

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Div. of Culture and History TITLE NUMBER: 182

CITE AUTHORITY §29-1-5(a) & (b); 29-1-6(b); 29-1-7

AMENDMENT TO AN EXISTING RULE: YES ___ NO^x ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 3

TITLE OF RULE BEING PROPOSED: Standards and Procedures for Granting
Permits to Excavate Archaeological Sites and Unmarked Graves

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Judy Cooper
for Culture & History

82 CSR 3

TITLE 82
LEGISLATIVE RULES
DIVISION OF CULTURE AND HISTORY

SERIES 3

STANDARDS AND PROCEDURES FOR GRANTING PERMITS TO EXCAVATE
ARCHAEOLOGICAL SITES AND UNMARKED GRAVES

S82-3-1. GENERAL.

1.1. Scope - This legislative rule establishes the procedures by which permits are issued for the excavation of historic and prehistoric ruins and archaeological sites; burial grounds, human skeletal remains and unmarked graves; and the removal or alteration of grave markers. Additionally, it establishes the method by which property tax exemptions for unmarked graves are determined and the methods for disposing of skeletal remains and associated artifacts claimed by descendents and those remains and artifacts not claimed. Not included within the scope of this legislative rule are collections of artifacts from historic or prehistoric ruins, burial grounds, archaeological sites or unmarked graves acquired prior to passage of H.B. 4752 or of artifacts collected from the surface of the ground through surface survey.

1.2. Authorization - WV Code 29-1-5(a) and (b); 29-1-6(b); 29-1-7

1.3. File Date - July 5, 1990

1.4. Effective Date -

S82-3-2. DEFINITIONS.

archaeology: the systematic, scientific study of past cultures through examination of material remains.

ruins: the remnants of structures constructed by humans during historic or prehistoric times.

sites: areas occupied for various durations by humans throughout history and prehistory including, but not limited to, campsites, villages, dwellings, caves, rock shelters and industrial complexes.

proven kinship: the relationship among people that exists because of genetic (which includes racial) descent, or marriage; in the case of Native American remains also includes persons who are designated by the director as acceptable and responsible representatives of an organization dedicated to and knowledgeable in Native American religious and cultural values.

burial grounds: a location where during history or prehistory human bodies or skeletal remains are entombed in visibly marked or unmarked graves and may include objects or artifacts with them.

grave goods: artifacts found in association with a human burial.

professional archaeologist: an individual meeting the qualifications specified in the Secretary of the Interior's Standards for the Recovery of Archaeological Data (36 CFR 66).

avocational archaeologist: an individual whose vocation is in a field different than archaeology and who does not have a degree in the subject.

permit: a written authorization issued by the director of archives and history, or designee, to conduct excavations of historic and prehistoric ruins, archaeological sites, burial grounds, human skeletal remains, and unmarked graves, and to remove or alter grave markers.

emergency condition: any unforeseen discovery of human remains.

excavation: the controlled removal of dirt to uncover and retrieve artifacts or human skeletal remains.

surface survey: an activity that involves traversing the land for the purpose of locating archaeological sites as revealed by artifacts found on the surface of the ground.

historical/archaeological significance: Sites, ruins, burial grounds, or unmarked graves having significance will be determined so by applying the criteria of eligibility for the National Register of Historic Places found in 36 CFR 60.

S82-3-3. TERMS AND CONDITIONS OF PERMITS TO EXCAVATE HISTORIC AND PREHISTORIC RUINS AND ARCHAEOLOGICAL SITES.

3.1. Any person proposing to excavate a ruin or site shall request a permit application form from the director of archives and history, or designee, at the Division of Culture and History, The Cultural Center, Capitol Complex, Charleston, WV 25305. They may call the Cultural Center at 348-0240 to determine if the activity being undertaken will require a permit. Permits will be issued on a project by project basis. The form will provide for and require the following information:

3.1.a Documentation of the property owner's or property manager's, in the case of publicly owned land, permission to excavate. Recovered artifacts remain the property owner's, except in the case of publicly owned land, unless they forfeit their rights to them in writing.

3.1.b The applicant's qualifications. A professional archaeologist will submit a resume, if not already on file at the State Historic Preservation Office. Permits for longer than two years may be granted to professionals through Memorandums of Understanding when they have demonstrated their ability to do competent work to the director of archives and history, or designee. Avocational archaeologists will submit a letter explaining their past accomplishments as an avocationalist.

3.1.c. An excavation plan detailing the methodologies and techniques by which the excavations will be conducted and justification for excavating the site or ruin.

3.1.d. The facility where recovered material and excavation records will be curated.

3.1.e. A plan to restore the site to its former condition prior to excavations when the site is not intended to be altered or destroyed.

3.1.f. A report of the excavations will be submitted upon completion of fieldwork. The deadline for reports will vary depending upon the nature of the project. Professionals will submit reports of the quality recommended in the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (36 CFR 68). Avocationalists are not expected to submit reports of professional quality, but they shall minimally include information on site location and conditions, relevant background information, all field observations (stratigraphy, features, etc.), and analyses and results. The director of archives and history, or designee, may request that reports be written for publication to be read by the general public, or in other ways disseminate the information recovered through permitted excavations to the general public.

3.1.g. Upon review of the permit application by the director of archives and history, or designee, a written response to the applicant will be forwarded within thirty days of receipt of the application. Permits may be issued for up to two years and may be suspended or revoked at any time for failing to meet terms and conditions of the permit. The director of archives and history, or designee, shall be allowed access to any excavation of a site or ruin to observe whether conditions and terms of the permit are being met.

3.1.h. Permits may be denied for reasons including, but not limited to, failure to provide a completed application form, inadequate

justification for excavating a site or ruins, or inability to complete satisfactorily a previous excavation. The reasons for denial shall be written down and forwarded to the applicant within thirty days of receipt of the application. Applicants denied a permit may appeal the decision by requesting a hearing before a regularly scheduled meeting of the Archives and History Commission.

382 - 3 - 4. TERMS AND CONDITIONS OF PERMITS TO EXCAVATE BURIAL GROUNDS, HUMAN SKELETAL REMAINS AND UNMARKED GRAVES.

4.1. After the director of archives and history, or designee, has been notified of the discovery of burial grounds, human skeletal remains, or unmarked graves and determined them to have archaeological significance, and after alternatives to excavation have been examined, and attempts to notify descendants of the deceased have been made; the director, or designee, may, upon receipt of a completed permit application form, issue a permit to excavate the burial grounds, human skeletal remains, or unmarked graves. Permits to excavate burials will be made available for review by the public upon request. When the director, or designee, determines that emergency conditions exist, a permit may be issued without having received an application form, provided that the terms and conditions for excavating are formally agreed to at a more convenient time. A permit will provide for and require the following information:

4.1.a. Documentation of the property owner's or property manager's, in the case of publicly owned land, permission to excavate. Recovered artifacts remain the property owner's, except in the case of publicly owned land, unless they forfeit their rights to them in writing.

4.1.b. The applicant's qualifications. A professional archaeologist will submit a resume, if not already on file at the State Historic Preservation Office. Permits for longer than two years may be granted to professionals through Memorandums of Understanding when they have demonstrated their ability to do competent work to the director of archives and history. Avocational archaeologists will submit a letter explaining their past accomplishments as an avocationalist.

4.1.c. An excavation plan detailing the methodologies and techniques by which the excavations will be conducted and justification for excavating the burial grounds, human skeletal remains, or unmarked graves except when discovered through construction activities.

4.1.d. The facility where recovered material and excavation records will be curated.

4.1.e. A plan to restore the site to its former condition prior to excavations when the site is not intended to be altered or destroyed.

4.1.f. A report of the excavations will be submitted upon completion of fieldwork. The deadline for reports will vary depending upon the nature of the project. Professionals will submit reports of the quality recommended in the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (36 CFR 68). Avocationalists are not expected to submit reports of professional quality, but they shall minimally include information on site location and conditions, relevant background information, all field observations (stratigraphy, features, etc.), and analyses and results. The director of archives and history, or designee, may request that reports be written for publication to be read by the general public, or in other ways disseminate the information recovered through permitted excavations to the general public.

4.1.g. Upon review of the permit application by the director of archives and history, or designee, a written response to the application will be forwarded within thirty days of having received the application. Permits may be issued for up to two years and may be suspended or revoked at any time due to failure of meeting terms and conditions of the permit. The director of archives and history, or designee, shall be allowed access to any excavation of burial grounds, human skeletal remains, or unmarked graves to observe whether conditions and terms of the permit are being met.

4.1.h. Permits may be denied from being issued for reasons including, but not limited to, failure to provide a completed application form, inadequate justification for excavating burial grounds, human skeletal remains, or unmarked graves, or inability to complete satisfactorily a previous excavation. The reasons for denying a permit shall be written down and forwarded to the applicant within thirty days of having received the application. Applicants denied a permit may appeal the decision by requesting a hearing before a regularly scheduled meeting of the Archives and History Commission.

4.1.i. The director, or designee, in considering permits to excavate remains or grave goods shall consult with an organization recognized by the director, or designee as representing the religious and cultural concerns and interests of Native Americans.

82 - 3 - 5. TERMS AND CONDITIONS OF PERMITS FOR THE REMOVAL OR ALTERATION OF GRAVE MARKERS.

5.1. Any person proposing to remove or alter the appearance of a grave marker shall request a permit application form from the director of archives and history, or designee. The form will provide for and require the following information:

5.1.a. Written authorization from the cemetery authority or caretaker for removal or alteration of a grave marker.

5.1.b. Evidence of attempts to notify descendents prior to removing

or altering the grave marker.

5.1.c. The purpose for removing or altering the grave marker.

5.1.d. The methods for recording the grave marker prior to its removal or alteration. They may include, but not be limited to, photographs, rubbings, and maps showing the location of the marker in relationship to surrounding markers or objects.

S82 - 3 - 6. TERMS AND CONDITIONS FOR THE DISPOSITION OF SKELETAL REMAINS AND ASSOCIATED ARTIFACTS FROM UNMARKED GRAVES HAVING POTENTIAL ARCHAEOLOGICAL SIGNIFICANCE WHEN CLAIMED BY DESCENDENTS.

6.1. In the case of human skeletal remains and associated artifacts from apparent Native American origin, reburial shall be done in consultation and cooperation with an organization recognized by the direct, or designee, as representing the religious and cultural concerns and interests of Native Americans.

S82 - 3 - 7. TERMS AND CONDITIONS FOR THE DISPOSITION OF SKELETAL REMAINS AND ASSOCIATED ARTIFACTS FROM UNMARKED GRAVES HAVING POTENTIAL ARCHAEOLOGICAL SIGNIFICANCE WHEN NOT CLAIMED BY DESCENDENTS.

7.1. When human skeletal remains are not claimed by descendents the director of archives and history, or designee, has the option to rebury the remains after archaeological investigations have been completed, or to accession them into the state museum where they will be cared for with dignity and respect as determined by the director, or designee, and interested parties. Reburial will be the preferred option unless a strong case against such action is presented.

S82 - 3 - 8. PROCEDURES FOR ESTABLISHING PROPERTY TAX EXEMPTIONS FOR BURIAL GROUNDS AND UNMARKED GRAVES.

8.1. When a private property owner has evidence for the presence of a burial ground or unmarked grave on his or her property, they may apply for a tax exemption in the manner outlined below.

8.1.a. The property owner shall submit a letter to the director of archives and history, or designee, seeking a determination of the suspected burial ground or unmarked graves authenticity and eligibility for tax exemption.

8.1.b. A response to the letter shall be made within thirty days about the availability of an archaeologist from the Division of Culture and History to make the determination.

8.1.c. Upon completion of archaeological fieldwork to determine the location and extent of the burial ground, a response shall be

prepared, after which, if verifying the presence of the burial ground, a certificate of authenticity will be issued to the property owner. The certificate may then be presented to the county assessor for processing.

8.1.d. The property owner has the option to establish a protective easement of the burial ground or unmarked grave by making arrangements with officials from the Division of Culture and History.

REASON FOR CHANGES TO RULES AND REGULATIONS FILED
WITH THE SECRETARY OF STATE'S OFFICE

1. Two versions of the rules and regulations were drafted. The shorter version was filed, although the public reviewed both versions.
2. During the public hearing, it became apparent that the longer version was preferred.
3. Reasons for changes made to longer version (The changes made reflect comments received by the public.):
 - a. correction to grammar in definition of sites
 - b. addition of definition of proven kinship at request of
 - c. addition of definition of grave goods to clarify what artifacts would have to be reburied
 - d. change in definition of archaeology to reflect federal guidelines
 - e. addition of definition of emergency conditions at request of Archives and History Commissioner
 - f. addition of definition of significance to specify the way in which sites are determined to be important
 - g. phone number of Cultural Center added to make it easier for public to obtain a permit
 - h. deadlines for reports not specified, so that depending on the nature of a project, they might vary
 - i. terms for disposing of skeletal remains changed at request of Native Americans

OFFICE OF THE SECRETARY OF EDUCATION
AND THE ARTS

1018 KANAWHA BOULEVARD, EAST
Suite 700
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE 304 348-1440

July 5, 1990

The Honorable Ken Hechler
Secretary of State
Capitol Complex
Charleston, WV 25305

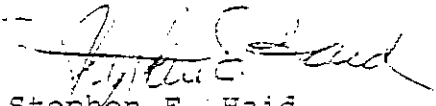
Dear Mr. Secretary:

Pursuant to West Virginia Code §5F-2-2, I hereby consent to the filing of proposed legislative rules for public comment by the Division of Culture and History, Archives and History Section, relating to:

- (a) Establishing procedures for issuing a permit to excavate, remove, destroy, or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance; and issuing a determination verifying the location of an unmarked grave for tax exemption purposes.

A copy of the proposed rule is attached.

Sincerely,


Stephen E. Haid
Secretary of Education
& the Arts

Enclosure

cc: William M. Drennen, Jr.

DEPARTMENT OF EDUCATION AND THE ARTS • DIVISION OF CULTURE AND HISTORY

STATE OF WEST VIRGINIA
GASTON CAPERTON, GOVERNOR

DR. STEPHEN E. HAID, SECRETARY

WILLIAM M. DRENNEN, JR., COMMISSIONER

For more information contact:
Deborah Rainey, Media Relations
Division of Culture and History
The Cultural Center, Capitol Complex
Charleston, West Virginia 25305
(304) 348-0220

FOR IMMEDIATE RELEASE
JULY 19, 1990

GRAVE PROTECTION BILL PUBLIC HEARING
TO BE HELD AT CULTURAL CENTER

CHARLESTON, WV -- A public hearing regarding the rules and regulations of recently enacted H.B. 4752 (Unmarked Graves Protection Bill) will be held on Thursday, July 26, 5 - 7 p.m. in the North Briefing Room of the Cultural Center, Capitol Complex, in Charleston.

This public meeting will address the procedures for issuing a permit to excavate, remove, destroy, or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact, or grave marker of historical significance and issuing a determination verifying the location of an unmarked grave for tax exemption purposes.

For more information, contact Bill Farrar, Historic Preservation Unit at 348-0240.

-30-

<u>NAME</u>	<u>ADDRESS</u>	<u>ASSOCIATION</u>
Rosemarie Guthrie	35 Willis Lane, St. Albans	WVAS
James Guthrie	35 Willis Lane, St. Albans	WVAS
Carl Wills	474 58th S.E., Charleston	WVAS
Bob Schwarz	Chas. Gazette 1001 Va. St. E.	Chas. Gazette
Hillis Youse	1912 Woodside Circle, Chas.	WVAS
Marjorie Campbell	501 48th St., Charleston	WVAS
Jackie Patrella	P.O. Box 5027, Charleston	WVAS
Jerrel Anderson	22 Ashwood Dr., Vienna	WVAS
Ron Moxley	Box 51, Sharples	WVAS
Bill Drennen	640 Halley Rd., Charleston	WV Dept. of Culture & His.
Karen Farris	216 Angel Terrace, Charleston	WV Highlands Conservancy
Allison McClanahan	Poca, 25159	WVAS
Charles Bonnett	Poca, 25159	WVAS
Ed Grant	30 Riverdale Estates, Winfield	WVAS
Wayne Bennett	P.O. Box 178, Winfield	WVAS
Loki Tribbie	732 Churchill Drive, Chas	Appalachian
Herb Woman		Amer. Indian
V.A.M. McDowell	103 Midway Dr., Dunbar	Society
Ken Pence	143 Midway Drive, Dunbar	WVAS
Arnold Cyrus	Rt. 3, Box 158, Hurricane	WVAS
J.W. (Bill) Williams	429 C St., St. Albans	WVAS
Roland Barnett	69 Kenna Dr., So. Chas.	WVAS
Dawn Pauley	Rt. 2. Box 57, Alum Creek	WV Committee
Charles Pitchford	Charleston	on Native Am.
Star Van Syoc	Charleston	Archaeological
Ida Edens	621 1/2 Belle Dr., Chas.	and Burial
John Chic	Charleston	Policies
Barbara Garten	306 Beauregard St. #D, Chas.	WVAS
Dwana McClung	Box 898, Eleanor	WVAS
Norma Withrow	616 Garrison Ave., Charleston	WVAS
David Morton	810A Marianna St., Charleston	WVAS
Tom Davies	301 Dunbar Ave., Dunbar	WVAS

A Synthesis of Written and Oral Comments on the Proposed Rules and Regulations to H.B. 4752. JDB 8/1/90

1. Written letter from Ron Moxley, Pres., WVAS dated 7/26/90
 - a. law passed is vague and open to broad interpretations as to what activities are legal and which aren't.
 - b. one version of rules and regulations written with input from WVAS, the other without (1st includes statement about exclusion of surface hunting and that collections acquired prior to bills passage aren't affected).
 - c. WVAS endorses version in which they had input.
2. Written letter from Dr. Robert Maslowski, COE archaeologist 7/23/90
 - a. list of corrections by section to 2nd version.

Section 2.3

1. archaeology needs to be defined.
2. ruins--if markings left as part of definition it needs to be defined.
3. excavations--add controlled removal of dirt by "archaeologists".
4. effect should be eliminated--as it's used it's confused with Advisory Council terminology.

Section 3.3

1. This section should be rewritten without references to effect or significance.
2. How will director determine significance?

Section 3.4

1. description of alternatives should be deleted.
 - b. the major state legislation affecting archaeological work in West Virginia, but no mention made of the Council for WV Archaeology.
 - c. "I feel that the professional community should have some guarantee of our concerns..."
3. Letter from Carl Wood, Chairman, Cemetery Committee of the Berkeley Co. Historical Society dated 6/29/90
 - a. doesn't feel graves have any measure of protection as long as they are subject to the depredations of archaeology and anthropology--wants to protect graves from being dug up by archaeologists (desecrators).
 - b. believes that supporters of his bill were misled into believing that H.B. 4752 would provide protection.

4. Letter from Loki Tribbie, Headwoman, Appalachian American Indian Society 6/22/90
 - a. difficult to identify tribal affiliation, though easily recognized as Indian.
 - b. state should set aside burial plot to reinter Indians where private ceremonies can be held by accredited Indians.
 - c. Indians in WV should be notified when graves of American Indians encountered.
5. Letter from David A. Mohr, Office of Secretary of Education and the Arts, dated 7/18/90
 - a. There may be occasions when a site to be reclaimed is substantially altered.
 - b. "Effect should be "affected".
 - c. Section 82-3-5 should state that the landowner will permit an on-site inspection by the director.
 - d. "Historical significance" should be defined.

Review of Oral Comments Made at Public Meeting on 7/26/90

1. Ron Moxley, President, WVAS
Read his letter and Maslowski's
2. Loki Tribbie, Appalachian American Indian Society
Reiterated comments
3. Norman Withrow, WVAS
Question about how final regulations will be written
4. Marjorie Campbell, WVAS
Endorses letters read by Moxley
5. Dave Morton, WVAS
Endorses letters read by Moxley
6. Ken Pence, WVAS
Concerned about when to apply for a permit. Frequently small text excavations are dug to determine if a site is worth digging. Will a permit be required for this? Also concerned about unwillingness of private property owners to let others know about a site on his/her land. Agrees that a grandfather clause about surface hunting and pre H.B. 4752 collections is needed.

7. Star Van Syoc, WVCNAABP
Why collect? Isn't bill supposed to stop buying and selling of grave goods and skeletons?
8. Ron Moxley, WVAS
Notes that WVAS has been able to cooperate with various groups, including professional archaeologists and Indians. Admits that some WVAS members jave collections. The goal of archaeology is not to collect but to gain knowledge--a credo of the WVAS. Is personally in favor of reburial of skeletal remains. Law is vague. Don't know what we can legally do.
9. Star Van Syoc
Sees the law as giving avocationalists quite a bit of freedom.
10. Farrar
Main intent of law is to have a means to restrict large scale looting, not prohibit small time collecting.
11. Jerrel Anderson, WVAS
Is the law constitutional, can state laws be enforced on private land? If burials are to be reinterred, how will cultural affiliation be identified?
12. Farrar and Jerrel Anderson
Discussion about a certification program.
13. ?
Who owns artifacts recovered during an excavation?
14. Bill Williams, WVAS
Concerned about artifacts leaving the state and the lack of any permanent curation facility in the state.
15. Ken Pence, WVAS
Concerned about artifacts belonging to WVAS, temporarily curated by WVGES, and now apparently lost by the state or claimed to have been returned.
16. Charles Bonnet, WVAS

Will not be disrespectful to burials and invites American Indians to WVAS meetings.
17. Ed Grant, WVAS
Will older collections sold to keep it in WV be subject to penalties of H.B. 4752 . Is still unclear about what kinds of activities need to be permitted.
18. J. Anderson, WVAS
Asks that WVAS be kept informed.
19. Marjorie Campbell, WVAS
2nd version didn't mention WVAS, were they being ignored?
20. Ron Moxley

Recommends that a list of organizations be maintained so that they can be kept informed.

21. Karen Farris, Highlands Conservancy
Is there an "urban archaeologist" to examine landfills?

22. Ken Pence

Will collections acquired prior to passage of H.B. 4752 have to be registered? How will newly acquired artifacts be differentiated from older ones?

23. Norma Withrow

If somebody is prosecuted for violating 4752 and their collection is confiscated, how do you distinguish between items collected before the violation?

24. Bill Williams

How will grave goods be defined?

21. Karen Farris, Highlands Conservancy
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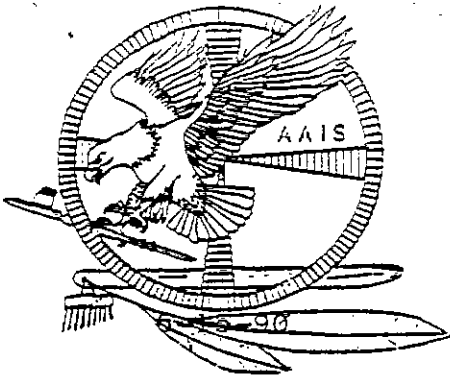
24. Bill Williams

How will grave goods be defined?

Written comments received after public hearing:

1. Letter from David Morton, WVAS member, dated 7/31

- a. Believes that law goes to far in prohibiting private land owners from digging on their own land.
- b. Suggests that Cultural Center host an "Artifact Day" to help curious identify artifacts and provide information about the archaeology of the state.
- c. Opposed to the Native American request to rebury grave goods.



Appalachian
American Indian Society, Inc.
732 Churchill Drive
Charleston, WV 25314
344-2150

RECEIVED JUN 19 1990

Jim Bloemker
Culture Center
Chas, WV 25305

Dear Jim, as to our phone call 6-15-90, it was very informative talking to you, and enjoyable. Enclosed, please find our fact-sheet, as promised.

Since our monthly meeting is Saturday, as I so stated, the only thing I can pass on to you at this time (we shall discuss the information you are sending at a Council meeting) is about the burial process.

Due to decay of many recognizable identifications: It will be difficult to know exactly to which Tribe or Nation the remains belong - though they will easily be recognized as Indian.

Therefore, it would be to the best interest of ALL concerned, for the State of West Virginia to set aside a plot of ground - to be used till the last blade of grass blooms - for the purpose of all such reburials: In this way, Nations and/or Tribes could be notified, so that they, then, could be present, to PROPERLY return the remains of their ancestors into the ground, in compliance with Honor and Dignity, through Age-Old, acceptable religious ceremony/ceremonies.

Our great fear is: That this very private and meaningful event, might, though unwittingly, be allowed to become a public spectacle, to be attended by the curious and the press. Surely, anyone can understand that a funeral belongs to the family.

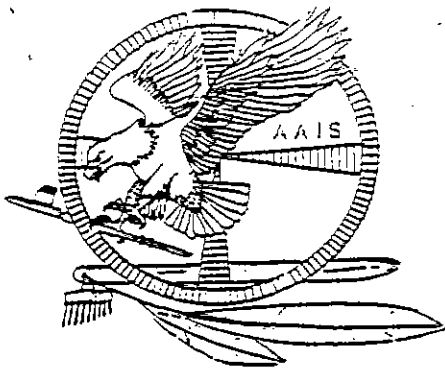
Again, thank you for your time and consideration. We can only hope that you will see and understand the many implications attached to the above request, and use your influence to see that such basic needs will be honored.

May the Father of us all smile down on this endeavor,

LOKI

Loki

Headwoman, AAIS



*Appalachian
American Indian Society, Inc.*

732 Churchill Drive
Charleston, WV 25314
344-2150

AAIS, a non-profit, charitable, cultural, intertribal organization in which Native Americans come together to share and perpetuate the culture, traditions and religion of their forefathers. Other parties, interested in learning about our history and our ways are sincerely welcomed.

We give freely of our knowledge, lore and information on current events/affairs and readily relate stories/legends of our past - even helping others trace their genealogy!

Though our group is small, we stay busy with bow making, painting, drawing, cooking, sewing, picnics, public speaking, assisting others when they contact us with a need, helping in the community, and, just plain old-fashion sharing. Many other things are planned - just as soon as you join, teaching us how by sharing your skills.

AAIS meets at noon (and lasts 2-4 hours, depending on how long people wish to sit around and share), on the third Saturday in each month, (the locations and directions of which are supplied in each month's newsletter.) Bring a covered dish of your choice, if, it is convenient for you, to compliment the communal meal held after the business meeting. AAIS supplies the cutlery.

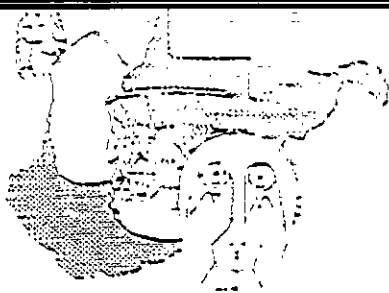
No drugs and/or alcohol are tolerated at AAIS functions.

Membership dues: \$17.00 for singles; \$24.00 for family. No one is refused membership due to hardship, just explain your circumstances (confidentially) to anyone on our Council, or, call/write to Loki, % of the above address. Make checks payable to AAIS, or, bring it with you to a meeting.

AAIS is offering you an opportunity to come "home". To sit on a log by a Brother, or trade recipes with a Sister as you share and relax with people comfortable with their heritage. Bring a friend - A heart is as big as the whole outdoors!

We welcome you.

LOKI



WEST VIRGINIA
ARCHEOLOGICAL SOCIETY, Inc.
MEMBER OF
EASTERN STATES ARCHEOLOGICAL FEDERATION

RESPONSE TO THE NEW WEST VIRGINIA ARCHEOLOGICAL
LAW AND ITS REGULATIONS

THE W.VA. ARCHEOLOGICAL SOCIETY WAS FORMED IN 1949. THE SOCIETY IS MADE UP OF BOTH AVOCATIONAL AND PROFESSIONAL ARCHEOLOGISTS.

OVER 90% OF THE RECORDED ARCHEOLOGICAL SITES IN WEST VIRGINIA HAVE BEEN RECORDED BY THE MEMBERS OF THE W.VA. ARCHEOLOGICAL SOCIETY, EXCEPT FOR A FEW MOUND EXCAVATIONS DONE BY THE SMITHSONIAN INSTITUTION AND RECENT SURVEYS BY CONTRACT ARCHEOLOGISTS. ALMOST ALL OF OUR KNOWLEDGE OF WEST VIRGINIA'S PAST HAS COME ABOUT THROUGH THE EFFORTS OF THE W. VA. ARCHEOLOGICAL SOCIETY.

THIS PAST YEAR IT WAS PROPOSED THAT WEST VIRGINIA NEEDED A LAW TO PROTECT UNMARKED GRAVES; THIS WAS LATER EXPANDED TO INCLUDE ANY ARCHEOLOGICAL OR HISTORICAL SITE. THE W.VA. ARCHEOLOGICAL SOCIETY WAS NOT ASKED TO PARTICIPATE IN HELPING TO WRITE THE FORMAT FOR THIS LAW, AND IT WAS SUBMITTED TO THE LEGISLATURE WITHOUT THE INPUT OF THE ARCHEOLOGICAL SOCIETY.

THE LAW THAT WAS PASSED BY THE W. VA. LEGISLATURE IS VAGUE AND OPEN TO BROAD INTERPRETATIONS AS TO WHAT ACTIVITIES ARE LEGAL TO DO, WITHOUT OBTAINING A PERMIT FROM THE DEPARTMENT OF CULTURE AND HISTORY.

THE RULES AND REGULATIONS TO GOVERN THE ISSUANCE OF THE PERMITS REQUIRED FOR ARCHEOLOGICAL WORK WAS WRITTEN (WITH THE INPUT OF THE WVAS). THESE REGULATIONS STATED AMONG OTHER THINGS THAT: SURFACE COLLECTION OF ARTIFACTS DOES NOT REQUIRE A PERMIT, AND THAT COLLECTIONS OF ARTIFACTS MADE BEFORE THE LAW ARE LEGAL AND NOT SUBJECT TO THE REGULATIONS THAT GOVERN ARTIFACTS OBTAINED AFTER THE LAW WENT INTO EFFECT.

THESE REGULATIONS HAVE SINCE BEEN REVISED AND REWRITTEN AND ARE NOW AS VAGUE AS THE LAW ITSELF. THERE IS NO MENTION OF WHAT ACTIVITIES REQUIRE A PERMIT AND WHICH DON'T.

THE W.VA. ARCHEOLOGICAL SOCIETY CANNOT ENDORSE THE LAW OR ITS REGULATIONS IN ITS PRESENT FORM.

WE ARE CONTENT TO ENDORSE THE RULES AND REGULATIONS AS THEY WERE ORIGINALLY WRITTEN.

RON MOXLEY, PRESIDENT
W.VA. ARCHEOLOGICAL SOCIETY, INC.
JULY 26, 1990

M E M O R A N D U M

TO: William Farrar

FROM: WV Committee on Native American Archaeological and Burial Policies

DATE: July 6, 1990

RE: 82 CSR 3; TITLE 82; LEGISLATIVE RULES;
DIVISION OF CULTURE AND HISTORY; SERIES 3;
STANDARDS AND PROCEDURES FOR GRANTING PERMITS TO
EXCAVATE ARCHAEOLOGICAL SITES AND UNMARKED GRAVES

Herein are the Committee's findings and conclusions that your Division has requested:

1) S82-3-2. DEFINITIONS

ARCHAEOLOGY: The material remains which are frequently excavated are not necessarily "discarded"; many have been deliberately **placed with ceremonial intent**. The wording of this sentence does not differentiate between accumulating objects from past cultures which have in fact undoubtedly been discarded (bones in a firepit; arrowheads, etc.) and blatant robbery of religious items and skeletal remains. This is a point which cannot be argued; it is simply fact.

KINSHIP: We note that the word "proven", as found in House Bill 4752, has been omitted. This is not acceptable to us. This word **must** be included, as it is of vast importance to Native Americans. Because we have noted that the WV Archaeological Society and the Council for WV Archaeology have been named and given omnipotence within the scope of this bill, the state may also name our Committee (which is not necessarily exclusive of any individuals from other groups, as the membership may expand in the future when the need arises and when any competent collaborators are found).

This should be the definition of **proven kinship**: the relationship among people that exists because of genetic descent, or marriage, or an individual/individuals recognized by the West Virginia Committee on Native American Archaeological and Burial Policies -- an organization selected by the state for consultation regarding Native American historic and prehistoric burial issues.

2) S82-3-3. TERMS AND CONDITIONS OF PERMITS TO EXCAVATE HISTORIC AND PREHISTORIC RUINS AND ARCHAEOLOGICAL SITES.

3.1.b We need to be sure these permits which will be granted for more than two years will be for one site only; this needs to be reiterated in the rules, as it is not clear. Also, the public and our Committee will want to know about these extensions, and provisions should be made to notify us.

It needs to be said, in plain and specific language, just what these "avocationalists" will be allowed to do and what the limits are.

3.1.e. Some examples of instances in which sites are intended to be altered or destroyed.

3.1.f. A year after the fact is a long time to wait to get a report on what has been done at a site. There should definitely be at least monthly reports or outlines of what has been done, if only just to list what has been found, what has been dug, and what is being done with what has been found. And since most of these materials will be removed from public lands, the director **should** (not may) order that reports be written for public access.

82-3-5. TERMS AND CONDITIONS OF PERMITS FOR THE REMOVAL OR ALTERATION OF GRAVE MARKERS.

5.1.b. The efforts that are made should be outlined, and a minimum should be specified. For example, a notice of the discovery and all information should be published in a county-wide newspaper once a week for four consecutive weeks.

S82-3-7. TERMS AND CONDITIONS FOR THE DISPOSITION OF SKELETAL REMAINS AND ASSOCIATED ARTIFACTS FROM UNMARKED GRAVES HAVING POTENTIAL ARCHAEOLOGICAL SIGNIFICANCE WHEN NOT CLAIMED BY DESCENDENTS.

7.1. We need a definition of "with dignity and respect". A nonIndian's understanding of this phrase is quite different from an Indian's. We also need a "for example" regarding "a strong case against such action is presented".

*Note: It should be said somewhere that not only the director but also descendants or "proven kin" may be allowed access to burial, if only on public lands. It is up to the property owner on private lands.

ALTERNATIVES

1) S82-3-2. DEFINITIONS

PROVEN KINSHIP: the relationship among people that exists because of genetic (which includes racial) descent, or marriage; in the case of Native American remains also includes persons who are designated by the director as acceptable and responsible representatives of an organization dedicated to and knowledgeable in Native American religious and cultural values.

2) S82-3-3. TERMS AND CONDITIONS OF PERMITS TO EXCAVATE HISTORIC AND PREHISTORIC RUINS AND ARCHAEOLOGICAL SITES.

3.1.i. All applications for permits to disturb ruins, sites, or graves shall be kept available at all times for inspection by those of proven kinship.

S2-3-4. TERMS AND CONDITIONS OF PERMITS TO EXCAVATE BURIAL GROUNDS, HUMAN SKELETAL REMAINS AND UNMARKED GRAVES.

4.1.i. The director in considering permits to excavate remains or artifacts which appear to be of Native American origin, shall consult with an organization recognized by the director as representing the religious and cultural concerns and interests of Native Americans.

S82-3-7. TERMS AND CONDITIONS FOR THE DISPOSITION OF SKELETAL REMAINS AND ASSOCIATED ARTIFACTS FROM UNMARKED GRAVES HAVING POTENTIAL ARCHAEOLOGICAL SIGNIFICANCE WHEN CLAIMED BY DESCENDENTS.

7.2. In the case of human skeletal remains and associated artifacts from apparent Native American origin, reburial shall be done in consultation and cooperation with an organization recognized by the director as representing the religious and cultural concerns and interests of Native Americans.

810A Marianna Street
Charleston, West Virginia 25302-3123

31 July 1990

RECEIVED AUG 02 1990

Mr. William Farrar, Deputy State Preservation Officer
West Virginia Department of Culture and History
State Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Farrar:

I was in attendance at the meeting which was held Thursday evening, 26 July, at the Cultural Center regarding legislative rules pertaining to archaeological sites, the retention/collection of Amerind artifacts, et al. I am also on record in support of the contents as spelled out in both letters from the West Virginia Archaeological Society and from Dr. Robert Maslowski, archaeologist for the Corps of Engineers. I desire, though, to make further comment and in writing:

As stated at that time, I am a member of the Lower Kanawha Archaeological Society, Inc., a separate entity from the State Society although affiliated. I am in the process of reactivating my State Society membership and I hold membership with the Archaeological Society of Ohio. I am not an archaeologist by profession; however, I am a student of ancient cultures and hold enormous interest in anthropology as well as the results of archaeological findings worldwide. Through the years I have been an avid collector of Amerind artifacts from North and Central America. My collection of North American artifacts are those which I, myself, have found through surface hunting, trading with other collectors, and buying from sources throughout the country. I am quite proud of my collection and strive in as many instances as possible to obtain correct provenience, where found; and in the artifacts I have found, I have documented thoroughly. As with the majority of collectors, who are so unjustly maligned as "potholers", I hold deep respect for the people and the cultures from which they come; and hold vehemently and tenaciously to the right to collect artifacts as a private citizen without condemnation or laws enacted to curtail this right.

The average collector and/or amateur archaeologist is not a party to the desecration of grave sites, but because some have done these things, the whole community of collectors has been branded as unworthy to acquire artifacts and possess them in collections. You are well aware, I am sure, that a number of states have enacted laws which, as far as I am concerned, are outrageously unfair to the otherwise law abiding citizen. This wholesale condemnation of lay collecting is an insult, as well as a narrow and pompous stance taken by many members of the professional archaeological community, who, in a number of instances propose that they, through virtue of their degree and license, should be the only curators of artifacts.

It has been said that artifacts taken out of context have no value, yet any prudent person, lay or professional, should accept that there is always value in a genuine artifact if for no other reason than for its art form. Surface hunting along plowed fields or along stream and river banks or even in a vacant dirt lot should not be seen as unlawful. To pose laws forbidding the picking up of an arrowhead or some such artifact is an unreasonable prohibition, and to call attention to this--to create unreasonable laws--will only serve to drive collecting underground and the outright digging for artifacts by those who, heretofore, had not considered doing such a thing. Human behavior being what it is and has always been, it is a very

common behavioral quirk to be curious about the ancient people before us and the artifacts they leave behind. As stated elsewhere, "who owns the past, anyhow?"

If we ARE to have laws in West Virginia protecting sites from being disturbed which have not already been dug by professionals or amateurs, then I agree that some form of a monitoring device be created to curtail wholesale indiscriminate digging. Your department advocates the issuance of a permit, and while this may be the most judicious route to take, you go too far in your vision of forcing private land owners in West Virginia to comply that they not be allowed to dig when and where they please. Your thoughts of an incentive are more than a bit naive if you expect to receive the cooperation you anticipate. A couple of us had a conversation recently with a farmer who has always been kind to allow us to surface hunt. He grew very angry when told of the potential ramifications of the law and stated that if you or any member of your department ever stepped foot on his property to check up on his doings that you and any others could expect a sufficient amount of buckshot in your behinds to convince you that your laws pertaining to private citizens are folly and no less than Gestapo tactics not found one bit amusing or favorable by a free American! It is our contention, Mr. Farrar, that you can create all the ivory-tower laws you want, but the ill-will garnered will be more than you ever imagined. Already, in states which have created unreasonable laws, such as Oregon, New Mexico and others, collecting has gone underground and those who otherwise would be considered upstanding and law-abiding citizens are now closet criminals due to such repressive and unrealistic prohibition.

It is my feeling that GOOD WILL within a community achieves far better results than the heavy hand of the law which should be directed to far more terrible crimes than collecting or finding and picking up an artifact. Someone has suggested, and I believe this has merit, that the people at the Cultural Center ought to consider hosting an all day event, a WEST VIRGINIA PREHISTORIC ARTIFACT DAY, whereby all citizens would be encouraged to bring their collections or full shoe boxes of artifacts, spread them out on the great lawn of the Capitol, much like the Vandalia Festival event, for all, as well as you, to see. In that way, the positive tradeoff would be that you could ascertain where many of the artifacts have been found, note the typology which indicates the era, and then, hopefully, you could determine more finite information as to location where they were found and possible sites at these locations which have as yet been recorded. On that day, as well, speeches and talks could be given to the public on the errors of indiscriminate digging as well as the virtues of recording and offering up information to you. It is even possible that you might obtain some artifacts for the Center as well. Another aspect of human nature which I believe has been forgotten or ignored is that when one is reasonable with another the response is usually reasonableness in return.

The Native Americans who voice their desire to have bones of possible ancestors returned to the earth have a valid point and their plight and plea should not be taken lightly. I do, though, take issue with their demand that artifacts which could possibly be grave goods, such as beads, pipes, gorgets, etc., be returned to the earth as well. Pragmatic thought and reason needs to surface in this issue, especially when such artifacts are so vulnerable to the "march of progress" where bulldozers, backhoes, the pouring of asphalt, the building of dams, shopping centers, housing projects, and the farmers wretched disc which destroys everything in its path leave these often exquisite artifacts vulnerable to destruction, as well as rivers and streams causing erosion which causes further the loss of such artifacts forever. There is something almost foolish in the premise that it is better that an artifact be destroyed or lost than rescued and cabinetted for posterity.

While I do not possess a single element of a human body in my personal collection and have no desire ever to do so, some old time collectors and amateur archaeologists

who were active in digging in the earlier part of this century do. I am not here to pass judgement on these folks, many of whom who did so much for archaeology in earlier days in our state. I do know, though, that so many who have had or still possess a skull or bone of some kind have kept terrific excavation notes and site reports. Some of these folks are beginning to have second thoughts on the merits of keeping remains of humans in their possession and are considering returning these bones to contemporary Native Americans for reburial or reburying them themselves. And, of course, I do not need to remind you of the controversy this has created for museums and laboratory repositories throughout the country which do possess human remains as well.

Let us not have unreasonable laws forbidding the collecting of artifacts by the lay community, but, in turn, offer encouragement and solicit their support in reporting what they have found so whatever has been found can be documented.

Let us not have unreasonable laws forbidding the finding and picking up of artifacts on surface hunts in plowed fields, on stream and river banks and elsewhere. If it has surfaced, picking it up is better than eventual, sure destruction.

Create, if you must, a permit formula so that whatever digging is done might be done with reasonable monitoring of those performing the excavations, but bear in mind the strong feelings private citizens have about their rights on their own property. Your zeal may be your complete downfall in any further support of future programs the department may wish to have by way of community support.

As discussed with you in the open session at the meeting, if these stipulations are not satisfied as we perceive satisfaction, then you can expect that the legislative body of this State will be lobbied extremely strongly; that letter-writing and newspaper articles will be published and that we will do everything we can to challenge the whole package. If you desire cooperation, then it must be given in return. We will not be bullied or belittled by any factor which enjoys power to the extremes nor by laws created to curtail what has been a time-honored avocation ever since this land was settled.

Sincerely,



David L. Morton

cc: to significant others

Mr. William Drennen
State Historic Preservation Office
Capitol Complex
Charleston, WV 25305

July 23, 1990

Dear Mr. Drennen,

I have reviewed two versions of Title 82 Legislative Rules, Series 3, Permits to effect archeological sites and unmarked graves, one authored by Jim Bloemker and the other by Killburn.

Overall the original document by Bloemker is far superior and precise. In an attempt to shorten the document your staff has misconstrued much of the original intent of the bill and misinterpreted sections completely.

Here are a list of major corrections that should be made:

Section 2-3. Definitions

The definition of archeology should be left in as 2.1.

2.1. Ruins. If markings is left as part of this definition it should be defined. I assume it refers to petroglyphs or pictographs.

2.6. Excavation: the controlled removal of dirt "by archeologist" should be added, otherwise any utility company employee will be required by law to get a permit when they are looking for a water, gas or electric line.

2.11. Effect should be deleted. All references to effect and significance should be deleted. These are terms relevant to National Register evaluations and Advisory Council Compliance and have nothing to do with the present legislation or original intent of the present legislation.

Effect according to Advisory Council Regulations can be adverse or beneficial.

3-3. Applicability.

This whole section should be rewritten without reference to effect or significance.

As I recall the original intent of the legislation was to protect all unmarked graves. How is the director going to determine which are significant and which are not?

3-4. Permit Process.

4.2.d. A description of alternatives to the activities that were considered should be deleted. This is another term that is taken out of context from an Advisory Council Case report. This is required if an agency is going to perform an action that may have an adverse effect on a National Register archeological sites and is already covered under 106 compliance (sections 3.2.a and b).

If an amateur wants to go out on weekends an dig a site being destroyed by private construction what alternatives do you want discussed? Go to a movie? Go to the Beach? Or sit home and watch television?

This is the major state legislation affecting archeological work in West Virginia, yet there is no mention of the Council for West Virginia Archeology, the state organization of professional archeologists. There were at least two versions of these rules, one written by an archeologist and one obviously written by a non archeologist, yet the non archeologist version is making it to the state legislature.

Also a major problem stated in the Bloemker version and omitted in the Killburn version is treatment of collections acquired before passage of H.B. 4752 or artifacts collected from the surface. I believe that the West Virginia Archeological Society was told that there would be a clause covering this in the Legislative Rules. If this is not adequately covered I sincerely doubt that the West Virginia Archeological Society will support the Rules.

I feel that the professional community should have some guarantee that our concerns will be incorporated before we voice our support for these legislative rules.

It seems we have been told time and time again, support this and we will fix it. Well the time has come for you to fix it before we can support it.

Sincerely,

Dr. Robert F. Maslowski
Society of Professional Archeologists
P.O. Box 213
Milton, West Virginia

25541

OFFICE OF THE SECRETARY OF EDUCATION
AND THE ARTS

1018 KANAWHA BOULEVARD, EAST
Suite 700
CHARLESTON, WEST VIRGINIA 25301
TELEPHONE 304 348-2440

July 18, 1990

Mr. Bill Farrar
Division of Culture and History
Cultural Center
Capitol Complex
Charleston, West Virginia 25305

Re: Permits to Effect Archeological
Sites and Unmarked Graves

Dear Mr. Farrar:

With regard to the legislative rule filed by the Division of Culture and History relating to procedures for issuing a permit to excavate, remove, destroy or otherwise disturb any historic or prehistoric ruins, etc., Title 82, Series 3 of the Code of State Rules, I would submit the following comments for your consideration:

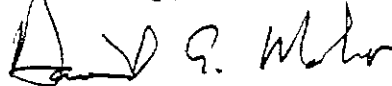
- (1) Section 4.2.h requires a plan to reclaim the site when it will not be substantially altered. Perhaps the intent of the rule is say permanently altered. It is conceivable that you might want a substantial alteration reclaimed, as in the case of the excavation of a burial mound, but would not want it reclaimed in the case of moving graves for highway construction.
- (2) The word "effect" is defined and used in several places throughout the rule both in the present and past tense. As used, the word "affected" seems more appropriate.
- (3) Section 82-3-5 of the rule relating to certifying the location of unmarked grave sites for tax exemptions should perhaps require the landowner to permit an on-site inspection of the site if requested by director.

Mr. Bill Farrar
July 18, 1990
Page 2

- (4) The director is to make a determination as to whether certain locations and articles have historical significance. This might be simplified if the rule provided guidelines or a definition for the term historical significance.

I hope these comments are helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Mohr". The signature is written in a cursive style with a large initial "D" and "M".

David A. Mohr
Senior Program Analyst

DAM/lis

Mockingbird Hollow Farm

P. O. Box 860,

Falling Waters, WV 25419 Carl P. Wood Prop. Est. 1786

Mr. William G. Farrar,
Deputy State Historical Preservation Officer,
Division of Culture & History,
Cultural Center,
Capitol Complex,
Charleston, WV 25305

June 29 1990

Dear Sir:

Re: your request for comment on title 82, Legislative Rules, Division of Culture & History, Series 3, Standards and Procedures for Granting Permits to Excavate Archaeological Sites and Unmarked Graves.

I am enclosing a copy of my editorial in the June 23, "Martinsburg Weekend Journal" This pretty well sums up the sentiments of our Historical Society as well as various other similar Societies and those interested in protecting the graves of our ancestors, be they Native American or those of European or other ancestry.

In short, Mr Farrar, we do not feel that the graves of our ancestors have any protection whatever as long as they are subject to the depredations of persons having degrees in any of the various Historic Culture Sciences such as Archaeologists or Anthropologists. **THESE ARE THE PEOPLE WHO WANT TO DIG UP OUR ANCESTOR'S GRAVES. THE PEOPLE WE WANT TO PROTECT THEM FROM,** By putting these people in charge of issuing dig permits, the legislature has set a classic case of putting the foxes to guard the henhouse.

Somehow, the bill we sponsored to protect our gravesites was switched and those legislators who had agreed to support our bill putting responsibility for the protection of graves in the hands of the Circuit Court voted for HB 4752 which was substituted by Delegates Murphy and Martin, apparently at their behest of various Anthropology and Archaeology groups. These legislators believed they were supporting the bill to protect the graves from the desecrators as they had promised us, instead, they have given our cemeteries into the hands of the desecrators. Upon finding the truth of what has happened, these legislators are, to put it mildly, less than happy, and there is going to be a very much different atmosphere in the next Legislature. We are **DETERMINED** to protect the graves from you people.

As for Mr. Murphy, he is running for the County Commission here in our County, and we plan to buy full page advertisements in the local papers a few days before the election explaining just what he did to the graves of the ancestors of those he wishes to vote for him.

Sincerely,

Carl P. Wood,
Chairman, Cemetery Committee,
Berkeley County Historical Society