



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

National Park Service Employees Violated Federal and National Park Service Regulations During Cleanup Efforts at Virgin Islands

This is a revised version of the report prepared for public release.

REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

We investigated an allegation that National Park Service (NPS) employees damaged archeological resources at Cinnamon Bay in Virgin Islands National Park (VIIS). According to the complaint, an NPS senior official, a VIIS senior official, and a VIIS employee failed to adhere to compliance and protection requirements related to a 2018 cleanup project in Cinnamon Bay.

Cinnamon Bay, a historic and archeologically sensitive area, was severely damaged by Hurricanes Irma and Maria in 2017. After an initial cleanup effort that same year, the NPS senior official directed employees to initiate a broader cleanup and construction project in fall 2018 to remediate damage. We found that the NPS senior official and the VIIS senior official did not follow the NPS compliance and protection process required by Section 106 of the National Historic Preservation Act to protect archeological, cultural, and historic resources before the crew started work in 2018. The VIIS employee supervised the crew and provided them with the heavy equipment used at Cinnamon Bay. The crew's work damaged artifacts at the site that, according to an NPS damage assessment report, resulted in damages between \$21,004 and \$121,886; these amounts include the cost of restoration at the site in addition to the value of historic loss.

We also found that the NPS failed to comply with a U.S. Department of the Interior regulation under the Archeological Resources Protection Act, which seeks to protect archeological resources on Federal lands.¹

We provided this report to the NPS Deputy Director of Operations, Exercising the Delegated Authority of the Director, for any action deemed appropriate.

II. BACKGROUND

Cinnamon Bay Plantation, established by the Danes in 1717, is one of the earliest sugar plantation settlements in St. John in the U.S. Virgin Islands. The site includes the ruins of the old sugar and cotton estates and prehistoric archeological sites dating to the period of the Taíno habitation from A.D. 1 to A.D. 1450. The site, which was listed on the National Register in 1978, is also a burial ground for the enslaved Africans who lived and worked at the Cinnamon Bay Plantation. Archeological testing of the site found evidence of the 1733 slave rebellion and the economic shift from cotton and maritime to a sugar estate in the 1780s.

In September 2017, Hurricanes Irma and Maria hit the U.S. Virgin Islands and caused severe damage to the surrounding areas, including Cinnamon Bay. The damage affected Cinnamon Bay Plantation, a Taíno village, a cemetery for prehistoric and indigenous peoples, and a 17th century slave burial ground (see Figure 1). The hurricanes severely damaged the aboveground

¹ Violations of ARPA can be punishable by criminal and civil penalties. We presented this matter to the U.S. Department of Justice, which declined prosecution.

archeological structures (see Figure 2), but many of the archeological artifacts lay underground and were unaffected by the hurricanes.²

Figure 1: Aerial Map of Cinnamon Bay



Source: [NPS website](#).

² These artifacts included, for example, prehistoric pottery sherds, prehistoric lithic fragments, porcelain sherd, El Morro ware from the period between 1550 and 1825, Pearlware sherds from 1780, a brown stoneware sherd, Creamware sherds dating before 1760, and 19th century stoneware pottery sherds.

Figure 2: Damage to the Cinnamon Bay Museum as a Result of the Hurricanes



Source: NPS.

After the storms, the onsite campground and the public's access to the area were closed indefinitely. As a federally protected registered historic site, Cinnamon Bay provides archeologists significant insight into the meaning of Caribbean petroglyphs, prehistoric life, and the extent of cultural interaction from Puerto Rico to the Dominican Republic to Antigua, and along the shores of South America. Disturbance to a historic site may permanently affect the site's archeological value.

Regulations Protecting Cultural Resources

Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) both require the NPS to review and consider the potential impacts of any undertaking—which includes the restoration or construction activities that took place at Cinnamon Bay in 2018—on archeological, cultural, and historic resources before commencing any such activities. Federal regulations generally define an undertaking as any project, activity, or program funded by an agency. NPS guidelines provide that senior officials must implement and coordinate activities that have the potential of directly and adversely affecting these resources. The guidelines also specifically require certain senior officials to ensure that all undertakings in their parks are identified, documented, and reviewed for Section 106 compliance to preserve cultural resources. Adverse effects are types of threats that could diminish the resources' integrity.

Examples of potential adverse effects include:

- Physical destruction or damage
- Alterations that are inconsistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*
- Removal or relocation of the property
- A change in the property's use or features within the setting that could change its historic character
- An introduction of visual, atmospheric, or audible elements that diminish the property's historic integrity
- Neglect resulting in deterioration

NPS policy and the Advisory Council on Historic Preservation, which is a Federal agency that promotes the preservation and sustainable use of the Nation's diverse historic resources and oversees the Federal historic preservation review process established by Section 106 of the NHPA, do not provide any exceptions that would have been applicable here to completing Section 106 compliance reviews for activities in response to emergencies or disasters.

To track projects or undertakings that may affect archeological, cultural, and historic resources, the NPS uses the Planning, Environment, and Public Comment (PEPC) system. A PEPC is a collaborative online tool designed to facilitate the project management process in conservation planning and environmental impact analysis. The tool helps the NPS make informed decisions regarding compliance issues throughout the planning, design, and construction process for any undertaking that could impact archeological, cultural, or historic resources. After the PEPC is entered into the system, the NPS identifies experts and assembles a team to review the PEPC for approval. The PEPC then goes to a senior official for approval and signature. Failure to sign a PEPC and follow the Section 106 process violates policy, regardless of whether any damage actually occurs to those resources.

In addition, 43 C.F.R. § 7.4(a) of the U.S. Department of the Interior's (DOI's) regulations under the Archeological Resources Protection Act (ARPA) states, in part, that no person or agency may damage or otherwise alter or deface any archeological resource located on public lands without a permit or exemption.

III. RESULTS OF INVESTIGATION

We initiated this investigation after receiving an allegation that NPS employees damaged archeological resources in 2018 at Cinnamon Bay during a second cleanup effort to reopen the site after Hurricanes Irma and Maria. According to the complaint, an NPS senior official, a VIIS senior official, and a VIIS employee failed to adhere to compliance and protection requirements related to the fall 2018 cleanup project.

A. Facts

1. The NPS Began Its First Cleanup Effort at Cinnamon Bay in Fall 2017

In fall 2017, following Hurricanes Irma and Maria, the NPS sent an emergency crew to St. John to clear the main roads leading to Cinnamon Bay and remove debris. In preparation for this work, and to ensure compliance with Section 106, the NPS initiated an internal review and authorization process under PEPC Project 75246. A Virgin Islands National Park Interdisciplinary Team reviewed the PEPC for the 2017 project and completed the environmental assessment documentation. An NPS senior official signed the 2017 PEPC document and authorized the work. The NPS senior official led the project.

The PEPC for the 2017 project stated that the project:

- Would not affect threatened, endangered, or rare species and/or their critical habitat
- Would not affect historic, cultural, or archeological resources
- Would not have serious or long-term undesired environmental or visual effects

The project followed all NHPA and NEPA compliance requirements before work began. The project was described as “Routine Maintenance (ROU)” and “the recovery work included the removal of vegetative debris, cleaning of roads and areas, and other efforts characteristic of a disaster area.” An archeologist told us that to ensure resources at the site were not impacted, several archeologists monitored the project and provided guidance to the cleanup crew on how to avoid certain areas. The archeologist confirmed that the 2017 project did not damage or disturb artifacts at Cinnamon Bay.

Despite these emergency cleanup efforts in fall 2017, Cinnamon Bay remained closed to the public, and much of it was still covered by debris from fallen trees and other materials (see Figure 3). Tourism is a leading contributor to St. John’s economy, which suffered when the damages from these hurricanes forced sites like Cinnamon Bay to close. Therefore, according to VIIS leadership, pressure mounted from NPS headquarters, Virgin Islands’ politicians, and St. John’s citizens to reopen Cinnamon Bay. In response, the NPS senior official launched a second cleanup effort in 2018.

**Figure 3: Fallen Trees and Debris Remaining
After the 2017 Cleanup Efforts**



Source: NPS.

2. The NPS Began Planning for a Second Cleanup Project at Cinnamon Bay in Spring 2018

Cinnamon Bay remained closed to the public more than 1 year after the hurricanes hit, and various sources reflected that the economic impact of limited tourism increasingly affected the residents of St. John. In addition, all scientific study at the historic site had stopped. The NPS senior official began discussions in early 2018 to develop plans to reopen Cinnamon Bay. In response to these plans, in spring 2018, an archeologist emailed guidelines for debris removal at Cinnamon Bay to the VIIS senior official and three other NPS employees; neither the NPS senior official nor the VIIS employee received this email. The email did not specifically detail Section 106 compliance requirements for such debris removal but explained the historic significance of Cinnamon Bay as well as the importance of using caution when operating heavy equipment at the site and of monitoring the area during vegetation removal. The archeologist wrote that heavy machinery should stay on the two-track road as much as possible and that any equipment that could not stay on the two-track road must be operated on load-disbursing material approved for use by the park. The email further stated that all equipment should be used in a manner that would not result in ground disturbance. The archeologist sent the email to ensure that Cinnamon Bay's cultural resources and landscape were protected and preserved during the cleanup project and to prevent damage to the site by heavy equipment.

The NPS senior official, the VIIS senior official, and the VIIS employee had all received training in NHPA and NEPA compliance regulations before the fall 2018 cleanup project began. These regulations require a compliance review whenever a project or undertaking could affect archeological, cultural, or historic resources.

As noted in the background section of this report, NPS guidelines and NEPA require certain senior officials to consider, identify, and document the impact on cultural resources while implementing and coordinating activities in national parks by initiating a PEPC. Despite a

responsibility to initiate the PEPC process, neither the NPS senior official nor anyone else submitted a PEPC for the fall 2018 cleanup project before work had started.

The NPS senior official first created a cleanup plan for Cinnamon Bay in fall 2018. The NPS senior official said the plan included cleaning the upper parking lots and main roadway and creating 15 campsites using wooden platforms. The NPS senior official asked NPS staff in fall 2018 to assemble a crew to work on the project.

When asked whether the fall 2018 project complied with the NHPA, we were told the NPS senior official was not involved in a compliance process for the 2018 project because the NPS senior official thought the VIIS employee was handling the project. We were also told the NPS senior official believed the PEPC for the 2017 cleanup effort should have sufficed. When asked why the NPS senior official believed the 2017 PEPC would suffice for the 2018 project, the NPS senior official said an NPS compliance specialist had said so.

When we interviewed an NPS compliance specialist and an NPS science and natural resources management employee, however, both disagreed with the NPS senior official and said the 2017 compliance review would not have sufficed for the 2018 cleanup project. The NPS compliance specialist was involved only with the 2017 PEPC and not the 2018 project; we later learned that the NPS senior official did not speak with the NPS compliance specialist regarding the 2018 project until summer 2019, after we began our investigation and had conducted our first interview with the NPS senior official. The NPS compliance specialist told us that the 2017 review, which was approved for emergency removal of debris only, could have sufficed for the 2018 project only if the cleanup crew planned to do nothing but remove debris. The NPS compliance specialist said that the 2018 project, which included the construction of primitive campground structures in addition to cleanup efforts, changed the scope of the 2017 project and required a separate compliance review.

3. The Cleanup Crew Arrived in St. John in Fall 2018

The crew members stated they were initially told they would be traveling to St. John for a project in fall 2018 but were not given any other details. The crew members, who were seasonal day laborers for the NPS, had not received training in NEPA or Section 106 compliance. They were landscapers and construction workers, many of whom had previously participated in similar cleanup projects. The crew members assessed the site when they arrived on the island. They said they told the VIIS employee that they would need leaf blowers, trimmers, rakes, chainsaws, a skid, a backhoe, and a truck to move debris out of the area. The VIIS employee and the crew members confirmed that the VIIS employee provided all requested equipment, including a backhoe, a bobcat, and a truck. According to the VIIS employee, however, the VIIS employee told the crew not to dig with the equipment because of the site's historic artifacts. The VIIS employee acknowledged knowing that Cinnamon Bay was one of "two major sensitive sites on this island . . . I've stated it a hundred times. You can stick a shovel in the ground anywhere in St. John and you're gonna pick up an artifact." The VIIS employee described to us telling the crew, "You cannot dig anywhere in this entire site." None of the crew members we interviewed reported that the VIIS employee or anyone else had told them that they could not dig or that Cinnamon Bay had any historic or archeological significance.

The NPS senior official arrived in St. John 2 days after the crew had arrived. We were told that, on that same day, the NPS senior official shared with the VIIS senior official, the VIIS employee, and the crew members the plan for the crew to remove debris and construct camping platforms. The NPS senior official described speaking to the crew for no more than 10 minutes and denied seeing any heavy equipment at the cleanup site. (Crew members told us they were unsure whether the NPS senior official had seen the heavy equipment while onsite.) The NPS senior official then left St. John to attend unrelated training.

The NPS senior official and the VIIS senior official both said they put the VIIS employee in charge of the crew to complete the project. The VIIS employee disputed this, however, and told us that no one ever put the VIIS employee in charge; the VIIS employee expressed to us the belief that one of the crew members was leading the project. The crew members told us that even though they received general instructions from the NPS senior official, they took their orders for the project from the VIIS employee through an English-speaking crew member's translation. Crew members added that they thought the VIIS employee managed the project and reported that they checked in with the VIIS employee each morning before working on the site. They also said the VIIS employee visited the cleanup area many times during the 2-week project.

Despite the VIIS employee's denial of a role managing the project, the VIIS employee sent an email to VIIS staff in St. John to ensure the work was completed according to the NPS senior official's instructions. The email included an attachment that explained the cleanup project. The email also included the VIIS employee's handwritten notes and a diagram of the areas to be cleaned of debris and the structures to be built. According to the VIIS employee, the VIIS employee authored the email and attachment without input from the VIIS senior official or the NPS senior official but created the documents based on the NPS senior official's instructions and the conversation the NPS senior official had with the crew at Cinnamon Bay.

The crew members told us they used the bobcat and backhoe to move debris and push it into berms. The area where the crew members used the heavy equipment included historically sensitive sites where archeological artifacts lay underground and near the surface (see Figure 4). As the crew used the equipment, the bobcat's and backhoe's buckets scraped the surface, causing visible disruptions on the ground (see Figure 5). Crew members told us they could see the equipment's tire tracks as they moved the equipment. Some crew members also told us they had no knowledge of Cinnamon Bay's archeological resources. The VIIS employee, who, as noted previously, expressed to us the belief that one of the crew members was leading the project, described providing the crew with equipment but denied playing any role in supervising the crew's use of it.

Figure 4: Heavy Equipment Onsite at Cinnamon Bay



Source: NPS.

Figure 5: Visible Tracks Made by Heavy Equipment Used at Cinnamon Bay



Source: NPS.

4. The NPS Initiated a PEPC for the Fall 2018 Cleanup Project After the Project Had Begun

An NPS science and natural resources management employee described learning from an NPS employee that a crew was in St. John conducting a cleanup and construction project approximately 1 week after the work had begun. The NPS employee, who administered the expenses associated with the cleanup project and had been with the NPS for a short time, noticed “kind of this break” in the cleanup project and “we need to catch up . . . We’re behind.” As such, the NPS employee described to us contacting the NPS science and natural resources management

employee to discuss the project. The NPS employee reported to us that, because of these concerns, the NPS science and natural resources management employee told the NPS employee that the project would have to comply with the NHPA. According to the NPS science and natural resources management employee, the NPS science and natural resources management employee also told the NPS employee that “[t]echnically we shouldn’t have started the project without the compliance in place, but I don’t think it is a heavy lift to get it in place quickly and allow you to move forward.” The NPS employee had only started working for the NPS in 2018, had no formal training in NHPA compliance, and was not aware of the compliance requirements for Cinnamon Bay until speaking with the NPS science and natural resources management employee. The NPS employee told us that the VIIS employee served as the point of contact for the project’s funding, scope of work, planning, and compliance issues; the NPS employee communicated with the VIIS employee via telephone and email.

After speaking to the NPS employee, the NPS science and natural resources management employee requested information on the Cinnamon Bay project; the NPS science and resources management employee described discovering later that crew members had used a backhoe and consequently damaged archeological resources at the site.

An archeologist told us that after someone from the “park actually reached out” to start the compliance process for Cinnamon Bay, a PEPC was entered into the system for the 2018 project. Entering a PEPC into the system only begins the compliance process, however, and activity should not begin until that process is completed; this did not occur for the 2018 project. The archeologist reported being unaware that the crew had begun working before the PEPC was entered into the system and learning only later that work at the site had begun and that damage had already occurred.

5. The VIIS Employee Visited Cinnamon Bay Throughout the Project

Even though the VIIS employee had initially told us the VIIS employee did not manage the project, when we asked the VIIS employee about visiting the site, the VIIS employee acknowledged providing the equipment and instructions for the project. The VIIS employee also acknowledged visiting the site on more than one occasion but not monitoring the crew daily. The VIIS employee told us that about halfway through the project the NPS employee and the NPS science and natural resources management employee requested to see what the crew was doing. In response, the VIIS employee provided them the handwritten diagram.

When we asked the VIIS employee about taking steps to ensure the 2018 project complied with the NHPA before the project started, the VIIS employee said, “Compliance was never discussed . . . I was just paying attention to what I was told [by the NPS senior official]. . . . I did not think about the compliance, to be honest with you, number one. Number two, I did not want to challenge [the NPS senior official].”

6. The VIIS Senior Official’s Statements to the OIG

According to the VIIS senior official, the VIIS senior official learned about the damage at Cinnamon Bay after receiving a call after the project had begun from the archeologist who wrote

the spring 2018 email to VIIS staff. The VIIS senior official had completed NHPA training, and when asked about NHPA compliance at the site, the VIIS senior official acknowledged during our interview in winter 2019 that compliance was required. The VIIS senior official added that the NPS senior official had said at some point that an NPS compliance specialist had completed it.³

The VIIS senior official acknowledged knowing about the historic significance of Cinnamon Bay and that the compliance and protection process had not been followed before the 2018 cleanup began. The VIIS senior official also later acknowledged knowing the NPS should have entered a separate PEPC for the fall 2018 project because the work expanded the scope originally contemplated under the PEPC that the NPS developed for the 2017 cleanup work. The VIIS senior official did not push back on the NPS senior official before the crew arrived in fall 2018 because “[the NPS senior official] told me to do this, and I was doing what my boss told me to do.”

7. The NPS Discovered Damage to Archeological Resources at Cinnamon Bay

An NPS employee described learning in fall 2018 through a conversation with the VIIS employee that the crew had constructed temporary platforms at Cinnamon Bay using the wooden platforms used for camping sites in the upper parking lot. The NPS employee recounted asking the VIIS employee about NHPA compliance and preserving the archeological site; according to the NPS employee, the VIIS employee said the crew only cleared vegetation from the site and did not dig.

After the NPS employee’s conversation with the VIIS employee, the NPS employee visited Cinnamon Bay the next day to see what work had been done and discovered damage in the area. The NPS employee photographed and documented several artifacts exposed on the ground surface (see Figure 6).

³ We note that any such information could not pertain to the PEPC that was submitted in fall 2018 because this was not initiated or submitted until *after* the work was performed.

Figure 6: The Debris Pushed Into a Pile Exposed Historic Artifacts



Source: NPS.

8. The NPS Engaged Law Enforcement and Conducted a Damage Assessment

The NPS senior official stated that approximately 1 month after an NPS cultural resources specialist first discovered the damage at Cinnamon Bay, the NPS senior official held a teleconference with the VIIS employee, the VIIS senior official, an NPS compliance specialist, and other VIIS management. During the teleconference, the NPS senior official described recently learning that the Cinnamon Bay cleanup crew had used a backhoe at the site. The NPS senior official said that during the teleconference no one on the VIIS management team wanted to take responsibility for the damage, so the NPS senior official requested that NPS law enforcement investigate the issue. After a preliminary investigation, the NPS referred the matter to our office.

In winter 2018, an archeological team assessed the damage at Cinnamon Bay. As part of the assessment, the team took small samples of each of the excavated piles and screened the soils for objects. According to an archeologist, the team found more than 400 prehistoric and historic artifacts, such as pottery and stoneware dating back to as early as 1550 (see Figure 7). While the archeologist did not know the exact number of artifacts affected by the crew's work, based on sampling, the archeologist determined that the project caused serious damage to the archeological resources at Cinnamon Bay and estimated that a backhoe disturbed nearly 6,000 square feet of soil.

In summer 2019, the archeologist produced a damage assessment report that cited damage made by heavy equipment used to scrape and excavate soil and to push trash, soil, and vegetation into piles. The report assessed the monetary damages at the site under ARPA by combining the cost

of repair and restoration and the commercial and archeological values of the resources. The estimated monetary damage amount was between \$21,004 and \$121,886.

Figure 7: Artifacts Recovered by the NPS Archeologists at Cinnamon Bay



Source: NPS.

- Group A: Historic Glass
- Group B: Pre-Historic Pottery Sherds
- Group C: Historic Pottery Sherds; Creamware 1762-1820
- Group D: Historic Pottery Sherds; El Morro Ware 1550-1700
- Group E: Historic Pottery Sherd; Lead-Glazed Coarse Earthenware 1490-1900
- Group F: Historic Pottery Sherd; Reyware 1725-1825
- Group G: Historic Pottery Sherds; Porcelain 1500-Present
- Group H: Historic Pottery Sherds: Brown Salt Glazed Stoneware 1690-1775
- Group I: Historic Pottery Sherds; Pearlware 1780-1840
- Group J: Fish Bone
- Group K: Clay Pipe Stems 1/16th Diameter 1750-1800
- Group L: Historic Pottery Sherds; Whiteware 1830-Present
- Group M: Lime Mortar
- Group N: Metal Door or Window Pintal

B. Analysis

The facts outlined in this report demonstrate that NPS employees did not conduct an NHPA compliance review before starting the 2018 work at Cinnamon Bay and that their actions damaged artifacts onsite. Failure to comply with Section 106 implicates regulations under the NHPA and policy requirements in NPS guidelines. Separately, damaging historic artifacts implicates 43 C.F.R. § 7.4(a) of the DOI's regulations under ARPA.

1. NPS and VIIS Senior Officials Violated NPS Regulations and Policy by Failing To Use the Section 106 Process To Protect the Historic Site From Damage

Regulations under Section 106 of the NHPA require Federal agencies to consider the effects of their undertakings on historic properties.⁴ As noted previously, an undertaking is broadly defined to include any project, activity, or program funded by an agency.⁵ Before expending any funds on an undertaking, agencies must follow the so-called Section 106 process so that they can consider the effects on historic properties.⁶ The process includes reviewing whether a project will impact historic properties, and, if so, an agency must take additional steps, such as considering mitigation of adverse effects to the site. NPS policy assigns this responsibility to certain senior officials.

Under governing regulations, an agency must base its Section 106 reviews on the agency's assessment of the potential effects on historic property from the specific actions planned.⁷ According to NPS guidelines, certain senior officials must use the Section 106 process to develop a plan as early as possible to ensure that potential damage "can be avoided or resolved."⁸ For example, NPS guidance suggests as one potential method of avoiding damage to the site having staff archeologists monitor activities if the activities involve disturbing the surface of the ground.⁹ As discussed earlier in this report, several archeologists were on the island monitoring the 2017 project, but this did not occur for the 2018 project.

As explained in detail in this report, the NPS senior official and the VIIS senior official did not ensure that a Section 106 compliance review was completed before the 2018 project in Cinnamon Bay commenced, despite having received training that identified the requirement to complete the compliance review process for any undertaking that could impact archeological, cultural, or historic resources. Furthermore, the project was entered into the PEPC system only after work had already started and the resulting damages had already occurred. The NPS senior official argued that the NPS did not need to complete this process because an earlier review approved in 2017 was adequate to cover the 2018 project. Other NPS witnesses—an NPS compliance specialist and an NPS science and natural resources management employee—disagreed, however, and pointed out that the scope of the 2018 operation differed from the scope of the 2017 project and represented a separate undertaking that required Section 106 review. Further, even though the NPS senior official stated that an NPS compliance specialist confirmed the NPS senior official's belief that the earlier review was sufficient, the NPS compliance specialist was not involved with the 2018 project, and the NPS senior official did not consult with the NPS compliance specialist until at least summer 2019, after we began our investigation.

⁴ 36 C.F.R. § 800.1(a).

⁵ *Id.* § 800.16(y).

⁶ *Id.* § 800.1(c).

⁷ 36 C.F.R. §§ 800.3(a), 800.4(a), 800.16(d).

⁸ NPS Director's Order 28A: Archeology, §§ 4B(1), 5B.

⁹ See "Programmatic Agreement between the NPS, NCSHPO and ACHP" (2008), p. 12 (referenced in Director's Order 28A, § 5B).

Based on our review of the evidence and statements from the NPS compliance specialist and the NPS science and natural resources management employee, we agree that the 2018 project was a separate undertaking requiring Section 106 review. The evidence showed that the NPS based its Section 106 review for the 2017 project on activities and effects having a distinctly different scope from those at issue in 2018. In particular, the NPS' activities in 2018 involved building camping structures and using heavy equipment in a culturally sensitive area, neither of which were contemplated in 2017. Instead, the 2017 project and associated PEPC was for routine maintenance in response to emergency clearing of vegetation from the disaster area.

The NPS senior official and the VIIS senior official failed to ensure that the Section 106 process was followed for the 2018 project, and the evidence showed that they directed the work at Cinnamon Bay to begin without Section 106 protections in place. As senior officials, it was their responsibility to ensure that the NPS completed the Section 106 process before the work commenced, and their failure to do so violated NPS regulations and policy. We emphasize that the Section 106 process is required so that work occurs with a full understanding of potential risks to the site in question; we also note that, in this case, the work that occurred without such a Section 106 process resulted in a loss of historic artifacts.

2. The NPS Did Not Comply with a DOI Regulation Under ARPA

Section 7.4(a) of the DOI's ARPA regulations (43 C.F.R. § 7.4(a)) states in pertinent part:

. . . [N]o person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands . . . unless such activity is pursuant to a permit issued under § 7.8 or exempted by § 7.5(b) of this part.

The term "person" in the regulations includes Federal employees or a Federal agency.¹⁰ "Public lands" includes national parks, and "archeological resources" covers the damaged artifacts described in this report.¹¹ Accordingly, a Federal employee or agency violates § 7.4(a) if archeological resources are damaged or excavated in a national park without a permit unless an exemption applies.

In this case, we did not find that any exemptions applied, nor did we find that the DOI issued a permit in accordance with the PEPC process to any of its components or to any of its employees to proceed. In addition, as discussed above, the NPS' cleanup work, construction, and use of heavy equipment at Cinnamon Bay removed a significant quantity of soil at the site, unearthed numerous archeological artifacts, and resulted in damage to the site estimated between \$21,004 and \$121,886. Further, the loss of historic value resulting from the ground disturbance cannot be remedied.

¹⁰ 43 C.F.R. § 7.3(g). We analyzed this matter under the ARPA regulation rather than the relevant statute because, as noted previously, the Department of Justice declined prosecution of this matter and because we found no evidence that any artifacts were intentionally excavated. We are unaware of any case law or other guidance specifically construing this regulation as applied to the DOI itself under circumstances similar to this case and have accordingly applied its plain language.

¹¹ *Id.* §§ 7.3(a), 7.3(d).

3. *Even Though the VIIS Employee Was Not Personally Subject to the Requirements of Section 106, the VIIS Employee Bears Some Responsibility for the Damages at Cinnamon Bay*

Even though the VIIS employee was not a senior official, and thus was not personally subject to the requirements of Section 106, we note that the evidence showed that the VIIS employee knew about the historic and archeological significance of the site and had received training before the project started on how to comply with the NHPA to protect the site's resources. Despite the VIIS employee's knowledge and training, the VIIS employee provided the crew with heavy equipment to use at the site without monitoring the crew's use of the equipment or advising the crew to ensure the site was not damaged.

Considering this evidence, we concluded that the VIIS employee bears some responsibility for the NPS' failure to complete the Section 106 process. This is particularly true given that, as described previously, the VIIS employee was the onsite NPS employee who directed the project based on the NPS senior official's instructions. Further, the crew members told us that they took their day-to-day orders for the project from the VIIS employee through an English-speaking crew member and that the VIIS employee visited the site often and checked in daily with the crew. The record also showed that the VIIS employee emailed detailed instructions to VIIS staff in St. John to ensure the work was completed according to the NPS senior official's direction. The VIIS employee's email to VIIS staff included the VIIS employee's detailed handwritten notes and a diagram of the areas to be cleaned of debris and the structures to be built.

IV. SUBJECTS

1. NPS senior official
2. VIIS senior official
3. VIIS employee

V. DISPOSITION

We provided a copy of our report to the NPS Deputy Director of Operations, Exercising the Delegated Authority of the Director, for any action deemed appropriate.

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