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BLM - BUREAU OF LAND MANAGEMENT

Collecting on Public Lands

https://www.blm.gov/sites/blm.gov/files/documents/files/collecting_on_publiclands.pdf

The public lands offer a broad range of outdoor activities that include collecting resources such as firewood, gemstones, pine nuts and fossils for personal enjoyment and use. This is a summary of what may be collected from public lands. The BLM encourages people to explore the nearly 48 million acres of public land in Nevada. Collecting on Public Lands

Please use care in collecting. Avoid activities which damage public resources such as vegetation, scenery and archaeological sites, or which create hazardous conditions such as pits or trenches. Power equipment and explosives may not be used except for woodcutting and certain dredging operations.

Reasonable amounts of the following may be collected for non- commercial purposes:

- Flowers, berries, nuts, seeds, cones, and other plant parts.
- Campfire wood.
- Rocks, mineral specimens, common invertebrate fossils and semiprecious gemstones.

Exceptions

Exception include specifically protected plants, campfire wood in posted areas, wilderness areas, wilderness study areas, areas of critical environmental concern including Stewart Valley, near Gabbs, Nev., Red Rock Canyon and Sloan Canyon National Conservation Areas, historic and prehistoric sites and districts, and national natural landmarks. Maps and information on specific restrictions are available at Bureau of Land Management (BLM) offices in Las Vegas, Tonopah, Carson City, Reno, Winnemucca, Battle Mountain, Elko, Ely and Caliente.

Minerals

Gold and silver may be prospected for with hand tools including pans and metal detectors. Minerals such as gold, silver and opals found on mining claims belong to the claim holder. Mining claim records may be viewed at BLM and county recorder offices. Sluicing, dredging and commercial mining require permits. Recreational panning which does not involve mechanical equipment is permitted in wilderness and wilderness study areas if it does not create surface disturbance or impair the environment.

Saleable minerals, such as sand, gravel, cinders, topsoil and other common mineral materials must be purchased by prior arrangement with the BLM.

Gemstones and common rock specimens may be collected for private use on unclaimed sites.

Commercial production of common rocks on an unclaimed site requires a permit. Only hobby collecting is allowed in wilderness and wilderness study areas and must not involve surface disturbance. Collection of

prehistoric tools and chips made of precious or semiprecious stones is not allowed.

Fossils

Vertebrate fossils such as dinosaurs, mammals, fishes and reptiles, and uncommon invertebrate fossils may be collected only by trained researchers under BLM permit. Collected fossils remain the property of all Americans and are placed with museums or other public institutions after study.

Common invertebrate fossils such as plants, mollusks, and trilobites may be collected for personal use in reasonable quantities, but may not be bartered or sold.

Petrified wood may be collected up to 25 pounds plus one piece per person per day, with a maximum of 250 pounds per person per year. Permits are required for pieces over 250 pounds. Petrified wood may not be traded, bartered or sold without permit.

Cave resources, including plant, animal and geologic features, are federally protected and may not be altered, damaged or removed.

Cultural Artifacts

Cultural materials on public lands may not be removed, damaged, disturbed, excavated or transferred without BLM permit. Cultural resources include prehistoric and historic artifacts and sites, broken objects and debris more than 100 years old that were used or produced by humans. Protected materials include arrowheads and other stone tools, grinding stones, beads, baskets, pottery, old bottles, horse shoes, metal tools, graves and trash scatters.

Historic sites such as cabins, sawmills, graves, trail traces, mining areas, town sites, ranches and railroads are not open to collecting.

Metal detector use is allowed on public lands. Modern money may be collected, but coins and artifacts more than 100 years old may not be collected.

Wood, Plants and Pine Nuts

Various species of trees are available for firewood with a personal use permit, which allows the cutting of up to 10 cords per family per year in specified areas for a nominal fee. Permits for woodcutting are required even on an individual's mining or exploration claim.

Collection of dead and down wood for immediate campfire use is allowed except for posted sites.

Christmas tree permits are available for a nominal fee during the holiday season. Check with local BLM offices for permits and tree cutting area maps.

Small amounts of plants, plant par to, seeds, f lowers and berries may be collected for personal use in most areas. Cacti, yuccas, succulents and evergreen shrubs and trees are protected by the state. Species listed as

threatened or endangered are protected by the federal government and may not be collected without permit. Collection of species listed as sensitive or candidates for threatened or endangered status should be avoided.

Pine nuts in amounts up to 25 pounds per person per year may be collected for non-commercial use. Although there are some designated commercial collecting areas, these are fully open to the public as well.

Harvesting plants or plant materials such as seeds, pine nuts, landscaping materials, firewood and timber for commercial purposes requires a permit.

Animals

Collection or harvest of game and nongame animals, including fish, is regulated by the State and the U.S. Fish and Wildlife Service. Information for hunters, trappers, fishermen and collectors is available from the Nevada Division of Wildlife.

Threatened and endangered species, including desert tortoise and some other reptiles, whether federal or state listed, may be collected only under permit from the U.S. Fish and Wildlife Service or state of Nevada. Lahontan cutthroat trout may be taken with a Nevada fishing license in permitted areas and seasons. Lists of protected species are available from the U.S. Fish and Wildlife Service, the Nevada Division of Wildlife and BLM offices.

Wild, free-roaming horses and burros may not be harassed, harmed, collected or sold under any circumstances. Their water sources are also protected. Wild horses and burros gathered under BLM supervision and prepared for private ownership may be adopted from the BLM.

Violations of regulations under the Federal Land Policy and Management Act, the Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act, state and federal wildlife law, and other laws may be punishable by fines, imprisonment, and forfeiture of equipment and vehicles used in commission of the crimes.

639 Bureau of Reclamation

<https://www.govinfo.gov/content/pkg/CFR-2008-title43-vol1/pdf/CFR-2008-title43-vol1-sec423-27.pdf>

§423.26 Public events and gatherings. You must not conduct public assemblies, meetings, gatherings, demonstrations, parades, and other events without a permit issued pursuant to subpart D of this part 423. Public gatherings that involve the possession or occupancy of Reclamation facilities, lands, and water bodies are governed by 43 CFR part 429.

§ 423.27 Advertising and public solicitation. You must not engage in advertising or solicitation on Reclamation facilities, lands, or water bodies except as allowed under a valid contract with Reclamation, or as allowed by a permit issued pursuant to subpart D of this part 423.

§ 423.28 Memorials. You must not bury, deposit, or scatter human or animal remains, or place memorials, markers, vases, or plaques on Reclamation facilities, lands, or water bodies. This section does not apply to the burial of parts of fish or wildlife taken in legal hunting, fishing, or trapping.

§ 423.29 Natural and cultural resources.

(a) You must not destroy, injure, deface, remove, search for, disturb, or alter natural resources or cultural resources, including abandoned buildings or structures, on or in Reclamation facilities, lands, or water bodies except in accordance with

§ 423.29(g) and other applicable Federal, state, and local laws. (b) You must not introduce wildlife, fish, or plants, including their reproductive bodies, into Reclamation lands and water bodies.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, at, or down, caves, caverns, valleys, canyons, mountainsides, thermal features, or other natural formations.

(d) You may bring firewood to or gather dead wood on Reclamation lands for fires as allowed under

§ 423.31. You must not damage or remove any live tree or part thereof except with proper authorization under 43 CFR part 429.

(e) You must not walk on, climb, enter, ascend, descend, or traverse cultural resources on Reclamation lands, including monuments or statues, except as specifically allowed in special use areas designated by an authorized official under subpart E of this part 423.

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

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

(2) As allowed by a permit issued pursuant to subpart D of this part 423.

(g) You may engage in renewable natural resource gathering activities such as picking berries and mushrooms, collecting antlers, and other similar activities as regulated by this part 423 and other applicable Federal, state, and local laws.

USDA - United States Department of Agriculture Forest Service

<https://www.fs.usda.gov/detail/hoosier/learning/history-culture/?cid=stelprdb5406465>

Metal Detecting Policy

The restrictions to metal detecting on public lands are to protect historical remains. The Code of Federal Regulations, (36 CFR 261.9) states, "The following are prohibited: (g) Digging in, excavating, disturbing, injuring, destroying, or in any way damaging any prehistoric, historic, or archaeological resources, structure, site, artifact, or property. (h) Removing any prehistoric, historic, or archaeological resources, structure, site, artifact, property."

The Archaeological Resources Protection Act (ARPA, 16 U.S.C. 470cc:) also prohibits these activities, stating, "No person may excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage or otherwise alter or deface any archaeological resources located on public lands or Indian lands unless such activity is pursuant to a permit..." ARPA exempts the collection of coins for personal use if the coins are not in an archaeological context. In some cases, coins may be part of an historical-period archaeological site, in which case they would be considered archaeological resources and are protected under law. These laws apply to all National Forest System land and do not vary from state to state.

Four forms of metal detector use are recognized.

Searching for treasure trove: Treasure trove is defined as money, uncounted gems, or precious metals in the form of coin, plate, or bullion that has been deliberately hidden with the intention of recovering it later. This use requires a special use permit.

Prospecting: Using a metal detector to locate gold or other mineral deposits is permitted subject to the General Mining Law of 1872. A Notice of Intent (36 CFR 228 A) is required for prospecting, and metal detectors may be used in this activity. Prospecting that involves land disturbance also requires the filing of a mining plan of operations. People who use metal detectors for this activity should bear in mind that many of the mineralized lands within the NFS have been "claimed" by others who have sole right to prospect and develop the mineral resourced found on the claim. A search of County and Bureau of Land Management records should be made prior to prospecting to determine if an area has been claimed.

Searching for historic or prehistoric artifacts: Using a metal detector to locate archaeological or historical remains is subject to the Antiquities Act of 1906 and the Archeological Resources Protection Act of 1979 as amended and requires a special use permit. Such permits are granted for scientific research only.

Recreational pursuits: The most common form of metal detector use is searching for lost coins, jewelry, and incidental metal items having no historical value. Such use is common in developed campgrounds, swimming areas, and picnic areas and requires no permit. However, one must assume personal responsibility to notice if the area may indeed contain archaeological or historical resources and if it does, cease metal detecting and notify a Forest Service office. Not doing so may result in prosecution under the Code of Federal Regulations or ARPA.

The metal detecting policy on public lands is fairly restrictive to protect our valuable, non-renewable historical resources. However, recognizing the universal interest in archaeology and history and the vast public knowledge of such resources, the USDA Forest Service sponsors a public archaeology program through which metal detector enthusiasts and others can help. Passport In Time is a national program inviting the public to work with agency archaeologists on historic preservation projects. We have done numerous projects through PIT in cooperation with metal detecting clubs and individuals. The cooperation has been beneficial for both the detectorists and agency's archaeologists. Locating archaeological sites becomes a joint endeavor and we learn a great deal. If you would like more information on this program, call 1-800-281-9176 or visit <http://www.passportintime.com>.

National Park Service, Interior

<https://www.nps.gov/romo/learn/management/upload/CFR-2010-title36-vol1-chapI.pdf>

§ 2.1 PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

Sec. 2.1 Preservation of natural, cultural and archeological resources.

AUTHORITY: 16 U.S.C. 1, 3, 9a, 462(k). SOURCE: 48 FR 30282, June 30, 1983, unless otherwise noted. § 2.1 Preservation of natural, cultural and archeological resources. (a) Except as otherwise provided in this chapter, the following is prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state: (i) Living or dead wildlife or fish, or the parts or products thereof, such as antlers or nests. (ii) Plants or the parts or products thereof. (iii) Non-fossilized and fossilized pale- ontological specimens, cultural or archeological resources, or the parts thereof. (iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into a park area ecosystem.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the park area: Provided, however, That the superintendent may designate areas where dead wood on the ground may be collected for use as fuel for campfires within the park area.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue, except in designated areas and under conditions established by the superintendent.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or sub-bottom profiler. This paragraph does not apply to:

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

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or sub-bottom profilers used for authorized scientific, mining, or administrative activities.

(b) The superintendent may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to §§ 1.5 and 1.7. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walk- way in violation of designated restrictions is prohibited.

(c)(1) The superintendent may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or consumption upon a written determination that the gathering or consumption will not adversely affect park wildlife, the reproductive potential of a Ver Date Mar2010 08:59

Aug 05, 2010 Jkt 220136 PO 00000 Frm 00027 Fmt 8010 Sfmt 8010 Y:\SGML\220136.XXX 220136 WReier-Aviles on DSKGBLS3C1PROD with CFR 18 36 CFR Ch. I (7–1–10 Edition)§ 2.2 plant species, or otherwise adversely affect park resources.

(2) The superintendent may:

- (i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or
- (ii) Limit the location where natural products may be gathered; or
- (iii) Restrict the possession and consumption of natural products to the park area.

(3) The following are prohibited:

- (i) Gathering or possessing undesignated natural products.
- (ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the superintendent.
- (iii) Unauthorized removal of natural products from the park area.
- (iv) Gathering natural products out- side of designated areas.
- (v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 or § 2.3. NOTE: Regulations concerning archeological resources are found in 43 CFR part 3.

Army Corps Engineers Metal Detecting

Metal Detector Policy

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

Metal detectors may be used under the following conditions:

1. Only in those areas designated as "open"; all other government land is classified by regulation as "closed".
2. Non-identifiable item of nominal value (less than \$25.00) may be kept.
3. Identifiable items such as rings, watches, wallets; items of greater than nominal value; and all historical archaeological items found will be deposited with a Park Ranger or at the Resource Managers Office.
4. Digging shall be limited to hand tools that can be used by one hand only, and are no more than 4 inches wide and 12 inches long.
5. Grass and other vegetation may not be removed or disturbed; digging is allowed in bare soil or sand only. All soil disturbed or displaced shall be returned to its original state.
6. Failure to conform with these requirements will be grounds for possible prosecution under one or more sections of Title 36, CFR, Part 327.

The areas open for metal detector use with restrictions is:

Recreation Season - April through October

327.14 Public property.

(a) Destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, paleontological resources, boundary monumentation or markers and vegetative growth, is prohibited except when in accordance with written permission of the District Commander.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Commander.

(c) Gathering of dead wood on the ground for use in designated recreation areas as firewood is permitted, unless prohibited and posted by the District Commander.

(d) The use of metal detectors is permitted on designated beaches or other previously disturbed areas unless prohibited by the District Commander for reasons of protection of archaeological, historical or paleontological resources. Specific information regarding metal detector policy and designated use areas is available at the Manager's Office. Items found must be handled in accordance with §§ 327.15 and 327.16 except for non-identifiable items such as coins of value less than \$25.

Federal Historical and Archaeology Acts

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The above highlighted Federal Acts have had the greatest impact of any other Federal law on Metal Detecting in the United States. These Acts have also been adopted either in whole or in-part by states. As the country moves forward in time more and more Cities and Counties are also adopting portions of these Federal Acts.

So, if you get banned from Metal Detecting it is very likely from the impact of these Acts on your state, cities and counties.

1906 American Antiquities Act

1906 American Antiquities Act

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

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

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

Sec. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act. Approved, June 8, 1906

1966 National Historic Preservation Act 2000 amended

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

1966 National Historic Preservation Act 2000 amended

[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 Secretary for inclusion on 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. 460l-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 insure 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 SStat. 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.

1979 Archaeological Resources Protection Act

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,

1979 Archaeological Resources Protection Act

AN ACT To protect archaeological resources on public lands and Indian lands, and for other purposes.
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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 United States as part of -

(i) the national park system,

(ii) the national wildlife refuge system, or

(iii) the national forest system; and

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

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

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

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

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

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.

(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.

1990 Native American Graves Protection and Repatriation Act

To provide for the protection of Native American graves, and for other purposes.

1990 Native American Graves Protection and Repatriation Act

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

[PUBLIC LAW 101-601--NOV. 16, 1990 104 STAT. 3049]

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

[104 STAT. 3050 PUBLIC LAW 101-601--NOV. 16, 1990]

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.

[104 STAT. 3052 PUBLIC LAW 101-601--NOV. 16, 1990]

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

[104 STAT. 3058 PUBLIC LAW 101--601--NOV. 16, 1990]

1996 American Battlefield Protection Act

The purpose of this section is to assist citizens, public and private institutions, and governments at all levels in planning, interpreting, and protecting sites where historic battles were fought on American soil during the armed conflicts that shaped the growth and development of the United States, in order that present and future generations may learn and gain inspiration from the ground where Americans made their ultimate sacrifice.

1996 American Battlefield Protection Act

AS AMENDED

This Act became law on November 12 (Public Law 104-333, 16 U.S.C. 469 k). It has been amended once. See 16 U.S.C. 469k notes for the Congressional findings and purposes associated with the establishment of Section (d), the Battlefield acquisition grant program. The description of the Act tracks the language of the United States Code except that (following common usage) we refer to the “Act” (meaning the Act, as amended) rather than the “subchapter” or the “title” of the Code.

16 U.S.C. 469k, American Battlefield Protection Program

Purpose

Section 604

(Paragraph (a) omitted)

(b) The purpose of this section is to assist citizens, public and private institutions, and governments at all levels in planning, interpreting, and protecting sites where historic battles were fought on American soil during the armed conflicts that shaped the growth and development of the United States, in order that present and future generations may learn and gain inspiration from the ground where Americans made their ultimate sacrifice.

Preservation assistance

(c)(1) Using the established national historic preservation program to the extent practicable, the Secretary of the Interior, acting through the American Battlefield Protection Program, shall encourage, support, assist, recognize, and work in partnership with citizens, Federal, State, local, and tribal governments, other public entities, educational institutions, and private nonprofit organizations in identifying, researching, evaluating, interpreting, and protecting historic battlefields and associated sites on a National, State, and local level.

Financial assistance

(2) To carry out paragraph (1), the Secretary may use a cooperative agreement, grant, contract, or other generally adopted means of providing financial assistance.

Authorization of appropriations

(3) There are authorized to be appropriated \$3,000,000 annually to carry out this subsection, to remain available until expended.

Battlefield acquisition grant program

Definitions

(d)(1) In this subsection:

(A) The term “Battlefield Report” means the document entitled “Report on the Nation’s Civil War Battlefields,” prepared by the Civil War Sites Advisory Commission, and dated July 1993.

Battlefield report

Eligible entity

(B) The term “eligible entity” means a State or local government.

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Eligible site

(C) The term “eligible site” means a site—

- (i) that is not within the exterior boundaries of a unit of the National Park System; and
- (ii) that is identified in the Battlefield Report.

Secretary

(D) The term “Secretary” means the Secretary of the Interior, acting through the American Battlefield Protection Program.

Establishment

(2) The Secretary shall establish a battlefield acquisition grant program under which the Secretary may provide grants to eligible entities to pay the Federal share of the cost of acquiring interests in eligible sites for the preservation and protection of those eligible sites.

Nonprofit partners

(3) An eligible entity may acquire an interest in an eligible site using a grant under this subsection in partnership with a nonprofit organization.

Non-federal share

(4) The non-Federal share of the total cost of acquiring an interest in an eligible site under this subsection shall be not less than 50 percent.

Limitations on land use

(5) An interest in an eligible site acquired under this subsection shall be subject to section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 [as amended 16 U.S.C. 4601-8(f)(3)].

Reports, In general

(6) (A) Not later than 5 years after December 17, 2002, the Secretary shall submit to Congress a report on the activities carried out under this subsection.

Update of battlefield report

(B) Not later than 2 years after December 17, 2002, the Secretary shall submit to Congress a report that updates the Battlefield Report to reflect—

- (i) preservation activities carried out at the 384 battlefields during the period between publication of the Battlefield Report and the update;

- (ii) changes in the condition of the battlefields during that period; and
- (iii) any other relevant developments relating to the battlefields during that period.

American Battlefield Protection Act

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Authorization of appropriations, Battlefield acquisitions

(7)(A) There are authorized to be appropriated to the Secretary from the Land and Water Conservation Fund to provide grants under this subsection \$10,000,000 for each of fiscal years 2004 through 2008.

Appropriation authorization, Update of battlefield report

(B) There are authorized to be appropriated to the Secretary to carry out paragraph (6)(B), \$500,000.

Repeal

(e)(1) This section is repealed on September 30, 2008. No effect on general authority

(2) The Secretary may continue to conduct battlefield studies and provide battlefield acquisition grants in accordance with other authorities available to the Secretary. Unobligated funds, after September 30, 2008

(3) Any funds made available under this section that remain unobligated shall be credited to the general fund of the Treasury.

**INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE
RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN
OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION**

Twentieth Session
UNESCO Headquarters, Room II
29-30 September 2016

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INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION

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Provisional agenda item 6: “Treasure hunters” and cultural trafficking – regulation on metal detectors and underground monitoring systems This document contains information on international and national regulations concerning metal detectors and treasure hunting.

1

Introduction

1. This document contains information on international and national regulations concerning metal detectors used for treasure hunting

1. Considering the irreparable impact of looting of archaeological sites through clandestine excavations, the Members of the Committee and Member States may wish to introduce measures for the use of underground monitoring/penetrating systems.

2. Underground monitoring/penetrating systems 2 are being used by scientists, archaeologists and art historians for research or excavations. Those systems are not limited to metal objects, and are being widely used by ‘treasure hunters’.

3. Metal detectors are relatively easy to obtain, and are affordable compared to more elaborated penetrating systems. They are promoted by advertisements, which can sometimes be seen as encouraging infringing legislations in force. For example, in some countries, the relevant State authority issues permits, which generally do not apply to registered archaeological or historical sites. Yet, looking at the posts of some metal detector sellers on social media websites, it is possible to find videos recorded directly at registered heritage sites.

4. Treasure search/hunting is not limited to people settled in rural areas. “Treasure legends” are very common in settlements which are close to archaeological sites or to port towns. Some studies revealed that populations living close to those areas are approached by criminal networks to hunt archaeological artefacts for the latter’s benefit³. Destruction by Treasure Hunters and or Metal Detectorist: What is the motive?

5. Although, in most of the States Parties to the 1970 Convention, undiscovered cultural heritage is considered as state owned⁴, people who suffer from poverty or lack of economic opportunities can see illegal excavations as an important source of revenue as documented in the reports provided by Syrian Arab Republic⁵ and Niger⁶ in 2015, on the implementation of the UNESCO 1970 Convention.

6. However, monetary gain is not the only motive behind stealing undiscovered cultural property. In some cases, the thrill of discovering treasures that are unknown to the public suffices as a motive to excavate cultural property.

1 The definition of Treasure hunting has a broader meaning which also includes valuable mines such as gold and minerals, however due to the scope of this document, this term refers to the ambition to find cultural property.

2 Side-Scan Sonar, Magnetometer, Swath Bathymetry (Multibeam Echo Sounder), Diver (in shallow water) or video/ROV (in deep water) ground trothing

3 Miura, K., "Destruction and plunder of Cambodian Cultural Property", Cultural Property and Contested Ownership: The trafficking of artefacts and the quest for restitution, Ed. Hauser-Schaublin, B. and Prott, L. V., 2016

4 Please see paragraph 75 of the Evaluation of UNESCO's Standard-setting Work of the Culture Sector Part II – 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. For more information on State Ownership of undiscovered objects please refer to paragraphs 31 and 32

5 Please see the periodic report of Syrian Arab Republic available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Rapport_Syrie.pdf

6 Please see the periodic report of Niger available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Niger_Report.pdf

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What is an archaeological context and why it is important?

7. Treasure hunting and use of metal detectors has evolved in a way that is now considered a problem in many countries, and States have implemented various procedures to tackle the problem ranging from prohibition to indulgence. 7 The use and misuse of metal detectors significantly impacts cultural heritage for many reasons:

- a. Improper extraction of artefacts skew spatial patterns, making it hard to interpret what people were doing based on how the artefacts were placed.⁸
- b. Improper extraction increases the chances that a scientifically (historically) significant piece is damaged;
- c. When an artefact is removed from a site, there is no accurate account of them which makes it hard to understand the artefact or the site;
- d. In cases where the piece is not reported (e.g. theft, illicitly excavated) and then sold in the antiquities market it is an incredible loss of knowledge, as these pieces are sold without determining the provenance.

What are the modalities for regulating treasure hunting and use of metal detector?

8. Whilst some national legislations prohibit treasure hunting regardless of the case of a detector or not, there are other examples which allow this activity under certain conditions. Prohibitions or permissions are to be decided at the national level, for which clear and comprehensive regulations are needed. The main risk that is caused by treasure hunters and/or metal detectorists is destruction and ruining archaeological context.

9. Absolute prohibition: In this model, individuals are not entitled to search or excavate for the purpose of treasure hunting. This blanket prohibition covers the use of metal detectors. For example, according to the

legislation of the Former Yugoslav Republic of Macedonia 9, seeking for treasures is prohibited and the license for the use of a metal detector can be only provided for scientific excavations.

10. Licensing System: Permits are issued under certain conditions to treasure hunters as well as metal detector users. These permits are generally being issued for areas excluding archaeological, historical sites or ancient monuments. In the countries which implement a licensing system using metal detectors without a license is strictly prohibited and criminalized. For example, according to the Greek legislation 10 a person might be liable for up to 10 years of imprisonment for violating the law concerning the use of metal detectors.

11. Cyprus, in 2012, amended its Antiquities Law and introduced restrictions on the import and use of metal detectors. The use of such instruments now requires prior

7 [http://www.academia.edu/5684936/Past present and future of archaeological metal-](http://www.academia.edu/5684936/Past_present_and_future_of_archaeological_metal-)

8 <http://www.pbs.org/time-team/explore-the-sites/lost-civil-war-prison/metal-detection/>

9 Please see the periodic report of FYROM available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/macedonia_2010-11natrep_1970_en.pdf

10 Law 3028/2002

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written permission from the Director of the Department of Antiquities¹¹. Malta also restricts import of metal detectors.

12. It has been reported by Estonia¹² that a new regulation on metal detecting devices recently entered into force. According to this regulation the obtainment of a permit is subject to satisfactory training, all licensees have to be annually reported to the Heritage Board. This framework encourages metal detectorists to inform the authorities about the sites they may discover. Estonia highlights also the difficulty of proving the intention of searching for cultural artefacts when individuals are caught as the use of metal detector is not limited to searching for archaeological objects.

13. The Netherlands informed the Secretariat¹³ on new rules for metal detection which entered into force in 2016. These rules permit metal detection up to 30 cm deep with the exception of archaeological sites and protected (archaeological) monuments. The 30 cm depth was decided upon, it corresponds to a depth that has already been disturbed due to other activities (agriculture, building, roadwork etc.). The legal permission for metal detection is only valid on land, not under water, as objects of archaeological value might be found just above or directly under the surface.

14. In 2010 illegal metal detector users entered a registered archaeological site in Noyon, France and excavated coins, antique fibulas, strapping copper and shrapnel fragments from the First World War. Following this incident, the Ministry of Culture and Communication asked for a report from the "Conseil national de la recherche archéologique" (CNRA), on the impact of metal detector use in France¹⁴. CNRA has made a series of proposals to strengthen the legal framework on the use of metal detectors, particularly training of metal detector users, supervising the use of such devices, raising awareness among "amateur archaeologists", involving regional authorities, registering metal detectors, criminalization of unauthorized use and implementation of legislation.

15. In Sweden the use of metal-detectors is legally prohibited. The Swedish Heritage Conservation Act 1988, states that “metal detectors may not be used, except by National Heritage Board or for military activities to search for things not including ancient items¹⁵”. However, despite this prohibition, Sweden reported that looting occurring in archaeological sites are often due to the use of metal detectors¹⁶. In 2012, the Swedish National Heritage Board issued a report with suggestions on new regulations on the use of metal detectors in the Swedish Heritage Conservation Act¹⁷. This report proposes solutions such as permitting the search of objects other than ancient artefacts and the adoption of a licensing system which would include a training package and pilot training programmes for examiners.

11 Please see the periodic report of Cyprus available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/CYRPUS_REPORT.pdf

12 Please see the periodic report of Estonia available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/REPORT_ESTONIA.pdf

13 Please see the periodic report of Netherlands available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/REPORT_Netherlands.pdf

14 http://www.culturecommunication.gouv.fr/content/download/48536/381738/file/cnra_rapport_ddm_2011.pdf

15 Sweden Heritage Conservation Act 1988 art. 19

16 Please see the periodic report of Sweden available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Rapport_Suede.pdf

17 http://www.raa.se/publicerat/rapp2012_3.pdf

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16. Turkey enforces a regulation concerning treasure hunting¹⁸, according to which individuals can apply for permission for a treasure-hunting excavation at non-archaeological or historical sites. Under this regulation, experts from the nearest state museum examine the area, which cannot be broader than 100 m². If the application is approved, the excavation cannot exceed 30 days. The excavations must be undertaken under the supervision of museum professionals, a representative of police or gendarmerie and a representative of treasure administration. If a cultural layer is revealed, the treasure hunting excavations is immediately stopped and rescue excavations by museum professional are undertaken until a site management plan is decided.

17. The United Kingdom has had a system of “scheduling” in place since 1882 of monuments considered to be of national importance; and scheduling is the only legal protection specifically available for archaeological sites. The current legislation, the Ancient Monuments and Archaeological Areas Act 1979, places restrictions on the use of metal detectors on protected sites and disturbance or removal of an object may result in a fine. However, the Treasure Act 1996 does allow treasure-hunting at other sites, with the consent of the landowner. The United Kingdom also enforced the Portable Antiquities Scheme (PAS) which allows for use of metal detectors and for awards when important findings have been made¹⁹.

18. The Indian Treasure Trove Act regulates treasure hunting for objects buried for less than 100 years. In order to conduct a treasure search a license is required. This kind of search can only be done in areas which are not protected by law. For artefacts buried for more than 100 years, according to The Antiquities and Art Treasures Act, the Central Government is responsible for taking appropriate action regarding its sale, export, import or preservation²⁰. What is the International Legal Framework? The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

19. Although, the 1970 Convention is most commonly referred to for its return and restitution articles, this instrument is composed of three main pillars which are prevention, international cooperation and return-restitution. In the preamble of the Convention, the concern about illegal excavations is mentioned as follows: “Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export,”

20. As illegal treasure hunting excavations mean clandestine excavation in a broader definition, Article 10 (b) which obliges States Parties to endeavour “by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports” falls within the scope of this discussion.

21. Additionally, according to Article 5(d) of the Convention, State Parties undertake “to organize the supervision of archaeological excavations, ensuring the preservation ‘in

18 http://www.unesco.org/culture/natlaws/media/pdf/turkey/turkey_regulationtreasurehunting_4_entof

19 C70/13/1.SC/INF.2/REV2 « Consideration of the draft operational guidelines Study prepared by Professor Lyndel V. Prott »

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/INF2-SC1_StudyLVP_en_REV2.pdf

20 http://www.unesco.org/culture/natlaws/media/pdf/india/inde_act52_1972_enorof

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situ’ of certain cultural property, and protecting certain areas reserved for future archaeological research.” The first aspect of this provision is directed at clandestine excavations, which, as mentioned, damage archaeological heritage, and cause permanent loss to historical data. Furthermore, ensuring preservation in situ and preserving areas for future research are both provisions that are widely accepted in archaeological practices for sites on land.²¹ Operational Guidelines on the Implementation of the 1970 Convention

22. Paragraph 45 of the Operational Guidelines directly addresses treasure hunting and the use of metal detectors. “States Parties are also encouraged to establish provisions on the use of methods of ground-penetrating analysis such as the use of metal detectors. States are encouraged to prohibit, as appropriate, unauthorized use of such equipment for purposes of undertaking clandestine excavations on archaeological sites.”

23. Furthermore, paragraph 25 of the Operational Guidelines states that “in fulfilling their duty to protect cultural heritage, several States have enacted explicit laws on State ownership of certain cultural property, even when it remains officially undiscovered or otherwise unrecorded. State ownership laws constitute the first barrier against looting and should prevent laundering and international trade in undocumented cultural property.”²² This provision is frequently supplemented by additional requirements on recording, reporting and occasionally rewards for finding significant artefacts. The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage

24. The 2001 Convention on the Protection of the Underwater Cultural Heritage was adopted as the international community’s response to the increasing looting and destruction of underwater cultural heritage.²³ The Convention includes strict regulations to prevent commercial exploration, pillage and traffic of

underwater cultural heritage.

25. The availability of metal detectors poses a high risk to underwater cultural heritage, especially when used for unscientific purposes. The legends of pirate wrecks or sunken cities which are thought to house valuable artefacts are often a motive behind the looting or exploitation of underwater cultural heritage. Article 2 of the 2001 Convention addresses the issue of looting by asking States Parties to take measures.

26. The Committee Members and Member States at large may wish to adopt measures including awareness-raising and strengthening national legislation, as well as to encourage the ratification of the 2001 Convention. UNESCO-UNIDROIT Model Provisions on the State Ownership of Undiscovered Cultural Objects

27. The Committee at its 17th session in 2011, adopted the UNESCO-UNIDROIT Model Provisions on the State Ownership of Undiscovered Cultural Objects. These model provisions aim at both encouraging the protection of archaeological objects and facilitating their restitution to the State where illicit excavations took place. These provisions also aim at avoiding the time and efforts that would be needed to develop

21 Commentary on the 1970 UNESCO Convention pg. 51

22 Operational Guidelines paragraph 25

23 <http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/frequently-asked-questions/>

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comprehensive interpretations of the law of the State taking an action for the return of an object that falls within the scope of these provisions²⁴.

28. All model provisions ought to be reflected in national legislations. As far as illegal treasure hunting is concerned, Model Provision 4, which stipulates that « Cultural objects excavated contrary to the law or licitly excavated but illicitly retained are deemed to be stolen objects », is worth noting. Member States who have not done so may wish to accelerate the process of the integration of these provisions into their national legislation to strengthen their fight against illegal treasure hunting. The European Convention on the Protection of the Archaeological Heritage (Valletta Convention 1992) adopted under the aegis of the Council of Europe

29. The Valletta Convention is a Europe-wide international treaty which establishes the basic common principles to be applied in national archaeological heritage policies. It supplements the general provisions of the UNESCO World Heritage Convention (1972) and updates the Recommendation on International Principles Applicable to Archaeological Excavations (UNESCO, 1956) and the Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage (UNESCO, 1972). In terms of preventive measures, it also complements the 1970 Convention.

The 2001 Convention on the Protection of the Underwater Cultural Heritage is more restrictive in scope and more specific than the Valletta Convention. It relates mainly to underwater heritage, covering objects that are at least 100 years old. As such, the two conventions complement one another²⁵.

30. Building on the Recommendation 921 (1981) of the Parliamentary Assembly of the Council of Europe, Article 3(iii) of the Valletta Convention, addresses metal detectors as follows:

“To preserve the archaeological heritage and guarantee the scientific significance of archaeological research work, each Party undertakes: (iii) to subject to specific prior authorization, whenever foreseen by the domestic

law of the State, the use of metal detectors and any other detection equipment or process for archaeological investigation.”

31. The Recommendation 921, in addition to highlighting the importance of prior authorization, also addresses an important issue, namely the regulation of the metal detector market. As mentioned in paragraph 3 of this document, monitoring the market to ensure responsible trade is very important. Moreover, the Recommendation underlines the necessary cooperation between the administrative authorities, general public, archaeologists and metal detector users. Main challenges and remedial action?

32. The main challenges with regards to metal detectors are the fact that they have become increasingly affordable and easy to acquire. Furthermore, the technology involved is constantly being developed, allowing for a variety of metals and antiques to be found. Although not all metal detectorists are looking for profit, there is an

24 http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UNESCO-UNIDROIT_Model_Provisions_en.pdf

25 <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/143>

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increase in the demand for ancient finds in the international market. This demand is fuelled by the great range of valuable cultural objects that can easily be acquired. Additionally, the channels through which finds can be found is expanding. For instance, eBay has a range of cultural artefacts on sale that have been found using a metal detector. In most cases, once an item has been found and sold, the possibility of discovery and prosecution is very small.

33. Another challenge lies in the number of videos available online, which share experiences on how to find a treasure. These tools are deceitful and prompt people in committing offences. Furthermore, despite the fact that in most of the Member States the use of metal detectors is not allowed in any registered sites, “appealing promises” are given by metal detector sellers and advertisements are shot at archaeological sites. Although in most of the national legislations referred above it is obligatory to report the discovery of a cultural property, failure to do so is not necessarily criminalized.

34. Considering the importance of engaging local populations in the protection of cultural heritage, tailor made awareness-raising campaigns should be organized for this strategically significant audience. According to the information provided in the periodic reports on the implementation of the 1970 Convention, several countries are already undertaking campaigns or permanent programs in order to raise awareness at the local level 26, in particular among the public settled close to archaeological areas. As an alternative to awareness-raising programmes some countries organize vocational courses to provide sustainable job opportunities for local communities as an alternative to illicit trafficking activities²⁷.

35. In cases where it is not preferable to enforce an absolute prohibition, a licensing system should be established and sanctions in case of irresponsible/illegal treasure hunting, metal detecting and detector selling should be dissuasive and applicable. In addition to criminal sanctions, administrative sanctions should be applied such as, confiscation of the detector etc. Import restrictions should be considered for advanced technology metal detectors, which should be traceable.

26 The use of open-source information kept minimum in the preparation of this document. The main source used is the periodic reports on the implementation of 1970 Convention. Please see the periodic reports of Bulgaria, Bosnia and Herzegovina, Cyprus, Ecuador, Former Yugoslav Republic of Macedonia, Jordan, Lebanon, Pakistan, Turkey, Uzbekistan. Available online: <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/periodic-reporting/>

27 Please see periodic report of Ecuador:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/REPORT_ECUADOR.pdf