

Archeological Resources Protection Act of 1979

THIS PROCEDURE implements the provisions of Public Law 9696 (93 Stat. 721; 16 USC 470aa470MM), Archeological Resources Protection Act of 1979 (ARPA), and the final uniform regulations issued under the Act by the Department of Defense (32 CFR § 229). ARPA makes it a federal felony offense for the unauthorized excavation, removal, damage, alteration, or defacement of any archeological resources located on federal lands. The sale, purchase, exchange, transport, or receipt of any archeological resources obtained in violation of this or related laws is also a federal felony offense under ARPA.

Policies

Archeological resources from United States Army installations belong to the United States Government, except where NAGPRA requires repatriation of human remains or objects of cultural patrimony to a lineal descendant or Indian tribe. IAW AR 200-4, the Installation Commander will ensure that military police, installation legal staff, the installation Public Affairs Office (PAO), and the fish, game, and recreation management staff, and trainees are familiar with the requirements and applicable civil and criminal penalties under ARPA. In instances where proof of violation may be insufficient to obtain a conviction under the Act, or where deemed otherwise advisable, the Staff Judge Advocate may choose to assess a civil penalty under the provisions of 32 CFR § 229.15. Such actions may be particularly applicable to violations of Section 106 of the NHPA (36 CFR § 800) and the procedures outlined in SOP #1 of this ICRMP. For the purposes of Army compliance with ARPA, the Installation Commander is considered the federal land manager as defined in 32 CFR § 229.3(c). As the federal land manager, the Installation Commander may determine that certain archeological resources in specified areas under his jurisdiction, and under specific circumstances, are not or are no longer of archeological interest and are not considered archeological resources for the purposes of ARPA (IAW 32 CFR § 229.3(a)(5)). All such determinations shall be justified and documented by

memorandum and shall be formally staffed for review through the MACOM to HQDA prior to final determination (AR 200-4(26(g))) IAW AR200-4(26(b)). The use of metal detectors to locate archeological resources is prohibited on Army installations except when used by Army personnel, contractors, or permittees in association with official cultural resources management activities or pursuant to a permit issued under ARPA.

ARPA Permit Procedures

Archeological investigations that may result in the excavation and/or removal of archeological resources from Fort Bragg may not proceed without the express written approval of the Installation Commander. All archeological investigations conducted by individuals or agencies who are not under contract to, or otherwise cooperatively assisting the Department of Army, must obtain a permit issued by the USACE Savannah District Real Estate Officer on the approval of the Installation Commander.

The Installation Commander provides the USACE Savannah District with approval to issue the permit by means of a Determination of Availability report prepared after necessary consultation and compliance actions have been met. The Fort Bragg Cultural Resources Managers will monitor the field investigations of persons with archeological permits to ensure:

1. That compliance with the requirements of 32 CFR § 229, 43 CFR § 10 and the terms and conditions of the permit,
2. That any interests federally recognized Indian tribes may have in the permitted activity are addressed in a manner consistent with the requirements of the NHPA and NAGPRA, and
3. That permitted activities are performed according to applicable professional standards of the Secretary of the Interior.

Public Notice

The Cultural Resources Manager will ensure that a brief notice outlining the acts prohibited under ARPA and the criminal penalties assessed under the Act are published in the installation newspaper at least once each calendar year. This notice will include the prohibition of recreational use of metal detectors IAW AR 200-4.

Antiquities Act of 1906

Paleontological remains and deposits are considered to be objects of antiquity pursuant to the Act (16 USC 431433) and are specifically identified under AR 200-4 as being cultural resources under the purview of the Cultural Resource Program. All paleontological remains and deposits on the Fort Bragg military reservation belong to the installation and are protected under this Act from appropriation, excavation, injury or destruction. The Cultural Resources Manager will be notified of any discovery of remains or deposits suspected to be of paleontological origin and will institute appropriate measures for the protection and preservation of such objects in consultation with the Installation Commander and HQDA.

Protection of Archeological Sites

Information documenting the condition of, and threats to, archeological sites on Fort Bragg is completed during the Phase I inventory process. The large surface area of Fort Bragg, intensive military training activities, and limited manpower combine to restrict active site monitoring to those few sites most at risk. The effects of erosion and training represent the greatest threat to archeological sites on Fort Bragg. The soft, thin soils are easily displaced by the effects of wind and water. Other sites are subject to disturbance by routine training activities. Where a site is assessed as eligible for nomination to the NRHP, coordination is effected until Phase II testing and evaluation is complete. The Cultural Resources Manager will mark the site as off-limits and places protective signs around the site. Protection of NRHP eligible sites will consider potential impacts from human activities, as well as their physical location on the landscape.

Site Protection Procedures

1. Sites are protected by using signage that says “environmentally sensitive area—no ground disturbance—protected by federal law and Army regulation” OR "Keep Out by Order of the Post Commander."
2. Range Control is notified of all sites that require protection so that necessary measures may be instituted to preclude site damage during military training exercises. Where protection of a specific site would degrade or prohibit the completion of the Fort Bragg mission, consultation will be conducted with the North Carolina SHPO and the ACHP IAW 36 CFR § 800.5.
3. Periodic monitoring by the Cultural Resources Manager of all protected sites will take place not less than twice a year, preferably in early spring

and late fall. At these times, any change in site condition since the initiation of protection, or the last monitoring visit, will be documented. If necessary, the site protection strategy will be reevaluated and appropriate actions implemented to ensure continued site protection.

4. The condition of all protected sites will be included in the annual report to the SHPO. Any damage, alteration, or deterioration and associated corrective measures will be documented.

Archeological Site Violation Documentation Procedures

Investigation of looting or vandalism of an archeological site requires a systematic examination of the crime scene by both a law enforcement investigator and a professional archeologist. A law enforcement officer is responsible for investigating violations of the law and, therefore, directs the archeological crime scene investigation process. The archeologist provides forensic expertise on archeological resources for the crime scene investigation, and may be requested to assist in other activities, such as taking the crime scene photographs, testifying, helping with the crime scene sketch, or providing assistance in collecting the archeological evidence.

Procedures

An ARPA investigation begins when an archeological crime is first suspected or discovered, whether in person or upon receiving a report from a third party. Information provided by a witness should include a signed narrative statement describing the exact location, specific activity, and people and any vehicles involved. Specific investigation steps are:

1. **Field Notes:** Investigative note taking should contain, at a minimum, the who, what, where, when, why, and how of the incident, as well as the following specific information:

- Name and title of investigator and/or archeologist
- Date and time assigned to the case
- Who reported the crime and how it was reported
- Reported location of the crime
- Date and time of arrival at the crime scene
- Names of other members of the investigative team
- Weather and other environmental conditions
- Witnesses or other persons present
- Detailed description of the crime scene
- Specific details concerning actions taken

2. Crime Scene Search: The archeologist should accompany the law enforcement investigator during the initial crime scene survey to assist in locating archeological site damage and archeological and other physical evidence. If the crime scene involves human remains or objects of cultural patrimony of an obvious Native American origin, proceed with SOP #4.

3. Crime Scene Photography: Three types of photographs must be taken at the archeological crime scene:

- General, overall photographs of the entire area
- Intermediate photographs that show relationships of physical evidence contained in the crime scene
- Close-up photographs of each specific piece of evidence

The general rules concerning crime scene photography are as follows:

- Photograph the overall crime scene first
- Take intermediate crime scene photos second
- Photograph each item of evidence before moving or collecting it
- Take initial photographs without adding anything
- Maintain an accurate photo log and descriptions of each photograph
- Mark each photograph for identification purposes
- Handle all photographs, slides, and negatives as evidence

4. Crime Scene Sketch: The purpose of the crime scene sketch is to record the exact location of each evidential item as found. The crime scene sketch need not necessarily be drawn to scale, but all measurements must be accurately referenced to a fixed, immovable object. The sketch should also contain a title block that includes case number, date and time of sketch, name of sketcher, location, and name of person assisting with measurements.

5. Evidence Collection: Generally, the handling and collection of physical evidence at a crime scene will be handled by the law enforcement investigator. The sequence of evidence collection should follow a logical, systematic order.

6. Chain of Custody: In an ARPA case the law enforcement investigator, archeologist, and prosecutor together should determine which items of evidence should be analyzed by whom. The archeological evidence will normally be analyzed by a professional archeologist. Other types of physical evidence will be submitted to the crime laboratory. The same three people should also decide where to have the archeological evidence proceed.

7. Case Report: Detailed investigative field notes by both law enforcement and archeological specialists are the basis for preparing an ARPA case report. The report should include the following:

- Synopsis of the incident
- Individual team member reports
- Damage assessment report
- Photograph log
- Evidence log
- Laboratory reports
- Crime scene sketches, diagrams, and maps
- Witness statements
- List of potential government witnesses
- Letter from land manager concerning lack of ARPA permit issuance or violation of permit terms.