**24.21 Excavating or Trafficking in Archaeological Resources**

**(16 U.S.C. § 470ee(a), (b)(2))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [excavating] [trafficking in] archaeological resources in violation of Sections 470ee(b)(2) and (d) of Title 16 the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

[First, the defendant knowingly [[excavated] [removed] [damaged] [altered] [defaced]] [*specify archaeological resource*] while knowing that it was of archaeological interest and at least 100 years of age;]

*or*

[First, the defendant knowingly [[sold] [purchased] [exchanged] [transported] [received] [offered to sell] [offered to purchase] [offered to exchange]] [*specify archaeological resource*] while knowing that it was of archaeological interest and at least 100 years of age;]

Second, the [*specify archaeological resource*] was [[located on] [removed from]] [*specify public or Indian lands*]; and

Third, the defendant acted without a permit to do so from [*specify federal land manager*].

The government is not required to prove that the defendant knew that the [*specify archaeological resource*] was [[located on] [removed from]] [[public] [Indian]] land.

**Comment**

A felony prosecution under the Archaeological Resources Protection Act requires proof that the defendant knew, or at least had reason to know, that the object taken is an “archaeological resource”; otherwise, the offense is a misdemeanor and knowledge that the object is of archaeological interest is not an element.  *See United States v. Lynch*,233 F.3d 1139, 1145-46 (9th Cir. 2000) (discussing prosecution under 16 U.S.C. § 470ee(a)).

Knowledge that the archaeological resource was on government land is not an element of the offense, only a jurisdictional prerequisite for prosecution. *Cf. United States v. Howey,* 427 F.2d 1017 (9th Cir. 1970) (holding that defendant’s knowledge of government ownership of property is not element of the offense of theft of government property under 18 U.S.C. § 641).

Statutory maximum sentences are increased for offenses if the commercial or archaeological value of the archaeological resources at issue and the cost of restoration and repair of such resources exceeds the sum of $500. If the value of the resource is disputed, the jury should be instructed to make a finding of whether the value was more than $500. Archaeological value is what it would have cost the United States to engage in a full-blown archaeological dig to recover the archaeological information protected by the Act. *United States v. Ligon*, 440 F.3d 1182, 1185 (9th Cir. 2006).

For a definition of “archaeological resource,” *see* 16 U.S.C. § 470bb (1). As to obtaining a permit from a federal land manager, *see* 16 U.S.C. § 470cc.