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Legal Protection of Archaeological Remains on Public Property in the U.S. Virgin Islands

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An overview of the body of law pertaining to archaeological artifacts and historic remains in the Virgin Islands, with a focus on cultural materials located on terrestrial and submerged Government property.

The Territory of the U.S. Virgin Islands has a rich and beautiful cultural heritage. The earliest people arrived 4,000 years ago in the islands, with the next influx by the Taino about 2,000 years ago. By the time the Europeans arrived at the end of the 15th century, the Caribs had made it to St. Croix by migrating up the Windward Islands from South America. The Virgin Islands is also home to several hundred shipwrecks, since over

eighty percent of the Territory is underwater. Many of these ships are from colonial times, having wrecked on the reefs and rocks, others being sunk by hurricanes and the great tsunami of 1867.

The artifacts and sites resulting from this rich cultural heritage are protected by the Antiquities and Cultural Properties Act of 1998 ("the Act"), codified in

Title 29, Chapter 17 of the Virgin Islands Code. The Act sets forth the Territory's policies and responsibility to manage its terrestrial and marine historical, cultural, and archaeological resources for the benefit of Virgin Islands' citizens. Other laws that incidentally pertain to archaeological remains on public property are in Title 12, including

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Chapter 21 on Virgin Islands Coastal Zone Management and Chapter 1 which protects Marine Parks in the USVI.

The Act vests responsibility in the State Historic Preservation Office ("SHPO"), a division of the Department of Planning and Natural Resources, for administering and enforcing preservation and conservation laws in the Virgin Islands. SHPO surveys and inventories archaeological sites on land and underwater, and is charged with enforcing laws that protect cultural materials. SHPO also reviews rehabilitation work that is eligible for federal and local tax incentives or federal grants. The Division of Environmental Enforcement also assists in enforcing protection, preservation, and conservation laws pertaining to cultural resources.

Through the Act, the Government of the Virgin Islands lays an exclusive claim of ownership over all historical, cultural, and archaeological materials located on public property, whether on land or submerged within three miles of the coastline. Those who wish to

remove or disturb cultural materials on public property are required to obtain a permit from SHPO before doing so. The application process requires demonstrating professional qualifications, and documenting what methods and techniques will be employed for the recovery, analysis, and dissemination of data. The permit application must also indicate how materials will be conserved, stored, and recorded. The Act requires, as a mandatory prerequisite for obtaining a permit, that the work is to be "undertaken for the purpose of furthering scientific and cultural knowledge in the public interest." Accordingly, permits are issued only to scientific, research, and land-use planning organizations. Even if an excavation is performed pursuant to a validly issued permit, title to all objects recovered remains in the Government.

Any government agency that wishes to perform an undertaking on public property (i.e., construction) must consult with SHPO if that property is included in or eligible for inclusion in the Virgin Islands Registry of Historic Places ("the Registry"). The Registry is maintained by SHPO,

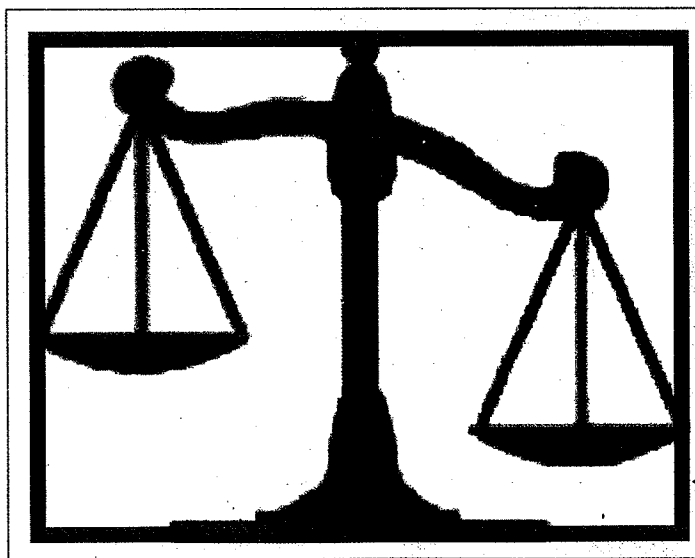
pursuant to the Act, and is supposed to be a comprehensive listing of all "terrestrial and marine archaeological sites, structures, sacred sites, shipwrecks, cemeteries, unmarked human burial sites, ossuaries, objects, artifacts and areas of value in archaeology, history, architecture, engineering and culture of the Virgin Islands, both on land and sea[.]" Under the Act, any property which is listed on the National Register of Historic Places is automatically listed on the Virgin Islands Registry of Historic Places.

If an agency wishes to perform an undertaking on a Registry (or Registry-eligible) property, it must consult with SHPO to determine the

best way to preserve cultural value and mitigate negative effects of the undertaking. If, upon starting construction on public land, an agency should inadvertently discover any cultural remains, the Act requires they immediately submit a full report to SHPO regarding the discovery. Similarly, any person who wishes to perform an undertaking on private land must consult with SHPO if there may be an adverse effect on cultural sites or materials on nearby public property.

In addition to permitting requirements, the Act also provides that the location of archaeological sites remain confidential. In order for any public official or agency to

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disseminate information regarding a site's location, they must obtain a statement in writing from the State Historic Preservation Officer that this will not create a risk of loss of archaeological resources.

In order to enforce these provisions, the Act provides for criminal and civil penalties. Section 963 makes it a criminal offense to remove or injure anything of cultural or historical value on public property without the requisite SHPO permit. This offense is punishable by a fine of not less than \$500 and not more than \$10,000 per day per violation, and may result in imprisonment for up to one (1) year. Anyone convicted under this

section must forfeit to the Government the materials associated with the infraction.

The Act also provides that SHPO or any resident of the Virgin Islands may commence a civil action seeking injunctive relief for a violation or threatened violation of the Act's provisions, even if a SHPO permit has already been issued. This creates a system of judicial review for SHPO decisions, as a Virgin Islands resident may contest a SHPO determination via a civil action for injunction. The action must be brought in the Superior Court, which is granted jurisdiction to issue an injunction and order compliance with the provisions of the Act.

The Act also gives SHPO authority to impose civil penalties for violation of the Act's provisions. A person may be fined not less than \$100 nor more than \$500 per day per violation, so long as they are given a hearing and the State Historic Preservation Officer has made findings of fact and conclusions of law pertaining to the assessment. The Act requires that all civil fines or proceeds from forfeitures made pursuant to a criminal conviction must be deposited into the Archaeological Preservation Fund, to which SHPO has access to for carrying out its duties under the Act. 

Kimberly Alderman is an attorney and cultural property law scholar. She completed a judicial clerkship on St. Croix for the late Francis J. D'Eramo, and now practices law in Taos, New Mexico. She maintains the Cultural Property & Archaeology Law Blog at <http://www.culturalpropertylaw.net>, and occasionally handles freelance assignments for select attorneys. She is licensed to practice law in the Virgin Islands and New Mexico.