickball: (Similar to Lacrosse) A ballgame played with sticks with nets at one end and a deer hide ball. The object is to use the netted sticks to throw the ball into the goals at the ends of the fields.

Strata: Layers (the plural of stratum); in archaeology this term generally refers to layers of earth.

Stratigraphy: The layering of deposits at an archaeological site. Cultural elements and natural sediments become buried over time. The layer on the bottom is the oldest and the top layer is the youngest.

Subsistence: the means of supporting life, usually referring to food and other basic commodities.

Vessel: A hollow or concave utensil for holding something.

Weir: A fence or wattle placed in a stream to catch or retain fish.

Woodland Stage: In Alabama, the cultural period that is marked by the appearance of pottery, the advent of horticulture, and the advent of elaborate ceremonialism.

Draft One 08-21

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