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PUTTING OUR PAST IN DANGER: HOW STATES PROTECT, OR FAIL TO
PROTECT, ARCHAEOLOGICAL MATERIAL

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ABSTRACT

The destructive cycle of looting and collecting keeps archaeological artifacts, sites and human burials found on private land constantly at risk. They are at risk of being destroyed, disrespected, and having their provenience stripped from them, rendering them useless to archaeologists and therefore limiting the public's knowledge of our past. While federal law protects archaeological resources found on federal land or discovered during the course of federally funded projects located off federal land, states are left to create their own laws to protect archaeological resources found on state and private land. This paper set out to discover what types of protective measures states have developed, and what was found is disturbing: most states fail to protect archaeological resources on private land. They place in the hands of the individual resources that ought to be placed in the hands of the public. Raising public awareness of this issue is the first step to change how states view ownership of archaeological resources. This paper calls for greater awareness and demonstrates the need for change.

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I. Introduction

The study of archaeology has many different components. Primary components include discovery and academic research. What many fail to realize, however, is that archaeology necessarily encompasses the protection and preservation of archaeological sites, artifacts, and human burials. Failure to protect these resources from the point of discovery negatively affects the quality and quantity of information that is available to archaeologists and ultimately the public.

Ethics are deeply embedded in the field of archaeology and archaeologists often face scenarios that test their code of ethics. In 1960 the Society for American Archaeology (SAA) announced its “Four Statements for Archaeology”, one of the first ethics codes for archaeologists. First, it defined archaeology. Second, it emphasized the importance of using systematic methods and record keeping. Third, it established some ethical guidelines. These guidelines included an explanation of the need to publish the results of archaeological research, prohibited the buying and selling of artifacts by archaeologists, required that records be available to all scholars, and prohibited the concealment, distortion or destruction of archaeological data. The fourth statement recommended levels of training for archaeologists (Zimmerman 2003: 20).

Archaeologists continued to develop ethics codes and today (currently the SAA outlines “Eight Principles of Archaeological Ethics” (Messenger 1999, Appendix II), they are taken very seriously in the field. These ethical guidelines have even become a part of archaeological training. They ensure that archaeological research is conducted efficiently,

and, most importantly, in a way that will benefit all. It is for this reason that ethics codes necessarily involve the process of protecting and preserving archaeological resources and data.

The process of protecting archaeological resources begins with discovery. Existing protective legislation has created a system in which the location of the resource determines whether archaeologists will be able to extract any information from it, whether it will be quality information, and finally, whether the public will have access to it. Federal legislation protects resources found on federal and Indian lands or discovered during the conduct of federally funded projects. “The Federal Government owns nearly 650 million acres of land - almost 30 percent of the land area of the United States” (“Federal Lands and Indian Reservations” n.d.). What happens to resources found on the other seventy percent of land, however, is left up to the state, and more to the point, individual land owners, to decide.

Each state differs in its approach to dealing with archaeological material found on private land. Without protective measures for these resources, private land owners would be (and are) allowed to strip the resources of all value and academic importance. The public would never be exposed to these resources because the wealth of information they could potentially provide is diminished the very second they are vandalized, destroyed, or removed from their original location by anybody other than a trained archaeologist. The goal of this paper is to document how many and which states fail to protect resources found on private property by examining each state’s legislation dealing with the protection and preservation of archaeological resources. What are the different approaches that states take to protect these resources? How does each state control

looting and collecting? Understanding the gravity of the results first requires understanding why finding answers to these questions are so important.

II. The Status Quo

Looting and Collecting: Why they are a Problem

Students of archaeology learn early on the importance of recording every detail. Knowing the general location where an artifact was found is not enough. Everything from the exact location to the color and texture of the soil is recorded. Details like this describe the layer of soil, or strata, in which the artifact was found and can provide information about what time period it is from. Strata are not evenly distributed across the ground, but often are discontinuous. It is not uncommon for one stratigraphic layer to dip vertically into the next rather than extend horizontally (Figure 1-1). A thorough understanding of how to properly carry out an excavation requires an education in archaeology. Excavations or even simply removing an artifact from the ground without a trained archaeologist can result in the loss of valuable information; information that can be used by archaeologists to learn about our past and then educate the public, providing everybody access to information about their own history.

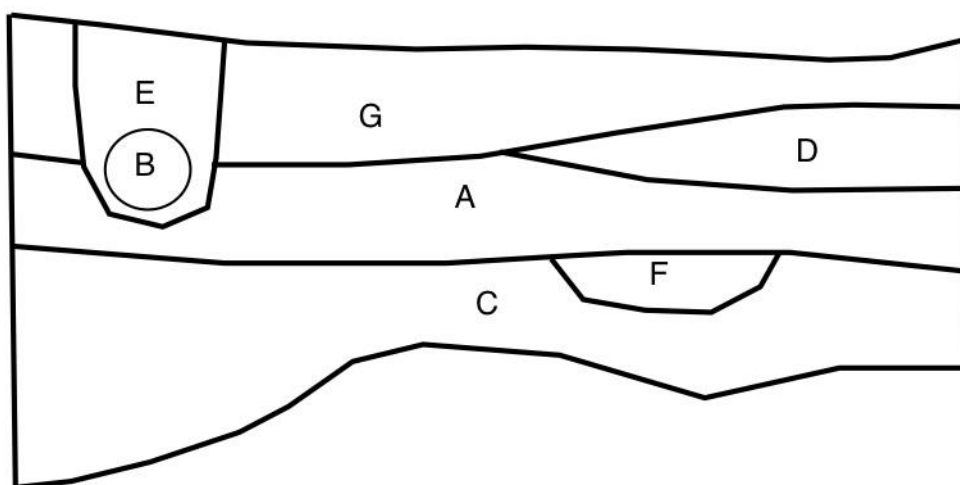


Figure 1-1 Soil stratigraphy (Archaeology 101 n.d.)

It is not uncommon for an individual to find an exposed artifact and remove it from the ground, unknowingly affecting the archaeological record and limiting the information the public receives about their history. Exposed arrowheads are frequently picked up by families along rivers or by farmers who have recently plowed their fields. While these individuals did not intend to damage the archaeological record, harm was done. Even more damaging, however, is an individual removing an artifact with the intention of selling or collecting it.

While the surface collecting of arrowheads, coins, bullets, and unworked minerals and rocks is allowed under the Archaeological Resources Protection Act (16 U.S.C. 470kk(b)) on federal and most state property, damage caused by digging and looting is extensive. On average, each year more than 850 sites are vandalized or looted on U.S. federal property, costing taxpayers nearly five million dollars annually (Hanson 2011: 429). This behavior occurs despite being outlawed by federal legislation. The same behavior carried out on private land may be legal depending on which state the land is

located in. In some cases the land owner allows looters to rent his land. The land is then searched, making use of metal detectors and large ditches. The land owner is often given an incentive, such as a percentage of the earnings from sold artifacts or receives a pre-determined set fee. In the case of Slack Farm (Arden 1989), a farm in Kentucky, looters dug more than 450 holes and disturbed more than 650 graves in 1987, leaving non-profitable human jawbones and teeth scattered throughout the field. The diggers had paid the landowner \$10,000 to dig for artifacts that they could then sell. Some reportedly sold for as much as \$4,500 (Arden 1989: 378). Looters have no interest in the non-monetary value of archaeological material. They do not record where artifacts were found and disregard anything that could not be sold. Artifacts such as pottery sherds are cast aside and their provenience is lost forever. Even if they make it into the hands of an archaeologist, they provide little information without knowing where they were originally located in the stratigraphy.

Furthermore, the effects of this activity are more detrimental to archaeology than the family who picks up an arrowhead alongside the river because they encourage others to actively seek artifacts to loot and sell. Looting ultimately becomes a business, with demand being fostered by wealthy collectors. Looters seeking economic satisfaction take to archaeological sites to supply demand. Thus the cycle of looting and collecting will continue until there is no longer a demand for looted material and there are no longer economic incentives.

The internet also plays a role in this cycle of looting and collecting. Since its invention, the internet has dramatically increased artifact trafficking. The internet makes the process of buying and selling easier, but it also makes this process very visible. In

1995, when the internet was just beginning to grow, some pieces of Native American pottery were being sold for as much as \$400,000 and some projectile points for \$10,000 (Hanson 2011: 430). Seeing the monetary benefits of looting a site, legally or illegally, encourages others to partake in the same behavior. The vast and growing nature of the internet also makes sales hard to regulate. Large companies, like Ebay, struggle to oversee each item advertised on their site and enforcement of federal laws and site rules is even more difficult (Sullivan 2009).

Also contributing to the visibility and appeal of looting and collecting are television shows such as “Diggers” on the National Geographic Channel and “American Digger” on Spike TV. The Society for American Archaeology (SAA) President William F. Limp wrote in an SAA listserv message that shows such as these “promote and glorify the looting and destruction of archaeological sites” (“Archaeologists Protest” 2012). Spike TV advertised its show by stating that a team of diggers will “scour target-rich areas, such as battlefields and historic sites, in hopes of striking it rich by unearthing and selling rare pieces of American history” (“Archaeologists Protest” 2012). Shows such as these give the American public the idea that looting and collecting is ethical. Especially when promoted by respected names, such as National Geographic. What is most damaging, however, was addressed by Iowa's State archaeologist John Doershuk, “The most damaging thing, I think, about this show is that no effort was made to document where anything came from or discussion of associations—each discovered item was handled piece-meal” (“Archaeologists Protest” 2012).

In a more recent case, the SAA, the Society for Historical Archaeology (SHA), the Archaeological Institute of America (AIA), the American Anthropological

Association (AAA), the European Association of Archaeologists (EAA), and the European Association of Social Anthropologists (EASA), sent a joint letter to the National Geographic Society, the National Geographic Channels, and the National Geographic Channel International about a TV show named “Nazi War Diggers”. The letter states that “The video and statements introducing the ‘Nazi War Diggers’ on the National Geographic Channel (NGC) Web site showed a complete disregard for proper and respectful treatment of human remains and a callous commercialization of the archaeological record” (refer to the letter in Appendix C). The letter goes on to explain how this is in direct contradiction of the profession of archaeology’s ethical principles and suggest that the show either be pulled from air entirely or renamed and revised to comply with “accepted archaeological ethical principles and standards of practice” (refer to the letter in Appendix C). The letter proved successful. Within hours of the letter being completed, the National Geographic Society informed Jeff Altschul, the President of SAA that the show would be pulled from air (refer to the email in Appendix C).

While the shows do not break any state or federal laws by digging on private property, they promote the process of looting, collecting, and ultimately damaging the archaeological record to a wide audience, who is exposed to the economic benefits. The cause of this problem is just that: economic. As long as collectors consider certain kinds of archaeological material to have value, looting will continue. As long as looting continues, artifacts will continue to be stripped of their value and importance and the public’s knowledge of our past will be directly affected.

Federal Legislation: What it Currently Protects

Beginning with the Antiquities Act of 1906, there have been many pieces of federal legislation passed with the goal of protecting archaeological and historical resources. While the protection of some of these pieces of legislation does extend to the interstate trafficking of resources, most of it deals only deals with resources found on federal lands. Benchmark federal legislation dealing with archaeological resources, as it relates to this paper, is outlined below in order to call attention to what is currently protected, and more importantly, what is *not* protected.

Antiquities Act of 1906

The Antiquities Act of 1906 was the first piece of legislation designed to protect historic and prehistoric sites on federal lands. It criminalized excavations or damages done to resources on federal lands without the permission of the secretary of the particular department of the government with jurisdiction over the land. The process of authorizing permits falls into the hands of the Secretaries of the Interior, Agriculture, and Army. The legislation states that the institution or individual seeking a permit must be qualified and the excavation must be “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” (16 U.S.C. 432 Sec. 3). What the legislation fails to establish is who is a qualified candidate. However, it deserves credit for being the first to establish penalties for excavations carried out by unqualified individuals or institutions and damages done to archaeological resources. The maximum fine, however, was only set at \$500 and the maximum prison time is only 90 days (16 U.S.C. 433 Sec. 1). In addition to criminalizing unauthorized excavations and damages, the legislation authorizes the President to declare areas of public lands as national monuments, giving the federal government additional protective power (16 U.S.C. 431 Sec. 2). While this piece of legislation was a great first step toward protecting our nation’s archaeological resources, its penalties are weak and it left “qualified” institutions undefined. Furthermore, it has no mention of excavations or destruction done to resources on private land.

Historic Sites Act

The Historic Sites Act, created in 1935, established the National Historic Landmarks program, a national policy to “preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States” (16 U.S.C. 461 Sec. 1). This piece of legislation provides the Secretary of the Interior the right and responsibility to preserve documentation associated with such resources, conduct investigations into which resources ought to be protected by this legislation, and acquire these resources. While this does not give the Secretary of the Interior the right to acquire land without the permission of the private property owner, it

does give the federal government the right to purchase private land or property (16 U.S.C. 462 Sec. 2). The Secretary of the Interior is also responsible for the preservation, operation, and development of educational programs (16 U.S.C. 462 Sec. 2). While this legislation gives the federal government the opportunity to negotiate with private property owners to obtain archaeological resources, it does not give property rights to the federal government. Therefore, under this legislation, a private property owner has the right to refuse to sell or donate the property, and instead can sell, collect, or destroy it unless state legislation steps in to guarantee its protection.

National Historic Preservation Act

The National Historic Preservation Act (NHPA) was created in 1966 and amended in 1980 and 1992. One of the most significant parts of this act states the reason for having protective legislation; “in order to give a sense of orientation to the American people” (16 U.S.C. 470 Sec. 1). Measures are taken to protect resources because ultimately, they belong to the public, not to institutions or individuals. “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” (16 U.S.C. 470 Sec. 1). The act also acknowledges the need for protection, stating that our nation’s heritage is being lost or altered with increasing frequency (16 U.S.C. 470 Sec. 1). The NHPA uses these rationales to establish the National Register of Historic Places (16 U.S.C. 470w Sec. 301), State Historic Preservation Offices (SHPOs), Tribal Historic Preservation Offices

(THPOs), (16 U.S.C. 470a Sec. 101), the Certified Local Government Program (16 U.S.C. 470a Sec. 101), and the President's Advisory Council on Historic Preservation (16 U.S.C. 470a Sec. 101).

The establishment of the National Register of Historic Places is significant because it is a means of providing federal protection for sites located off federal land. It provides a process to ensure that historic and prehistoric resources are considered during the planning and execution of federal projects (16 U.S.C. 470f Sec. 106). Resources on private land can be nominated for the registry, however, if a private land owner, or the majority of the land owners, object to the nomination, the nomination will not be considered (16 U.S.C. 470a Sec. 101). Therefore, this legislation still allows private land owners to sell, collect, or destroy archaeological resources.

Nevertheless, the NHPA takes a giant step toward protecting resources found on private property by calling on the federal government to encourage organizations and individuals to preserve historic and prehistoric resources found on private land. It also calls on states to expand their preservation programs and activities (16 U.S.C. 470-1 Sec. 2). The problem, however, is that the NHPA has not mandated any action in the way of protecting resources on private land. Therefore, the problems of looting, collecting, and destruction to the archaeological record and public knowledge will continue to exist unless states take the initiative to combat these on their own.

Archeological and Historic Preservation Act

The Archeological and Historic Preservation Act (AHPA) was enacted in 1974. It requires preservation of scientific, historical, and archaeological data, including the objects and materials collected from archaeological sites, related to all federal construction projects. The protection extends to projects that are being carried out by private individuals or corporations that hold licenses issued by the federal government (16 U.S.C. 469 Sec. 1) as well as any projects that receive federal funding (16 U.S.C. 469 a-1 Sec. 3). Therefore, the protective measures in this act could extend to resources found on private property, given that they were found as a result of a federally funded project.

However, while this legislation calls for the protection and preservation of these resources, it does not directly establish ownership. It states, “The Secretary shall consult with any interested Federal and State agencies, educational and scientific organizations, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section” (16 U.S.C. 469 a-3 Sec 5). Therefore, if the resources are found on private land, the land owner may be given ownership if he is deemed a “qualified individual”. However, the legislation fails to establish the criteria to be considered a “qualified individual”. Nevertheless, it requires the Secretary to be involved in determining an appropriate repository, and therefore even if the private landowner is given ownership of the resources, they will likely still be protected from being sold, collected, or destroyed. All information and reports from surveys, investigations, and preservation activities are required to be made public (16

U.S.C. 469 a-1 Sec. 3), ensuring that archaeologists and the public have access to information about their past.

American Indian Religious Freedom Act

The American Indian Religious Freedom Act (AIRFA) was created in 1978. It establishes the protection and preservation of traditional Native American, Eskimo, Aleut, and Hawaiian spiritual beliefs and practices by ensuring access to sites and allowing possession of sacred objects (42 U.S.C. Sec. 1). This is a step toward allowing public access to all archaeological sites, as the sites belong to the collective history of our nation. While the case can be made that resources on federal land are protected by other pieces of federal legislation, such as the AHPA, that is not the case for resources on private property. Therefore, while a group may have the right to access a site, the state of that site could be destroyed by the private land owner (or in the case of *Lying v. Northwest Indian Cemetery Protective Association*, by the United States Forest Service). Still it remains up to the state to ensure that resources on private land are protected.

Archaeological Resources Protection Act

The Archaeological Resources Protection Act (ARPA) was created in 1979 and is intended to supplement the already existing Antiquities Act of 1906. As previously stated, the Antiquities Act of 1906 provided weak penalties for violators of the law.

ARPA further defines the parameters for scientific research on federal land, clarifies the nature of illegal actions, establishes more effective law enforcement to protect public archaeological sites, creates stronger penalties for violators of the law, and requires federal agencies to establish public education programs (Smith 1995: 11). ARPA states that no person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public or Indian lands without first acquiring a permit (16 U.S.C. 470cc Sec. 4). Archaeological resources may not be sold, purchased, exchanged, or transported if it was excavated or removed from federal or Indian lands. It also prohibits selling, purchasing, exchanging, or transporting any archaeological resources that were obtained in violation of state or local law (16 U.S.C. 470ee Sec. 6). This, however, requires that the state first create such a law.

Unlike the Antiquities Act of 1906, the penalties associated with violating this act are severe. Criminal penalties include a \$10,000 fine and/or prison time with a maximum of one year. If the commercial value or restoration costs exceed \$500, however, the penalty is \$20,000 and/or prison time with a maximum of two years. A second or subsequent conviction can lead to a fine of \$250,000 and/or prison time with a maximum of five years. Civil penalties include a fine based on the assessment of the archaeological or commercial value of the resource and the cost of restoration and repair of the resource with provision for double penalties for second or subsequent violations. Violators will also be required to forfeit all archaeological resources as well as vehicles and equipment involved in the violation (Messenger 1989: 277).

While the strict penalties no doubt deter individuals from violating the law, there are some problems with them. For example, the amount of the fine for civil penalties

requires a monetary assessment of the archaeological resource. This violates the ethical code of many archaeologists and professional archaeological associations. Assigning value to a resource incentivizes looting and collecting.

The second problem associated with enforcement of this legislation is that those who violate the law by collecting arrowheads located on the surface of the ground will not be prosecuted (16 U.S.C. 470ee Sec. 6). This arbitrarily places more value on some archaeological resources than others, when in reality, some arrowheads, such as Clovis points, offer a great deal of information about the peopling of the Americas.

The third problem is the fines are often not enough to deter looters and collectors because the income they receive from violating the law is often so much higher. As previously stated, in 1995 some Native American pottery was selling for as much as \$400,000 on the internet (Hanson 2011: 430). A criminal conviction resulting in a fine of even \$250,000, the maximum fine for this offense, would not even offset the cost of selling one rare piece of Native American pottery in 1995.

Nevertheless, ARPA does acknowledge and present the need for further legislation of its type. Like the NHPA, ARPA acknowledges the increase in destruction of archaeological resources. Furthermore, it encourages increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals (16 U.S.C. 470aa Sec. 2). However, it does not mandate that private land owners contact governmental authorities or archaeologists when archaeological resources are discovered on their land. Therefore, whether the archaeological record will continue be damaged remains up to the states to decide.

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (NAGPRA) was created in 1990 and establishes important protective measures for Native American archaeological remains. NAGPRA is a very extensive piece of legislation that requires all museums, state and local agencies, and educational institutions that receive federal funding to inventory and return to the tribes American Indian remains, funerary objects, sacred objects, and objects of cultural patrimony for which the appropriate tribal relationships can be established (25 U.S.C. 3005 Sec. 7). More importantly for the purposes of this paper, however, it establishes rules of ownership and control of Native American human remains and objects. This act made it more difficult to acquire a permit to excavate or remove objects from federal or tribal lands (Messenger 1989: 277) and criminalized the sale, purchase, use for profit, or transport (without rights of possession) of all Native American human remains and objects (25 U.S.C. 3002 Sec. 4).

In 2010 the Final Regulations for the Disposition of Culturally Unidentifiable Human Remains (CUHR) were created. These regulations apply to the remains and funerary objects described above “for which no lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization has been identified” (43 C.F.R. 10.11). CUHR establishes the steps that must be taken if the remains and funerary objects cannot be culturally identified. In cases such as these, the museum or federal agency must offer to transfer control of the remains and funerary objects to Indian tribes and Native Hawaiian organizations in the following priority order:

1. “The Indian tribe or Native Hawaiian organization from whose tribal land, at the time of the excavation or removal, the human remains were removed; or” (43 C.F.R. 10.11 c1).
2. “The Indian tribe or tribes that are recognized as aboriginal to the area from which the human remains were removed. Aboriginal occupation may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order” (43 C.F.R. 10.11 c1).

If none of the Indian tribes or Native Hawaiian organizations identified in the previous section agrees to accept control, a museum or federal agency may take the following steps:

1. “Transfer control of the culturally unidentifiable human remains to other Indian tribes or Native Hawaiian organizations; or” (43 C.F.R. 10.11 c2).
2. “Upon receiving a recommendation from the Secretary of the Interior or authorized representative:
 - a. Transfer control of culturally unidentifiable human remains to an Indian group that is not federally-recognized; or
 - b. Reinter culturally unidentifiable human remains according to State or other law” (43 C.F.R. 10.11 c2).

This addition to NAGPRA ensures that human remains found on federal or tribal land are handled properly and respectfully even if they are not culturally identified. It ensures that in these cases, Indian tribes and Native Hawaiian organizations are given the opportunity to care for the remains and if they choose not to, that non federally-

recognized Indian groups are also given an opportunity. If no group accepts responsibility, the remains will be reinterred (43 C.F.R. 10.11). At no point are the remains put at risk of defacement or sale; they are protected through all phases of the process. Although CUHR is a step in the right direction in terms of protection for human remains, NAGPRA does not apply to all cases that involve Native American remains.

The primary problem with NAGPRA is that, while it provides essential and extensive protection for Native American archaeological remains found on federal or tribal land, it provides no protection at all for such remains found on privately owned land. Therefore, private land owners are left to do as they please with Native American remains and objects unless otherwise mandated by the state. Not only is this damaging to the archaeological record and to the public's knowledge of our collective history, but it is damaging to existing Native American cultural groups whose ancestors' remains may be sold, collected, displayed, or destroyed.

National Stolen Property Act

The National Stolen Property Act was created in 1934 and concerns the trafficking of stolen or fraudulent material, not specifically archaeological material. It was not until 1974 that this legislation was used in a case dealing with archaeological material ("Selling the Past" 2002). Since then, however, it has been used in cases where illegally obtained archaeological material has been transported across states. The problem in this legislation, however, lies in the fact that it does not apply to trafficked archaeological resources that were legally obtained on private property with the

permission of the private land owner, even if those resources are being transported for collection or sale. Therefore, whether this legislation can even be applied to protect archaeological resources depends on state legislation.

A careful look at the legislation outlined above shows that federal legislation gives little attention and provides little protection to archaeological resources found on private lands. Further protective measures are left up to the discretion of each state. In order to synthesize the measures taken to protect these resources, legislation from each state was examined. In the following chapter, the results from this research will be presented and the repercussions will be discussed.

III. State by State: What if Destroying Archaeological Material was Legal?

Each state has the opportunity to address the protection of archaeological resources found off of federal land differently. In order to thoroughly examine the approaches taken by states, legislation from each state was analyzed to determine whether it is the state or private land owner who holds ownership over archaeological resources and whether human burials on state and private land are protected. The results are broken down as follows: approaches to resources found on state land, approaches to resources found on private land, and approaches to human burials found on state and private land. While states are not required to be consistent in their legislation, most states have a similar approach: resources found on state land belong to the state and resources found on private land are the property of the land owner. States are also rather consistent when dealing with human burial legislation, and almost all take measures to protect human burials found on both state and private property.

Approaches to Resources Found on State Land

Like resources found on federal land, most archaeological resources found on state land are protected. All states, in fact, prohibit removing archaeological resources from state property without a permit issued by a state agency. Rather than provide detailed information about each state's approach in dealing with archaeological resources found on state property, the approaches of three states, Texas, Georgia, and Maine, will be described and will represent the relative consistency of the approaches taken by all states. Further information regarding the legislation of the other 47 states can be found in Table 3-1.

State	Ownership of archaeological resources found on state property	Ownership of archaeological resources found on private property	Ownership of archaeological resources found in cave on private property
Alabama	State	Property Owner	Property Owner
Alaska	State	Property Owner	Property Owner
Arizona	State	Property Owner	Property Owner
Arkansas	State	Property Owner	Property Owner
California	State	Property Owner	Property Owner
Colorado	State	Property Owner	Property Owner
Connecticut	State	Property Owner	Property Owner
Delaware	State	Property Owner	Property Owner
Florida	State	Property Owner	Property Owner
Georgia	State	Property Owner	Property Owner
Hawaii	State	Property Owner	Property Owner
Idaho	State	Property Owner	Property Owner
Illinois	State	Property Owner	Property Owner
Indiana	State	Property Owner (but prohibited from defacing or destroying resources)	Property Owner (but prohibited from defacing or destroying resources)
Iowa	State	Property Owner	Property Owner
Kansas	State	Property Owner	Property Owner
Kentucky	State	Property Owner	Property Owner (but state issued permit required to excavate)
Louisiana	State	Property Owner	Property Owner
Maine	State	Property Owner	Property Owner
Maryland	State	Property Owner	Property Owner (but state issued permit required to excavate)
Massachusetts	State	Property Owner	Property Owner
Michigan	State	Property Owner	Property Owner
Minnesota	State	Property Owner	Property Owner
Mississippi	State	Property Owner	Property Owner
Missouri	State	Property Owner	Property Owner
Montana	State	Property Owner	Property Owner (but prohibited from defacing or destroying resources)
Nebraska	State	Property Owner	Property Owner
Nevada	State	Property Owner (but prohibited from defacing or destroying resources)	Property Owner (but prohibited from defacing or destroying resources)
New Hampshire	State	Property Owner	Property Owner
New Jersey	State	Property Owner	Property Owner
New Mexico	State	Property Owner	Property Owner
New York	State	Property Owner	Property Owner
North Carolina	State	Property Owner	Property Owner
North Dakota	State	Property Owner	Property Owner
Ohio	State	Property Owner	Property Owner
Oklahoma	State	Property Owner	Property Owner
Oregon	State	Property Owner (with the exception of some objects. Also, state issued permit required to disturb any resources)	Property Owner (with the exception of some objects. Also, state issued permit required to disturb any resources)
Pennsylvania	State	Property Owner	Property Owner

Rhode Island	State	Property Owner	Property Owner
South Carolina	State	Property Owner	Property Owner
South Dakota	State	Property Owner	Property Owner
Tennessee	State	Property Owner	Property Owner
Texas	State	Property Owner	Property Owner
Utah	State	Property Owner	Property Owner
Vermont	State	Property Owner	Property Owner
Virginia	State	Property Owner	Property Owner
Washington	State	Property Owner (but state issued permit required to disturb any resources)	Property Owner (but state issued permit required to disturb any resources)
West Virginia	State	Property Owner (but state issued permit required to disturb any resources)	Property Owner (but state issued permit required to disturb any resources)
Wisconsin	State	Property Owner	Property Owner
Wyoming	State	Property Owner	Property Owner

Table 3-1 State approaches to ownership of archaeological resources. Refer to Appendix

A for citations.

The state of Texas takes the common approach. It prohibits excavating, removing, and damaging archaeological resources found on state lands as part of the Texas Natural Resources Code (191.092-191.093). The use of metal detectors in Texas state parks is also prohibited and this piece of legislation also defines the penalties for violators of the law. “A person violating any of the provisions of this chapter is guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than \$50 and not more than \$1,000, by confinement in jail for not more than 30 days, or by both. Each day of continued violation of any provision of this chapter constitutes a separate offense for which the offender may be punished” (191.171). The same penalties problem that arises in the ARPA legislation, however, arises here: the penalties do not provide substantial deterrence to looters and collectors who often make thousands off of single artifacts.

Georgia has similar legislation protecting archaeological resources found on state land. The state of Georgia “reserves to itself the exclusive right and privilege of exploring, excavating, or surveying all prehistoric and historic sites, ruins, artifacts, treasure, and treasure-trove, and other similar sites and objects found on all lands owned or controlled by the state, provided that this reservation shall not apply to property under the jurisdiction of the Board of Regents of the University System of Georgia” (Georgia Code 12-3-52). The legislation goes on to state that the discovery of all resources must be reported to the state within two days (Georgia Code 12-3-52). Unlike Texas, however, Georgia does not include the penalties in this legislation, making enforcement difficult and ambiguous. It also brings up the question of whether it is properly enforced.

The state of Maine also takes action to protect and preserve archaeological resources found on state land. The state has legislated that state-owned resources remain

within Maine. Legislation defines state-owned resources as those discovered on any state property. It is illegal to sell or offer to sell these resources without the “written permission of the permit grantors or the Director of the Maine Historic Preservation Commission and the Director of the State Museum” (Maine Code 27.13.371 through 27.13.378). The penalty for violating this law is also outlined: violations are “punishable by a civil penalty not greater than twice the price for which artifacts, objects of specimens are sold or offered for sale” (Maine Code 27.13.371 through 27.13.378). A problem similar to that which ARPA faces, is that this requires a value to be assigned to the archaeological resources, and forced archaeologists to compromise their ethics codes which state that it is unethical to assign monetary value to archaeological resources.

While existing state legislation dealing with archaeological resources found on state land can, in many cases, be improved, research has showed that each state has at least minimal protective measures. Unfortunately, the same cannot be said for archaeological resources found on private land.

Approaches to Resources Found on Private Land

While all states have at least minimal protective measures for resources found on state land, most states have *no* protective measures for resources found on private land, with the notable exception of protective measures for human burials, which will be further discussed in the next section. The different approaches of three states, Mississippi, Montana, and Oregon, for dealing with archaeological resources, not including human burials, are described below and will represent the disparity in the approaches taken by all states. Further information regarding the approaches taken by the other 47 states can be found in Table 3-1.

The state of Mississippi takes the same approach (or lack thereof) for dealing with archaeological resources found on private land that most states take. All resources found on private land in Mississippi belong to the landowner. There are no regulations prohibiting the landowner from altering, defacing, destroying, or selling archaeological resources found on their land (Mississippi Code 39-7-33). This common approach provides absolutely no protection for these resources and places all responsibility in the hands of private landowners, who are often unfamiliar with the archaeological processes as well as archaeology ethics. This could lead the landowner to lease their land to looters, as in the 1987 case of Slack Farm, or to excavate and collect various artifacts without recording valuable information or following detailed excavation methods. In sum, this approach allows the process of looting and collecting to continue legally, destroys the archaeological record, and limits our knowledge of our collective past. For further

information regarding the private landowner's full discretionary rights, please refer to Appendix B.

Fortunately, some states take approaches that offer more protection to archaeological resources than the state of Mississippi does. Montana, for example, takes measures to protect archaeological resources found inside caves on private property. Montana Code 23-2-903, the Montana Cave Conservation Act, prohibits that any person purposefully or knowingly "carve, write, mark upon, break, crack, burn, or remove or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or material found in a cave, whether attached or broken, including speleothems, speleogens, and sedimentary deposits." Cave material is defined in Montana Code 23-2-902 as "Material" means all or part of any archaeological, cultural, paleontological, biological, or historical item or artifact found in a cave, including but not limited to any petroglyph, pictograph, pottery, basketwork, fossil, human remains, or animal remains." The law therefore encompasses and protects archaeological material from any type of disturbance, whether it be from a visitor or the private landowner.

An exception to this law, however, does appear when it states, "The provisions of subsection (1) do not apply to a cave owner or the owner's authorized agent, officer, employee, or designated representative who undertakes work to improve or control physical access to the cave" (Montana Code 23-2-903). Therefore, a landowner's work to improve or control access to the cave takes priority over the protection and preservation of archaeological resources. This law also loses some teeth when the penalties are defined. "A person convicted of violating any provision of this part is subject to a fine of not less than \$500 or more than \$2,000, imprisonment in the county jail for not more than

60 days, or both” (Montana Code 23-2-908). While this law does provide more protection for archaeological resources than most states do, some states have developed a more comprehensive approach. For more information on the Montana Cave Conservation Act, however, please refer to Appendix B.

The state of Oregon takes more measures to protect and preserve archaeological resources found on private land than most states do. While private property owners maintain ownership of the resources on their land, they are required to have a state issued permit if they wish to “excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object” whether it be on state or privately owned land (Oregon Statutes 358.920). There is an exception to this law, however, in that arrowheads may be surface collected provided that collection can be accomplished without the use of a tool (Oregon Statutes 358.920).

This law allows private landowners to maintain ownership, but still ensures that archaeological resources are excavated properly and are not destroyed. What the law fails to address, unfortunately, is the preservation of resources once they have been properly excavated by a permit holder and placed in the possession of the private landowner. It also fails to prohibit the sale of resources if the private landowner consents (Oregon Statutes 358.920). In fact, it appears that lawmakers expected private landowners to sell resources, as section two stipulates what steps must be taken when selling resources. For example, a certificate of origin confirming that the resource does not fall under the category of human remains, funerary objects, sacred objects or objects of cultural patrimony (the significance of these objects will be further discussed below) as well as confirming the private landowner’s consent must be presented to the purchaser (Oregon

Statutes 358.920). Violation of these provisions will result in a Class B misdemeanor (Oregon Statutes 358.920). The specific penalties, however, are not described. For further information regarding this law, please refer to Appendix B.

In addition to the protective measure requiring private landowners to obtain a state issued permit to disturb archaeological resources, certain resources are given special attention. If a sacred object or object of cultural patrimony is discovered, Oregon Law requires that the person conducting the archaeological investigation notify in writing the SHPO and the appropriate ethnic group, religious group, or Indian tribe with which the object is associated (Oregon Statutes 358.945). It goes on to state that “If a sacred object or object of cultural patrimony is recovered on any land, the SHPO shall assist the appropriate group to repossess the object” (Oregon Statutes 358.945). These detailed protective measures go far enough to ensure that archaeologists and private landowners take ethical courses of action when dealing with archaeological resources. For more information about these requirements, please refer to Appendix B.

Approaches to Human Burials Found on State and Private Land

Although most states have few measures in place to protect archaeological resources found on private land, almost all are eager to protect marked and unmarked human burials. In fact, all states have legislation protecting human remains and associated funerary objects found on state land. Fewer, but still a large number of states also protect human remains and associated funerary objects found on private land. Most of these laws were created in the early 1990s, following the passage of NAGPRA. This is a great example of the influence the federal government has on individual states. The protective measures of three states, Michigan, Delaware, and Colorado, will be described in detail in this section and will serve to represent the approaches taken by other states. Information on the approaches of the other 47 states can be found in Table 3-2. The term protection, as used in Table 3-2, is defined as prohibiting the defacement, destruction, and sale of human remains and their associated funerary objects. Some states, however, take protective measures that reach beyond this definition, such as the state of South Dakota, which also prohibits the commercial display of human remains and their associated funerary objects (South Dakota Statutes 34-27-24).

State	Protection of human remains and associated funerary objects found on state property?	Protection of human remains found on private property?	Protection of associated funerary objects found on private property?
Alabama	Yes	Yes	Yes
Alaska	Yes	Yes	Yes
Arizona	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes
California	Yes	No	No
Colorado	Yes	Yes	Yes
Connecticut	Yes	Yes	No
Delaware	Yes	Yes	No
Florida	Yes	Yes	Yes
Georgia	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes
Idaho	Yes	Yes	Yes
Illinois	Yes	Yes	Yes
Indiana	Yes	Yes	Yes
Iowa	Yes	Yes	No
Kansas	Yes	Yes	Yes
Kentucky	Yes	Yes	No
Louisiana	Yes	Yes	Yes
Maine	Yes	Yes	No
Maryland	Yes	Yes	No
Massachusetts	Yes	Yes	No
Michigan	Yes	No	No
Minnesota	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes
Missouri	Yes	Yes	No
Montana	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes
Nevada	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes
New Jersey	Yes	No	No
New Mexico	Yes	Yes	Yes
New York	Yes	No	No
North Carolina	Yes	Yes	No
North Dakota	Yes	Yes	Yes
Ohio	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes
Oregon	Yes	Yes	Yes
Pennsylvania	Yes	Only in terms of permits for excavations.	Only in terms of permits for excavations.
Rhode Island	Yes	Yes	Yes
South Carolina	Yes	Yes	Yes
South Dakota	Yes	Yes	Yes
Tennessee	Yes	Yes	Yes
Texas	Yes	Yes	Yes
Utah	Yes	Yes	No
Vermont	Yes	Yes	Yes
Virginia	Yes	Yes	Yes
Washington	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes

Wisconsin	Yes	Yes	Yes
Wyoming	Yes	No	No

Table 3-2 State approaches to human burials found on state and private land. Refer to

Appendix A for citations.

The state of Montana takes an approach that represents those of most states. It has measures in place that protect human remains as well as associated funerary objects that are found on private land. Montana Code 22-3-801 through 22-3-811, the Human Skeletal Remains and Burial Site Protection Act, requires that all discoveries of human remains be immediately reported to the county coroner, who will conduct an investigation of the remains and notify the SHPO. Failure to do so can result in a fine of no less than \$100 or no more than \$500 (Montana Code 23-3-808). While the penalty for failing to report the discovery of remains is not particularly harsh, there are stronger penalties for other offenses associated with this legislation that are outlined below. The requirement that discoveries be reported is not uncommon amongst the other states.

What sets Montana apart from most states, however, is that this legislation also set up a burial preservation board which is composed of one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments, one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians, one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer, one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological association, one physical anthropologist appointed by the governor, one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association, and one representative of the public, appointed by the

governor, who is not associated with tribal governments, state government, the fields of historic preservation, archaeology, or anthropology, or the Montana coroners' association (Montana Code 22-3-804). The board has the responsibility of completing a field review. During the review the board decides whether the site can be preserved, negotiates with the private landowner concerning onsite reburial or disinterment and reburial, and also makes a recommendation concerning the final treatment or disposition of the human remains and associated funerary objects (Montana Code 22-3-804).

The board then gives control of the remains or materials in the following priority to: “(a) the descendants, if identifiable; (b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials; (c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or (d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials” (Montana Code 22-3-805). The priorities are set up similarly to NAGPRA's, which is no surprise given that this legislation went into effect in 1991, just one year after NAGPRA was passed. Certainly it was influenced by its federal counterpart. The priorities are also strongly aligned with CUHR, which was not enacted until 2010. In this case, Montana's protective measures for human remains preceded those put in place by the federal government.

Montana's Human Skeletal Remains and Burial Site Protection Act also lists prohibitions, such as destroying or disturbing a marked or unmarked human burial or

burial material. Such actions can result in a fine of up to \$1,000 and/or imprisonment in the county jail for up to six months (Montana Code 22-3-808). Furthermore, the buying, selling, transporting, bartering, or displaying of human skeletal remains or burial material is prohibited. Violating this section can result in a fine of up to \$50,000 and/or imprisonment for up to 20 years (Montana Code 22-3-808). Disclosing information that is highly probable to lead to pilferage, disturbance or destruction of a human burial site is also prohibited. Violating this section can result in a fine up to \$500 and/or imprisonment for up to six months. A subsequent violation can lead to a fine of up to \$10,000 and/or imprisonment for up to five years (Montana Code 22-3-808).

In addition to these fines, individuals who violate any of the previously mentioned sections may also be subject to a civil penalty of up to \$2,000 for the first violation and up to \$10,000 for a subsequent violation (Montana Code 22-3-808). The penalties outlined in this legislation demonstrate the severity of these violations and also show how seriously Montana takes the protection of its human burials and associated funerary objects. For more information regarding Montana's Human Skeletal Remains and Burial Site Protection Act, please refer to Appendix B.

The state of Delaware takes what is the second most common approach: protecting human remains found on private land, but failing to mention associated funerary objects in the legislation, leaving them unprotected. Delaware Code 7-5403 requires that all discoveries of unmarked human burials or skeletal remains be reported to the Medical Examiner immediately. All excavations not under the jurisdiction of the Medical Examiner or the Director of Historical and Cultural Affairs of the Department of State must be conducted by a professional archaeologist. If the remains are determined to

be Native American, a burial committee consisting of the Chief of the Nanticoke Indian Tribe, two members appointed by the Chief, the Director of Historical and Cultural Affairs of the Department of State, two members appointed by the Director, and a seventh member from the private sector appointed by the Governor, similar to that in the state of Montana (Delaware Code 7-5402), is then notified (Delaware Code 5406). The committee then creates a written plan for the treatment and disposition of the skeletal remains. If the remains are not determined to be Native American, the Director will seek out next-of-kin, who will then provide a written plan for treatment and disposition of the remains (Delaware Code 7-5406). What remains ambiguous, however, is whether any associated funerary objects are subject to the same process, along with the human remains, or if the private property owner retains ownership of them, as would be the case with other archaeological resources found on private property in Delaware.

In addition to outlining the process of notification of the state and then disposition of the remains, this legislation also defines prohibited acts. No person may legally acquire any human remains removed from unmarked human burials except in accordance with the process outlined above. Additionally, no person may knowingly sell or exhibit such remains (Delaware Code 7-5407). Violation of this law may result in criminal penalties with a fine between \$1,000 and \$10,000 and/or imprisonment for up to two years (Delaware Code 7-5409). The penalties demonstrate that Delaware takes the unlawful disturbance of human remains seriously. Unfortunately though, the prohibitions do not include disturbance of associated funerary objects. For more information regarding Delaware legislation dealing with unmarked human burials found on private property, please refer to Appendix B.

The state of Michigan takes the least common approach among the states, which is also the least protective approach. There is no law stipulating that a private landowner notify any state agency upon discovering human remains. In fact, Michigan Statutes 324.76106 states that the removal of relics or records of antiquity is at the discretion of the landowner. According to the law, such relics include “human or other bones; shells, stone, bone, or copper implements; pottery or shards of pottery, or similar artifacts and objects” (Michigan Statutes 324.76106).

Another piece of legislation, which prohibits the disinterment, mutilation, defacement, or carrying away of human bodies, outlines an exception for archaeologists, given they have the permission of the landowner to disturb the burial (Michigan Statutes 750.160). This implies (though is open to interpretation) that the landowner himself is also exempt from the law, as he has full discretionary rights in the case of human burials. In this respect, Michigan provides *no* protection for human remains and their associated funerary objects on private property. If this legislation has been interpreted correctly, the implications of this lack of protection are grave. It permits looters to legally disturb graves and gives landowners the right to knowingly disrespect Native American burial practices. For more information regarding these two pieces of Michigan legislation, please refer to Appendix B.

Through researching how each state deals with archaeological resources and human burials it becomes clear that there is a great deal of discrepancy in the approaches. It is my hope that this research raises awareness among the public of how little protection there is for these resources and human burials and why it is so important that they be

protected. Awareness is the key to creating new legislation that deals with this issue and protects our collective history.

IV. Legislating Our Future

How do we know what we do? Accessibility of Information to the Public

Allowing states to address ownership of archaeological material and human burials found on state and private land differently makes the process of reporting discoveries complicated. In some states, it is difficult to know whether something even has to be reported at all. Clearly outlining state laws about how discoveries should be dealt with as well as clearly stating prohibitions related to dealing with archaeological material is just as important as actually having protective legislation. It is often the case that individuals are unfamiliar with reading legislation or are not aware of how to search for it. If the public is not aware of the protective legislation, the archaeological record and the knowledge of our collective past will remain in jeopardy.

Archaeology ethics codes also address the importance of public awareness. The SAA's ethics statement of 1960 highlighted the need to publish research in order to make it available to the public. In 1996 the SAA announced its 8 principles of archaeological ethics. Number four is public education and outreach. Number 6 is again public reporting and publication. The archaeological community recognizes the importance of awareness and education because each individual has the right to knowledge of our collective past. If archaeological resources are destroyed simply due to unawareness, not only is the archaeological record damaged, but so is that right to knowledge of our collective past.

Some states understand the importance of public awareness, while others have failed to make the regulations clear. The following examples represent approaches taken by states to explain to the public the state regulations and why they are important. This information was found directly from websites that were produced by state governments. Also included are observations made while conducting the research for chapter III.

The state of Nevada has set up the Nevada Site Stewardship Program (NSSP), a “state-run organization of volunteers that share a commitment to the preservation of archaeological and paleontological resources on state and federal land” (“State Historic Preservation Office” n.d.). The stewards are assigned cultural and paleontological sites to monitor and submit regular reports on to ensure that the sites are safe from theft and vandalism. More importantly, however, the stewards work to increase awareness of archaeological preservation. The NSSP FAQ page states, “In many cases the destruction of archaeological and paleontological sites occurs because the public does not understand the true value of these resources or even know that they are present on the undeveloped landscape. Stewards address these issues through public education and outreach in an effort to prevent further destruction of these non-renewable archaeological and paleontological resources” (“State Historic Preservation Office” n.d.). It is clear that the state of Nevada is concerned about the protection of its archaeological resources and understands the importance of public awareness. Information about this program was easily found on the Nevada State Historic Preservation Office website.

Nevada also celebrates “Historic Preservation and Archaeological Awareness Month” each May. The 2014 theme is “Nevada’s Sesquicentennial- 150 Years of Statehood” (“State Historic Preservation Office” n.d.). An announcement on the SHPO

website encourages residents to “come and find out why historic resources and archaeological sites should be preserved to maintain a sense of community and place.”

The programs and activities that the state of Nevada organizes provide ample opportunities for residents to learn about the importance of archaeology and preservation of resources.

The state of Mississippi has also made information regarding archaeological resources and human burials very accessible. The Mississippi Department of Archives and History has multiple pages dedicated to archaeology in the state, among which is an FAQ page that explains what to do if artifacts are found on either state or private property. It also address the illegality of disturbing human burials on both state and private land (“FAQs” n.d.). Sites like these are very helpful at raising public awareness of archaeology. If a resident of Mississippi were to find a human burial on their private property, information about what steps to take would be easy to find with a quick internet search.

In addition to explaining what steps to take in the case of discovery of archaeological resources, the FAQ page also explains why digging should be reserved for professional archaeologists. The question, “If I find artifacts on top of the ground, should I dig to see what else is there?” is answered with, “No. Digging disturbs evidence and destroys part of the scientific value of a site and its artifacts. Refrain from digging at archaeological sites. The locations of artifacts and other fragile archaeological remains are evidence of the behavior of the people who made them. Only through careful, scientific excavation can the archaeologist recover and interpret this evidence. Archaeological sites are considered “non-renewable resources”: once a site is

excavated or disturbed in any way, the information the site contained is no longer available and cannot be gained from another source,” with the last sentence appearing in bold (“FAQs” n.d.). The state of Mississippi does an excellent job of making information about handling archaeological material readily accessible and clearly outlines state laws.

Not all states, however, are as proactive about educating the public on archaeology and the preservation of archaeological resources. For example, it was very difficult to find information about handling archaeological resources and human burials in the states of Idaho and Wyoming. Neither state had an FAQ page about archaeological resources nor a page dedicated to legislation dealing with such resources (“Idaho State Historical Society” n.d.) (“Welcome to the Wyoming State Historic Preservation Office” n.d.). If a resident of either of these states were to uncover an archaeological site or human burial on their private property, information about what steps to take would not be easily found. The lack of readily accessible information puts such resources in danger because the public is generally unaware of what actions to take. The lack of accessible information renders protective legislation almost useless and undermines archaeology ethics codes.

What do the Current State Practices Mean for Archaeology and our Future?

Research has shown that most states fail to protect archaeological resources, with the exception of human burials, found on private land. What does this mean for archaeology? How does this affect our future? The answers to these questions reach back to chapter I, where archaeology ethics codes and the destructive nature of looting and collecting were discussed.

The implications of the state legislation discussed in this paper are grave. A large part of our country permits the looting and collecting of our artifacts, in turn limiting our knowledge of the past. State legislation makes it easy for looters and collectors to take part in this behavior. Not only is our knowledge of the past being legally stolen from us, but Native American burials are, in some cases, being legally defaced and disrespected. The America we live in permits this behavior in the name of individual rights. In the midst of this destructive behavior, it is important to ask ourselves, “Who owns the past?”

Archaeologists have an ethical responsibility to protect and preserve archaeological resources because these resources do not (or should not) belong to just a few individuals. The knowledge that they provide belongs to us all, as it is the knowledge of our collective past as a human species. The destruction done to the archaeological record when an object is looted affects us all and limits our knowledge of the past. Most states have determined that archaeological resources belong to individuals, and in doing so, have also determined that the knowledge of our past belongs only to individuals.

The public must be made aware of the knowledge that is being stolen from them so they are given a chance to advocate for change. More research ought to be done in this field in order to raise awareness. This paper has explored legislation dealing with archaeological resources found on state property and private property. It has looked specifically at legislation dealing with caves and human burials. What has yet to be explored is how states handle archaeological resources and human remains found underwater, how states issue permits and what qualifications are necessary to obtain one, how states register sites as historic sites, how local municipalities, counties, cities, and townships address these issues, how all this legislation is enforced, and how effective that enforcement is. There is a great deal left to learn and compile that this paper has not begun to address. Each state may think they have the answer to the question, “Who owns the past?” but until more research is done and the public is made more aware, there will be no single answer.

V. Conclusion

The cycle of looting and collecting together with a lack of state protection keeps artifacts found on private land in constant danger. The findings of the research presented in this paper are grave. They provide a clue to what our future holds: a stunted understanding of our past. The key to preventing this from happening lies in the hands of both archaeologists and the public. The first step is for archaeologists to raise public awareness of this issue, demonstrating the need to protect archaeological resources. There must be a cultural change in how the public views ownership. Archaeological resources, though they may be found on private land, do not belong to one single person. Instead, they belong to the public. They are what is left over from a past that belongs to us all; a past that cannot be owned by one person. A thorough understanding of the destructive nature of looting and collecting will lead to the public's demand for greater protective measures. This is the only remaining hope for our nation's past and future.

Appendix A

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Appendix B

Mississippi Law Allowing Private Landowners Full Discretionary Rights

2013 Mississippi Code

Title 39 - LIBRARIES, ARTS, ARCHIVES AND HISTORY

Chapter 7 - ANTIQUITIES

§ 39-7-33 - Disfigurement, removal, destruction, etc., of historical structure or artifact

Universal Citation: MS Code § 39-7-33 (2013)

It shall be unlawful for any person, not being the owner thereof, and without lawful authority, to wilfully injure, disfigure, remove or destroy any historical structure, monument, marker, medallion, or artifact.

Montana Cave Conservation Act

Montana Code 23-2-901 through 23-2-908

This part may be cited as "The Montana Cave Conservation Act".

History: En. Sec. 1, Ch. 264, L. 1993.

As used in this part, the following definitions apply:

(1) "Cave" means any geologically formed void or cavity beneath the surface of the earth or within a cliff or ledge, including but not limited to natural subsurface water and drainage systems, whether or not a natural entrance is present. The term does not include a mine, tunnel, aqueduct, or human-made excavation but does include any natural structure that is commonly known as a cavern, sinkhole, pit, grotto, or rock shelter and

that communicates with a subterranean passage or drainage system.

(2) "Cave life" means any life form that occurs in, uses, visits, or inhabits a cave.

(3) "Gate" means a structure or device located to limit or prohibit access or entry to a cave.

(4) "Material" means all or part of any archaeological, cultural, paleontological, biological, or historical item or artifact found in a cave, including but not limited to any petroglyph, pictograph, pottery, basketwork, fossil, human remains, or animal remains.

(5) "Owner" means any person or public or private agency that has the right to possession of a cave.

(6) "Person" means an individual, partnership, firm, association, trust, corporation, or other legal entity.

(7) "Speleogen" means the surrounding natural earth or bedrock in which a cave is formed, including but not limited to clastic sediments, walls, floors, ceiling, and other related structural and geological features.

(8) "Speleothem" means a natural mineral formation or deposit occurring in a cave, including but not limited to formations known as stalagmite, stalactite, helectite, shield, anthodite, gypsum flower and needle, angel's hair, soda straw, drapery, bacon, cave pearl, popcorn, rimstone dam, column, palette, and flowstone. A speleothem is commonly composed of calcite, gypsum, epsomite, aragonite, celestite, or other similar mineral.

History: En. Sec. 2, Ch. 264, L. 1993.

(1) Except as provided in subsection (2), a person may not purposely or knowingly:

(a) carve, write, mark upon, break, crack, burn, or remove or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or material found in a cave,

whether attached or broken, including speleothems, speleogens, and sedimentary deposits;

(b) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to a cave;

(c) remove, deface, or tamper with a sign stating that a cave is posted or citing provisions of this part; or

(d) disturb or alter in any way the natural condition of a cave.

(2) The provisions of subsection (1) do not apply to a cave owner or the owner's authorized agent, officer, employee, or designated representative who undertakes work to improve or control physical access to the cave.

History: En. Sec. 3, Ch. 264, L. 1993.

A person may not purposely or knowingly remove, kill, harm, or otherwise interfere with cave life, except for health or safety reasons or when the act is a minimal disturbance or for removal of organisms for recognized scientific inquiry. Gates at the entrance or at any point within a cave must be of open construction to allow unimpeded passage of air, insects, bats, and other cave life.

History: En. Sec. 4, Ch. 264, L. 1993.

(1) A person may not purposely or knowingly store, dump, litter, dispose of, or otherwise place in a cave any refuse, garbage, dead animal, sewage, or toxic substance harmful to cave life or human life.

(2) A person may not burn in a cave any substance that produces smoke or gas that is or may be harmful to cave life. The use of a carbide lamp that produces acetylene gas is

permitted.

History: En. Sec. 5, Ch. 264, L. 1993.

A person may not sell, offer for sale, or export for sale any speleothem or speleogen.

History: En. Sec. 6, Ch. 264, L. 1993.

The liability of the owner of a cave or the owner's authorized agent, officer, employee, or designated representative acting within the scope of authority is restricted pursuant to 70-16-302.

History: En. Sec. 7, Ch. 264, L. 1993.

A person convicted of violating any provision of this part is subject to a fine of not less than \$500 or more than \$2,000, imprisonment in the county jail for not more than 60 days, or both.

History: En. Sec. 9, Ch. 264, L. 1993.

Oregon Law about Permit Requirements on Private Land

358.920 Prohibited conduct; exception; penalty. (1)(a) A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on public or private lands in Oregon unless that activity is authorized by a permit issued under ORS 390.235.

(b) Collection of an arrowhead from the surface of public or private land is permitted if collection can be accomplished without the use of any tool.

(c) It is prima facie evidence of a violation of this section if:

(A) A person possesses the objects described in paragraph (a) of this subsection;

(B) A person possesses any tool that could be used to remove such objects from the ground; and

(C) A person does not possess a permit required under ORS 390.235.

(2) A person may not sell, purchase, trade, barter or exchange or offer to sell, purchase, trade, barter or exchange any archaeological object that has been removed from an archaeological site on public land or obtained from private land within the State of Oregon without the written permission of the landowner.

(3)(a) A person may not sell, trade, barter or exchange or offer to sell, trade, barter or exchange any archaeological object unless the person furnishes the purchaser a certificate of origin to accompany the object that is being sold or offered. The certificate shall include:

(A) For objects obtained from public land:

(i) A statement that the object was originally acquired before October 15, 1983.

(ii) The location from which the object was obtained and a brief cumulative description of how the object had come into the possession of the current owner in accordance with the provisions of ORS 358.905 to 358.961 and 390.235.

(iii) A statement that the object is not human remains, a funerary object, sacred object or object of cultural patrimony.

(B) For objects obtained from private land:

(i) A statement that the object is not human remains, a funerary object, sacred object or object of cultural patrimony.

(ii) A copy of the written permission of the landowner to acquire the object.

(b) As used in this subsection, “certificate of origin” means a signed and notarized statement that meets the requirements of paragraph (a) of this subsection.

(4)(a) If the archaeological object was acquired after October 15, 1983, from public lands, any object not described in paragraph (b) of this subsection is under the stewardship of the state and shall be delivered to the Oregon State Museum of Anthropology. The museum shall work with the appropriate Indian tribe and other interested parties to develop appropriate curatorial facilities for artifacts and other material records, photographs and documents relating to the cultural or historic properties in this state. Generally, artifacts shall be curated as close to the community of their origin as their proper care allows. If it is not feasible to curate artifacts within this state, the museum may after consultation with the appropriate Indian tribe or tribes enter into agreements with organizations outside this state to provide curatorial services; and

(b) If the object is human remains, a funerary object, a sacred object or an object of cultural patrimony, it shall be dealt with according to ORS 97.740, 97.745 and 97.750.

(5) A person may not excavate an archaeological site on privately owned property unless that person has the property owner’s written permission.

(6) If human remains are encountered during excavations of an archaeological site on privately owned property, the person shall stop all excavations and report the find to the landowner, the state police, the State Historic Preservation Officer and the Commission on Indian Services. All funerary objects relating to the burial shall be delivered as required by ORS 358.940.

(7) This section does not apply to a person who disturbs an Indian cairn or burial. Any person who disturbs an Indian cairn or burial for any reason shall comply with the provisions of ORS 97.740 to 97.760.

(8) Violation of the provisions of this section is a Class B misdemeanor. [1983 c.620 §3; 1993 c.459 §4; 1995 c.543 §4; 1997 c.249 §115]

Oregon Law Involving SHPO Notification of Certain Objects Found on Private Land

358.945 Notice required upon finding of object; exception.

(1) If a person who is conducting an archaeological investigation on public lands according to the provisions of ORS 390.235 or on private land with the owner's written permission finds a sacred object or object of cultural patrimony, the person conducting the archaeological investigation shall notify in writing:

- (a) The State Historic Preservation Officer; and
- (b) The appropriate ethnic group, religious group or Indian tribe with which the object is associated.

(2) If a sacred object or object of cultural patrimony is recovered on any land, the State Historic Preservation Officer shall assist the appropriate group to repossess the object.

(3) This section does not apply to the contents of an Indian cairn or burial regulated under ORS 97.740 to 97.760.

(4) Failure to notify the appropriate Indian tribe as required by subsection (1)(b) of this section is a Class B misdemeanor. [1983 c.620 §8; 1993 c.459 §8; 1995 c.543 §5; 1997 c.249 §116; 2001 c.104 §124]

Montana Human Skeletal Remains and Burial Site Protection Act

Montana Code 22-3-801 through 22-3-811

This part may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

History: En. Sec. 1, Ch. 748, L. 1991.

(1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds not protected as cemeteries or graveyards under existing state law are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, this part is the exclusive law governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests against the interests of scientists, landowners, and developers;

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; and

(e) recognize the need for forensic examination of human skeletal remains, burial sites,

and burial material if the county coroner, county attorney, or state medical examiner determines an examination is necessary under state law.

History: En. Sec. 2, Ch. 748, L. 1991.

As used in this part, the following definitions apply:

- (1) "Board" means the burial preservation board established in 22-3-804.
- (2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.
- (3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.
- (4) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.
- (5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, except a cemetery or graveyard protected under existing state law, where human skeletal remains are or have been interred.
- (6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.
- (7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

History: En. Sec. 3, Ch. 748, L. 1991.

(1) The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to administer this part.

(2) Burial site records are confidential and available only to criminal justice agencies or to federal, state, and tribal personnel or their appointed representatives legally charged with administering laws protecting cultural resources.

(3) Statistical information compiled from burial site records must be made available to the general public. Any information concerning burial site records that is released to a criminal justice agency is confidential criminal justice information, as defined in 44-5-103, and is subject to dissemination pursuant to 44-5-303.

History: En. Sec. 7, Ch. 748, L. 1991.

(1) After July 1, 1991, unless authorized under this part or by the descendants, tribe, cultural group, or other person, group, or entity to which the board gives control of the human skeletal remains or burial materials under 22-3-805, a person may not:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of this part; or

(c) purposely or knowingly disclose information knowing that it is highly probable that the disclosure will lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) may be fined an amount not to exceed \$1,000, be imprisoned in the county jail for not more than 6 months, or

both. A person convicted of a subsequent violation of subsection (1)(a) may be fined an amount not to exceed \$20,000, be imprisoned for not more than 5 years, or both.

(3) A person convicted under the provisions of subsection (1)(b) may be fined an amount not to exceed \$50,000, be imprisoned for not more than 20 years, or both.

(4) A person convicted under the provisions of subsection (1)(c) may be fined an amount not to exceed \$500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) may be fined an amount not to exceed \$10,000, be imprisoned for not more than 5 years, or both.

(5) A person who knowingly fails to give notice as required by 22-3-805(1) may be fined an amount not less than \$100 or more than \$500.

(6) A person who violates a provision of this section or any term or condition of a permit issued under 22-3-806 is subject to a civil penalty not to exceed \$2,000 for the first violation and not to exceed \$10,000 for a subsequent violation.

History: En. Sec. 8, Ch. 748, L. 1991.

(1) This part does not preclude civil actions for damages.

(2) The board may bring an action under 22-3-808 for a civil penalty.

History: En. Sec. 9, Ch. 748, L. 1991.

The board may close part of a meeting of the board to the public if the board finds that information that may be acquired at that part of the meeting may allow a person to identify a burial site, human skeletal remains, or burial material and pilfer, disturb, or destroy the human skeletal remains, burial site, or burial material.

History: En. Sec. 10, Ch. 748, L. 1991.

There is an account in the state special revenue fund. The board shall deposit any fee, grant, or donation received under 22-3-804 into the account to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

History: En. Sec. 13, Ch. 748, L. 1991.

Delaware Legislation Dealing with Unmarked Burials

Delaware Code 7-5401 through Delaware Code 7-5410

§ 5401 Purpose.

The purpose of this subchapter is:

- (1) To help provide adequate protection for unmarked human burials and human skeletal remains found anywhere within the State, including subaqueous lands, but excluding those found anywhere on federal land;
- (2) To provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the Medical Examiner that are encountered during archaeological excavation, construction or other ground disturbing activities;
- (3) To provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials;
- (4) To provide for the dignified and respectful reinterment or other disposition of Native American skeletal remains.

66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, §§ 4, 5.;

§ 5402 Definitions.

As used in this subchapter:

- (1) "Committee" shall mean a body consisting of the Chief of the Nanticoke Indian Tribe, 2 members appointed by the Chief, the Director of the Division of Historical and Cultural Affairs of the Department of State and 2 members appointed by the Director and a seventh member from the private sector appointed by the Governor. The Committee members shall be residents of the State and shall serve 1-year, renewable terms.
- (2) "Director" shall mean Director of the Division of Historical and Cultural Affairs, Department of State.
- (3) "Human skeletal remains" or "remains" shall mean any part of the body of a deceased human being in any stage of decomposition.
- (4) "Medical Examiner" shall be as defined in Chapter 47 of Title 29.
- (5) "Professional archaeologist" shall mean a person having:
 - a. A graduate degree in archaeology, anthropology, history or another related field with a specialization in archaeology;
 - b. A minimum of 1 year's experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains; and
 - c. Designed and executed an archaeological study and presented written results and interpretations of such study.
- (6) "Skeletal analyst" shall mean any person having:
 - a. A graduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology or other relevant aspects of physical anthropology or medicine;

- b. A minimum of 1 year's experience in conducting laboratory reconstruction and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological affinity; and
- c. Designed and executed a skeletal analysis and presented the written results and interpretations of such analysis.

(7) "Unmarked human burial" shall mean any interment of human skeletal remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.

66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4.;

§ 5403 Discovery of remains and notification of authorities.

(a) Any person knowing or having reasonable grounds to believe that unmarked human burials or human skeletal remains are being encountered shall notify immediately the Medical Examiner or the Director.

(b) When unmarked burials or human skeletal remains are encountered as a result of construction or agricultural activities, said activity shall cease immediately upon discovery and the Medical Examiner or the Director notified of the discovery.

(c) Human burials or human skeletal remains which are encountered by a professional archaeologist as a result of survey or excavations must be reported to the Director.

Excavation and other activities may resume after approval is provided by the Director.

The treatment, analysis and disposition of the remains shall conform to the provisions of this subchapter.

(d) The director shall notify the Chief Medical Examiner, Department of Health and Social Services, of any reported human skeletal remains discovered by a professional archaeologist.

66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4.;

§ 5404 Jurisdiction over remains.

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the Medical Examiner shall certify in writing to the Director, as soon as possible, whether the remains come under the Medical Examiner's jurisdiction.

(b) If the Medical Examiner determines that the remains come under the Medical Examiner's jurisdiction, the Medical Examiner will immediately proceed with an investigation pursuant to Chapter 47 of Title 29.

(c) All those remains determined to be not within the jurisdiction of the Medical Examiner shall be within the jurisdiction of the Director.

66 Del. Laws, c. 38, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 153, § 4.;

§ 5405 Archaeological investigation of human skeletal remains.

All excavations not under the jurisdiction of the Medical Examiner shall be either conducted by, or under the supervision of, a professional archaeologist and shall be subject to permission from the landowner. All permissible excavations shall be conducted in accordance with the regulations promulgated for this subchapter.

66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4.;

§ 5406 Consultation, analysis and disposition.

(a) The Committee shall be notified of all skeletal remains determined to be Native American within 5 days of discovery. Within 60 days of notification, the Director shall

provide the Committee with a written plan for the treatment and ultimate disposition of the Native American skeletal remains.

(b) The Director shall publish notice of all excavations of human skeletal remains other than Native American, at least once per week for 2 successive weeks in a newspaper of general circulation in the county where the burials or skeletal remains were situated, in an effort to determine the identity or next-of-kin or both of the deceased. Treatment and ultimate disposition of the skeletal remains shall be subject to the written permission of the next-of-kin who notify the Director within 30 days of the last published notice. The Director shall provide next-of-kin with a written plan for treatment and ultimate disposition of human skeletal remains.

(c) All skeletal analysis conducted pursuant to this subchapter shall be undertaken only by a skeletal analyst as defined in § 5402(6) of this title.

(d) Any previously excavated skeletal remains of Native Americans of the State which are on display or remain uncovered as of June 5, 1987, shall be reinterred within 1 year. Treatment and disposition of all Native American remains discovered after enactment shall be determined by the Committee or, if direct descent can be determined, by the next-of-kin. In any event, Native American skeletal remains discovered after enactment shall be reinterred within 90 days unless an extension is granted by the Committee.

Ultimate disposition of all non-Native American remains shall be determined by the next-of-kin, if known. If next-of-kin are unknown, disposition shall be determined by the Director. All costs associated with reinterment of human skeletal remains must be borne by the next-of-kin, if known.

(e) Any state agency which is responsible, either directly or indirectly, for the unearthing of human remains deemed to be the responsibility of the Division of Historical and Cultural Affairs shall be responsible for the cost of reinterment of those remains.

66 Del. Laws, c. 38, § 1; 68 Del. Laws, c. 290, § 84; 75 Del. Laws, c. 153, §§ 4, 7.;
§ 5407 Prohibited acts.

No person, unless acting pursuant to Chapter 47 of Title 29, shall:

(1) Knowingly acquire any human skeletal remains removed from unmarked burials in Delaware, except in accordance with this subchapter.

(2) Knowingly sell any human skeletal remains acquired from unmarked burials in Delaware.

(3) Knowingly exhibit human skeletal remains.

66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4.;
§ 5408 Exceptions.

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to this subchapter.

(b) Human skeletal remains determined to be within the jurisdiction of the Medical Examiner are not subject to the prohibitions contained in this subchapter.

(c) Human skeletal remains acquired through archaeological excavations under the supervision of a professional archaeologist are not subject to the prohibitions as provided in § 5407(1) of this title.

66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, §§ 4, 8.;
§ 5409 Criminal penalties.

Any person who violates § 5407 of this title shall upon conviction be sentenced to pay a fine of not less than \$1,000 nor more than \$10,000 or be imprisoned not more than 2 years or both. The Superior Court shall have jurisdiction of offenses under this chapter.

66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, §§ 4, 6, 9.;

§ 5410 Rules, regulations, standards, and guidelines.

The Division of Historical and Cultural Affairs may, with the approval of the Department of State, formulate and adopt such rules, regulations, standards and guidelines as it considers necessary for the effective execution of its purposes under this chapter.

75 Del. Laws, c. 153, § 10.;

Michigan Legislation Dealing with Unmarked Burials

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT

Act 451 of 1994

324.76106 Removal of relics or records of antiquity; consent of landowner required.

Sec. 76106.

Without the consent of the land owner, a person shall not remove any relics or records of antiquity such as human or other bones; shells, stone, bone, or copper implements; pottery or shards of pottery, or similar artifacts and objects from the premises where they have been discovered.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995

Popular Name: Act 451

Michigan Legislation Exception to Burial Law Prohibitions

THE MICHIGAN PENAL CODE

Act 328 of 1931

750.160 Disinterment, mutilation, defacement, or carrying away of human body;
exception.

Sec. 160.

A person, not being lawfully authorized so to do, who shall wilfully dig up, disinter, remove, or convey away a human body, or the remains thereof, from the place where the body may be interred or deposited, or who shall knowingly aid in such disinterment, removal, or conveying away, or who shall mutilate, deface, remove, or carry away a portion of the dead body of a person, whether in his charge for burial or otherwise, whenever the mutilation, defacement, removal, or carrying away is not necessary in any proper operation in embalming the body or for the purpose of a postmortem examination, and every person accessory thereto, either before or after the fact, shall be guilty of a felony, punishable by imprisonment for not more than 10 years, or by fine of not more than \$5,000.00. This section shall not be construed to prohibit the digging up, disinterment, removal or carrying away for scientific purposes of the remains of prehistoric persons by representatives of established scientific institutions or societies, having the consent in writing of the owner of the land from which the remains may be disinterred, removed or carried away.

History: 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.160 ;-- Am. 1974, Act 168, Imd. Eff. June 23, 1974

Former Law: See section 21 of Ch. 158 of R.S. 1846, being CL 1857, § 5876; CL 1871, §

7711; How., § 9297; CL 1897, § 11710; CL 1915, § 15484; CL 1929, § 16836; Act 158 of 1879; Act 251 of 1919; and Act 256 of 1929.

Appendix C

Letter to the National Geographic Society, National Geographic Channels, and National Geographic Channel International

March 31, 2014

Gary E. Knell, President and CEO

National Geographic Society

1145 17th Street NW

Washington, DC 20036

David Lyle, CEO

National Geographic Channels

1145 17th Street NW

Washington, DC 20036

Ward Platt, CEO

National Geographic Channel International

1145 17th Street NW

Washington, DC 20036

Dear Sirs:

The Society for American Archaeology (SAA), the Society for Historical Archaeology (SHA), the Archaeological Institute of America (AIA), the American Anthropological Association (AAA), the European Association of Archaeologists (EAA), and the European Association of Social Anthropologists (EASA) wish to express our deep disappointment and grave concern about the upcoming National Geographic Channel International's (NGCI's) show, *Nazi War Diggers*. Together, SAA, SHA, AIA, AAA, EAA, and EASA represent more than 10,000 professional archaeologists and more than 600,000 individuals interested in archaeology. Our members live and work in all parts of the world, including the areas ravaged by World War II.

The video and statements introducing *Nazi War Diggers* on the National Geographic Channel (NGC) Web site showed a complete disregard for proper and respectful treatment of human remains and a callous commercialization of the archaeological record. We appreciate that NGC removed the video and incendiary remarks, but remain concerned about the content and format of the four-part show. The reference to Nazis in the title seems more of a device to attract a certain segment of the viewing public than a historical necessity or a central element of the show. The use of the term "Nazi" to describe the excavation of World War II sites, however, is insensitive and objectionable. We strongly urge NGCI to consider either (1) pulling the show entirely or (2) renaming it to strike the reference to Nazis and revising it to comply with accepted archaeological ethical principles and standards of practice.

In response to criticism over the promotional material and video, NGCI issued a statement from representatives from Latvian and Polish archaeological organizations supporting Nazi War Diggers. NGCI correctly observes that looting at World War II sites is a major problem. They go on to state that the show will demonstrate the need to recover remains and artifacts in a legal and authorized manner. The archaeological work on the show was all conducted, according to NGCI, under professional supervision and meets professional standards.

Given our experience with the U.S.-based NGC show Diggers, we suspect that NGCI's press release may be entirely accurate. Yet, we also strongly suspect that the TV show will leave the audience with the impression that metal detecting and archaeological excavation can be done without supervision and without being part of a larger archaeological team. We fear that instead of encouraging the interested public to work with archaeologists to recover in a respectful and systematic manner human remains, artifacts, and information about critically important and emotionally charged historical events, the show will have the exact opposite effect: to encourage individuals to buy metal detectors and loot World War II battlefields and other archaeological sites. Unless there are major changes to Nazi War Diggers, we are concerned that the shows will glorify recovering artifacts without regard to their context, their historical significance, or their value to local communities, descendants, or the public at large.

The retrieval of war dead has been a sacred duty of nations for generations. The promotional video for Nazi War Diggers was particularly troubling. The individuals in

the film showed an utter lack of knowledge about proper burial excavation technique and human osteology, resulting in the disrespectful treatment of human remains, which has the effect of titillating the audience and sensationalizing the process. If a main objective of the show is to discourage “black digging” as NGCI claims, then this video clip leaves us with very little hope that this goal will be accomplished.

But it doesn't have to be this way. The Joint POW/MIA Accounting Command (JPAC), for example, offers a model for how professionals and nonprofessionals can cooperate to recover war dead. JPAC demonstrates that the use of historical documentation to identify probable locations of military events; the development of appropriate recovery strategies to govern archaeological excavation; the proper training of nonprofessionals in archaeological technique; the collaboration of professionals and nonprofessionals in a supervised setting; the proper and respectful handling of remains; the documentation, reporting, and curation of project materials; and the repatriation of human remains and personal items to descendant family members are all integral parts of the process that cannot be left on the cutting-room floor.

SAA, SHA, AIA, AAA, EAA, and EASA want to assist NGCI in creating a TV show that displays the excitement and exhilaration of archaeology at the same time it portrays how professionals and nonprofessionals can work together to gain insights about the past. The show must not only meet archaeological ethical codes of conduct and standards of research performance, but show how these practices are met on screen. If NGCI would

like to produce such a show, we stand ready to help. If not, we ask that the show, *Nazi War Diggers*, not be aired.

Sincerely,

Jeffrey H. Altschul, President, Society for American Archaeology

Charles Ewen, President, Society for Historical Archaeology

Andrew Moore, President, Archaeological Institute of America

Monica Heller, President, American Anthropological Association

Friedrich Lüth, President, European Association of Archaeologists

Noel B. Salazar, President, European Association of Social Anthropologists

Email from SAA President

Dear Colleagues:

This morning the Society for American Archaeology (SAA), the Society for Historical Archaeology (SHA), the Archaeological Institute of America (AIA), the American Anthropological Association (AAA), the European Association of Archaeologists (EAA), and the European Association of Social Anthropologists (EASA) sent a joint letter to the National Geographic Society (NGS), the National Geographic Channels (NGC), and the National Geographic Channel International (NGCI) requesting that the TV show, *Nazi War Diggers*, be renamed and revised to meet the profession's archaeological ethical

principles and standards of research performance or that the show not be aired. Our letter can be found

at: <http://www.saa.org/Portals/0/SAA/GovernmentAffairs/Nazi%20War%20Diggers-V5.pdf>

When I was first alerted to the promotional video and material for the show by the AAA, I contacted NGS and asked for an explanation. Charles Ewen, president of SHA, did the same with NGC. As we continued the dialogue with NGS and NGC, we reached out to other professional organizations in the U.S. and Europe and proposed a joint letter as the best means of conveying our concerns over the TV show. Within hours of finishing our letter, NGS informed me that NGCI had decided to pull the show from its schedule indefinitely. Their press release speaks to NGS and NGC's commitment to engage viewers and produce shows to the highest standards. SAA appreciates the decision not to air the show. We also stand ready to assist NGS and NGC in meeting their stated goals.

Jeff Altschul, President

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for American Archaeology, 2003. Print.

ACADEMIC VITA

CORTLYN A HAGMAN

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EDUCATION

The Pennsylvania State University, University Park, Pennsylvania

June 2010 – May 2014

Schreyer Honors College • Paterno Fellow (Liberal Arts Honors Program)

Majors: Anthropology, Political Science, Spanish

Languages: English; Spanish (Advanced Intermediate)

Honors: Dean's List 7 semesters, Matson Student Member Fellowship, Craig Trustee Scholarship, Hyde Trustee Scholarship, Trout and Kreider Scholarship, Student Leader Scholarship, Phi Sigma Alpha (Political Science National Honor Society), Students That Are Recognized (STAR) Award (awarded for leadership in the residence halls), John W. Oswald Award for Scholarship

Publication: *Wild*, Penn Statements Volume 30

The Mendes Expedition, Mendes, Egypt

Summer 2012

The Pennsylvania State University • Dr. Donald Redford and Dr. Susan Redford

Site Supervisor Position: Supervised and instructed a team of Egyptian workers, recorded provenience and descriptions of all artifacts uncovered and constructed site plans. Gained the following skills:

- **Flotation:** Used flotation to extract organic material from light fraction and heavy fraction soil samples.
- **Pottery Restoration:** Restored pottery vessels in order to further analyze their date and type.
- **Artifact Registration:** Analyzed, photographed, and registered artifacts in the expedition database.

LEADERSHIP

Archaeological Institute of America

Fall 2012 – Fall 2013

Matson Student Member Fellow

- Promote a vivid and informed public interest in the cultures and civilizations of the past.
- Host researchers and speakers from universities around the world.

- Explore new subject areas as scholars of archaeology.

University Park Allocation Committee

Fall 2011 – May 2014

Representative, Student Contact Team Chair

- Review student organization funding requests and allocate the student activity fee as a Representative.
- Familiarize student organizations with the process of applying for student activity fee funds and represent student organizations during allocation reviews as a Student Contact Team Member.
- Schedule allocation reviews, act as primary contact for students applying for funding, and manage a committee of Student Contact Team representatives as Student Contact Team Chair.

HUB Advisory Board

Fall 2012 – May 2014

Representative

- Represent the University Park Allocation Committee on issues related to the use of the student activity fee at the HUB-Robeson Center, the Penn State student union.
- Review the applications of student organizations seeking office space at the student union and allocate appropriately.
- Assist in planning HUB-Robeson Center renovations.

Association of Residence Hall Students

Fall 2011 – May 2014

Homecoming Chair, Activities Chair, Social Chair

- Managed the group's homecoming involvement, including preparation of the parade float and coordination of group competitions as Homecoming Chair.
- Planned, publicized, and executed campus wide activities to improve the lives of on-campus students as Activities Chair. Events included campus-wide carnivals, large scale casino-style game nights, and 5k races.
- Promote teamwork and bonding experiences between group members by planning internal activities as Social Chair.

PROFESSIONAL EXPERIENCE

Office of Global Studies: Intensive English Communication Program

Fall 2013 – May 2014

Transition Partner

- Aid international students with a limited knowledge of English in their transition into the Penn State community.
- Work one-on-one with each student during International Student Orientation to ensure they understand what is being said.
- Aid students in the search for housing and health insurance.

Teach For America

Fall 2012 – May 2014

Campus Ambassador, Campus Campaign Coordinator, Physical Marketing Captain

- Coordinate recruitment campaigns with a team of students to meet regional and campus recruitment goals.
- Managed the physical marketing distribution of a team of 15 interns and volunteers.
- Campaign strategies include meeting with faculty and prospective students, giving classroom presentations, planning demonstrations in high traffic areas on campus, holding information sessions, hanging posters, and passing out flyers.

Harpers Ferry National Historical Park

Summer 2013

Education Department Intern

- Planned and executed seven educational programs designed for K-12 students visiting the park.
- Engaged 1,260 students in educational activities, including curriculum base programs for a national leadership conference for middle school aged students and hands-on experiential learning programs such as scavenger hunts, hikes, gardening programs, and crafts.
- Created educational materials to be used for the celebration of the West Virginia Statehood Celebration, celebrating the 50th anniversary of the state's admission to the Union.

Environmental Archaeology Laboratory

Spring - Summer 2013

Laboratory Assistant

- Sorted organic remains found in sieved soil samples from the excavation of a Creek Native American site in Georgia.
- Helped identify each of the organic remains, such as , such as seeds, corn cupules, and wood.
- Recorded findings using Excel and reported on each sample.