

## Professional Standards For the Determination of Archaeological Value

Escrito por Society For American Archaeology

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The Society for American Archaeology (SAA) is an international organization dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas. With more than 6,800 members, the society represents professional, student, and avocational archaeologists working in a variety of settings including government agencies, colleges and universities, museums, and the private sector.

The Archaeological Resources Protection Act of 1979 (ARPA) (Title 16, United States Code, Sections 470aa-470mm) and the ARPA Uniform Regulations establish “archaeological value” as one of three measures of the gravity of any criminal or civil violation of ARPA. In order to assist archaeologists performing archaeological damage assessments in ARPA cases, the SAA Task Force on Archaeological Law Enforcement has developed the following professional standards for the determination of archaeological value. The SAA Board strongly endorses these standards and encourages their use by professional archaeologists.

The determination of archaeological value is directly analogous to a routine professional practice that occurs daily in the United States. This is the process of developing real budgets for actual recovery of archaeological materials and data in mitigation or research projects that will be implemented through funding from contracts, grants, donations or other sources. In this sense, the determination of archaeological value is simply the structured application of this professional practice in order to provide information required by federal law.

The professional archaeologist who performs an archaeological value determination should be qualified to serve as an expert witness (Rule 702, Federal Rules of Evidence).

In addition to meeting general professional standards in archaeology, required qualifications include regional expertise and experience with resources similar to the resource(s) involved in the archaeological value determination. Formal training in the preparation of archaeological value determinations is recommended.

The specific legal provisions governing the determination of archaeological value are as follows.

### **ARPA Criminal Offenses and Archaeological Value**

The “Prohibited Acts and Criminal Penalties” section of ARPA specifies that “archaeological value” will be considered in determining whether the archaeological resource violation qualifies as a felony offense (Title, 16 United State Code, Section 470ee(d)). Trafficking in archaeological resources also may constitute a violation of ARPA (Title 16, United States Code, Section 470ee(b), (c)). Federal courts are required to use archaeological value in determining appropriate sentences for defendants convicted of ARPA violations or other federal offenses involving cultural heritage resources (United States Sentencing Guidelines, Section 2B1.5).

### *ARPA Civil Penalties and Archaeological Value*

The “Civil Penalties” section of ARPA specifies that “archaeological value” will be considered in determining the amount of a civil penalty for an archaeological resource violation (Title 16, United States Code, Section 470ff(a)(2)(A)).

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### *ARPA Prohibited Conduct*

The ARPA Statute and ARPA Uniform Regulations specify that under certain circumstances (e.g., lack of ARPA permit), prohibited conduct includes the following acts: "excavate, remove, damage, or otherwise alter or deface" any archaeological resource, "or attempt to (do any such act)" (Title 16, United States Code, Section 470ee(a); Regulations, section \_\_.4(a)). This prohibited conduct applies to both ARPA criminal offenses (Title 16, United States Code, Section 470ee(d)) and ARPA civil penalties (Title 16, United States Code, Section 470ff(a)(1); Regulations, Section \_\_.15(a)).

## **ARPA Definitions**

### *Archaeological Resource*

"The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest ... at least 100 years of age" (Title 16, United States Code, Section 470bb(1)).

### *Material Remains*

"Material remains" means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated" (Regulations, Section \_\_.3(a)(2)).

### *Archaeological Interest*

"Of archaeological interest" means capable of providing scientific or humanistic understandings of past human behavior ..." (Regulations, Section \_\_.3(a)(1)).

### *Archaeological Value*

" ... The archaeological value of any archaeological resource involved in a violation ... shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying our laboratory analysis, and preparing reports as would be necessary to realize the information potential (Regulations, Section \_\_.14(a)).

## **Professional Standards for the Determination of Archaeological Value**

### *Standard 1 – Identification of the Archaeological Resource(s) Involved in the ARPA Violation*

The first step in determining archaeological value is to specifically identify the archaeological resource(s) involved in the ARPA violation (i.e., the archaeological resource(s) excavated, removed, damaged, or otherwise altered or defaced). Identification of the archaeological resource(s) involved in the violation must be based on:

- a. the physical attributes of the archaeological resource(s), including spatial extent, and the discernable or inferable archaeological context of the resource(s) (this archaeological context could be an entire site, groups of features or strata, a single feature or stratum, single artifacts, or other commonly defined components of the archaeological record);

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b. the physical evidence of the prohibited conduct (i.e., excavation, removal, damage, alteration, or defacement) and its spatial extent;

c. knowledge about similar archaeological resources based on professional experience; and d. other archaeological, historical, and ethnographic sources, including information from descendant communities, to the extent that these sources contribute to scientific knowledge.

### *Standard 2 - Scale of Scientific Information Retrieval to be Used in Determining Archaeological Value*

The ARPA Uniform Regulations specify that archaeological value “shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation” (Regulations, Section \_\_.14(a)). Therefore, the appropriate scale of scientific information retrieval must be selected.

When the context of the archaeological resource(s) involved in the prohibited conduct cannot be ascertained more specifically than a site or location (e.g. unauthorized excavations in a site with no visible surface features), the scale of scientific information retrieval used in determining archaeological value must be based on the standard archaeological unit(s) that would at least encompass the spatial extent of the prohibited conduct (e.g., the volume of excavation resulting from the prohibited conduct). A standard archaeological unit in this case means a metric unit (e.g., a 2 by 2 meter square).

When the context of the archaeological resource(s) involved in the prohibited conduct can be ascertained more specifically than a site or location (e.g., an archaeological feature at a site), the scale of scientific information retrieval also must be based on the standard archaeological unit for that context. A standard archaeological unit in this case means a cultural unit, such as a pithouse, fire pit, burial feature, or petroglyph panel (for which metric units would be used as appropriate).

In addition, the scale of scientific information retrieval must be proportional to the nature and extent of the prohibited conduct. For example, a small, shallow hole dug into a large pithouse would not warrant an archaeological value determination based on scientific information retrieval from the entire structure. If, on the other hand, a backhoe had been used to excavate most of the pithouse, scientific information retrieval for the entire structure may well be the appropriate scale. This proportionality concept relates the scale of scientific information retrieval to the magnitude of harm to the archaeological resource(s) resulting from the prohibited conduct.

### *Standard 3 – Methods of Scientific Information Retrieval*

The methods of scientific information retrieval used as the basis for the archaeological value determination should be appropriate to the scale of the standard archaeological unit that has been selected. Depending on the conventions of archaeological practice in the area, examples of appropriate methods in a particular case involving unauthorized excavation would include a column sample, an excavation square, an excavation trench, a set of statistically based sample excavation units, or a block of contiguous excavation units. There also would be a comparable range of appropriate methods for cases involving other types of prohibited conduct.

In addition, the scientific information retrieval methods should be proportional to the nature and

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extent of the prohibited conduct. For example, the methods employed for scientific information retrieval from an entire pithouse would not be proportional contextually or justifiable scientifically relative to excavation of a small, shallow hole in the pithouse.

### *Standard 4 – Scientific Information Retrieval Standards*

The methods of scientific information retrieval used as the basis for the archaeological value determination should meet current and customary professional standards appropriate to the archaeological resource, the archaeological context, and the standard archaeological unit in the region. The retrieval methods also should comply with applicable government agency standards (e.g., *Secretary of the Interior's Standards and Guidelines*).