

Section 106 and the Regulatory Program

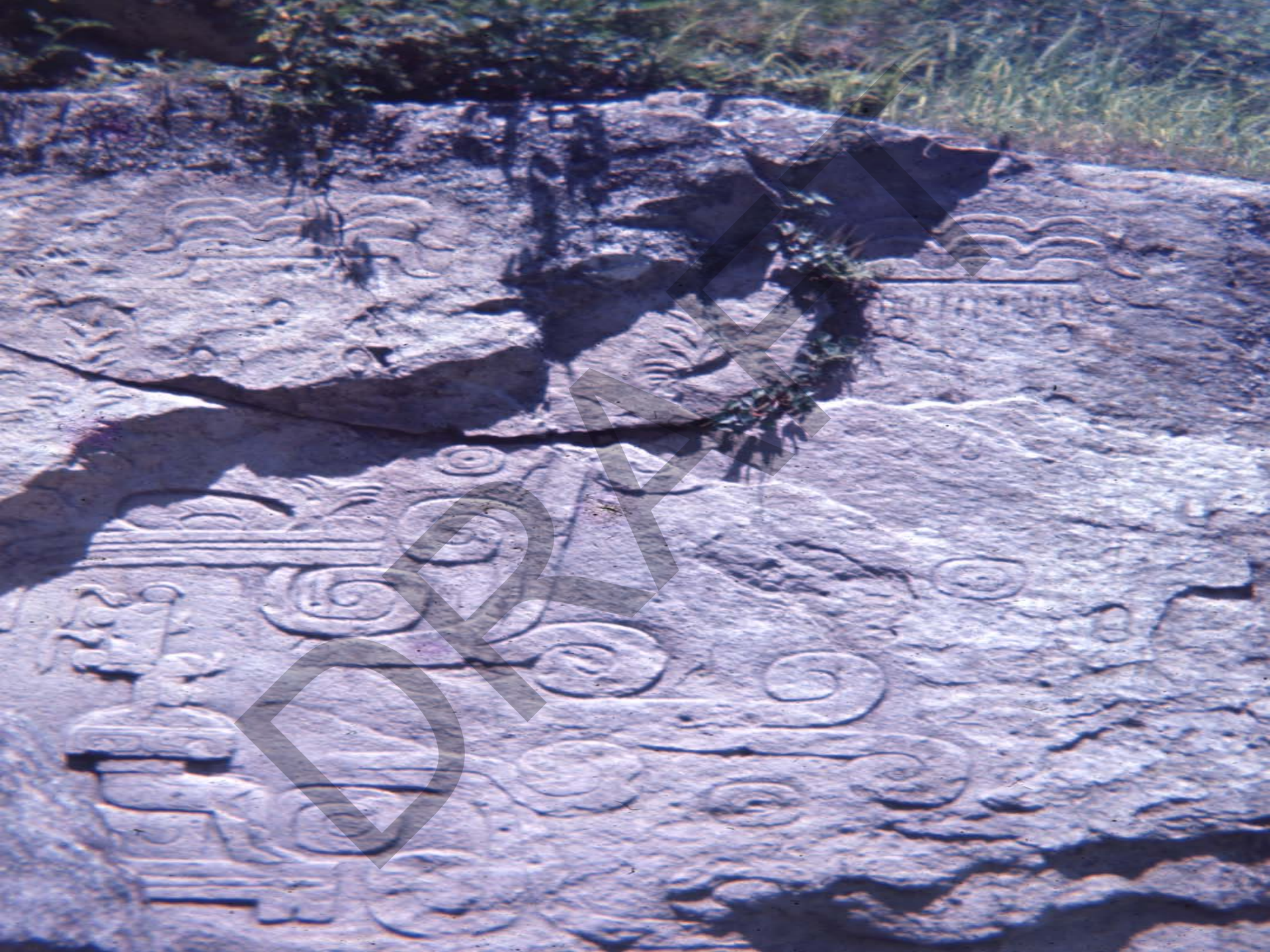
Fall 2010 Consultant Workshop



US Army Corps of Engineers
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Relevant Historic Preservation and Environmental Laws Affecting all Federal Agencies and Activities

- Section 106 of the National Historic Preservation Act of 1966, as amended through A.D. 2000 (16 U.S.C. 470f)
- Section 110 of the N.H.P.A., as amended (16 U.S.C. 470h-2)
- Section 102 of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347)



Section 106 of the National Historic Preservation Act

- Section 106 Requires 2 things:
 - ▶ 1. The Head of any Federal Agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking to take into account the effects of his or her actions Historic Properties;
 - ▶ and



Section 106 Requirements (cont'd)

- ▶ 2. To allow the Advisory Council on Historic Preservation a reasonable opportunity to comment on the effects of the undertaking on historic properties.



USACE REGULATORY AUTHORITIES

- Section 404 of the Clean Water Act (13 U.S.C. 1344)
- Section 10 of the Rivers and Harbors Act (33 U.S.C. 401)
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)
- Consideration, processing and issuance of USACE Permits under its authorities governed by 33 C.F.R. 320 - 330



Corps Regulations on Permitting and Historic Properties

- Effects to historic properties are among the many public interest factors that the USACE is required to consider in their processing and issuance of permits under its permitting authority, and laws pertaining to historic properties are among those that the Corps is required to make its decisions and actions as compatible with as possible



33 C.F.R. 320.4(e)

“Historic, Cultural, Scenic and Recreational Values”

- Applications for DA permits may involve areas which possess recognized historic, cultural, scenic, conservation or similar values.
- Full evaluation of the general public Interest requires due consideration given to the effect which proposed structure or activity may have on those values
- Action on permit applications should insofar as possible be consistent with and avoid significant adverse effects on those values for which those classifications, controls or policies were established



What are Historic Properties?

- Historic Properties may be buildings, structures, sites, districts, or objects: minimum age 50 years
- Under 36 CFR 800, must be either eligible for National Register of Historic Places, or listed on the National Register of Historic Places;
- Under Corps Regs at 33 CFR 325, historic properties may be considered that are not eligible



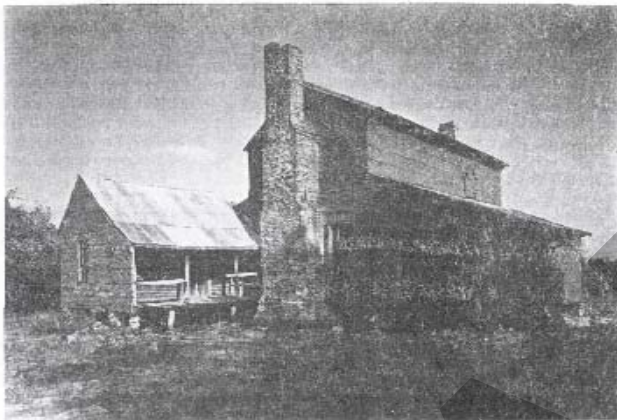


Figure 34. The Alexander-Cleveland house (HABS GA-30), northwest perspective. A good example of a Carolina I house located in the project area.

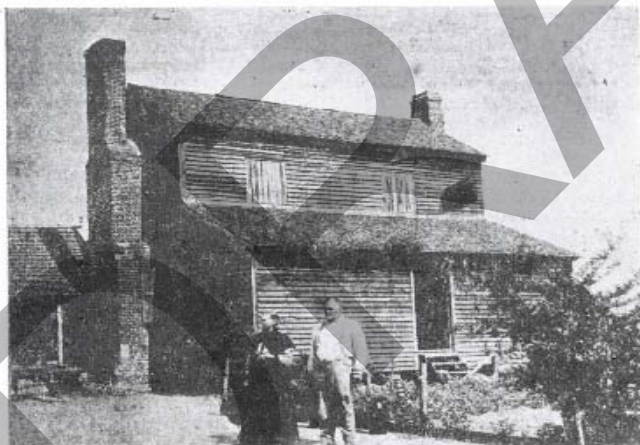
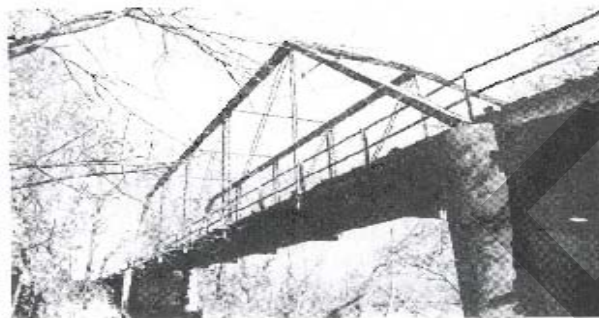


Figure 35. A similar view, with the Clevelands in front of their residence, from a photograph made ca. 1920 prior to the addition of the metal roofing and asphalt siding.



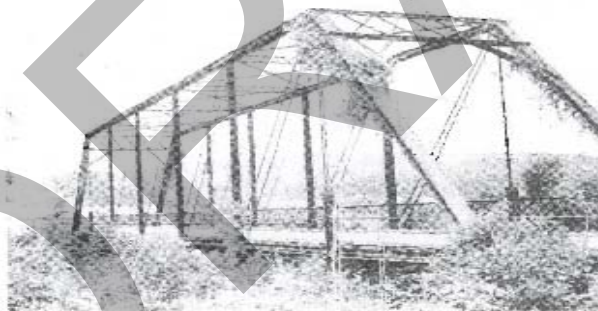
PRATT THROUGH TRUSS



KELLY BRIDGE DETERMINED
ELIGIBLE FOR THE NATIONAL
REGISTER ON 11-5-80

I.D. No. 281-00057X-001.05E
C.R. 87 over Hiwassee River
I - TOWNS - I

PRATT THROUGH TRUSS



I.D. No. 015-00048-000.7BN
C.R. 49 over Euharrie Creek
VI - BARTOW - 4

Plate 5



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CONCRETE ARCH (open spandrel)

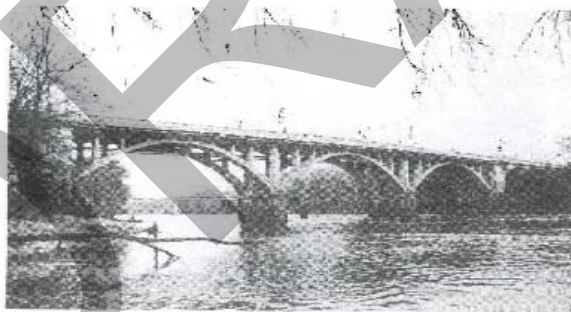
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DETERMINED ELIGIBLE FOR
THE NATIONAL REGISTER
ON 11-5-80

I.D. No. 195-00072-19.56E
S.R. 75 Connector over Broad River
1 - MADISON - 1

CONCRETE ARCH (open spandrel)



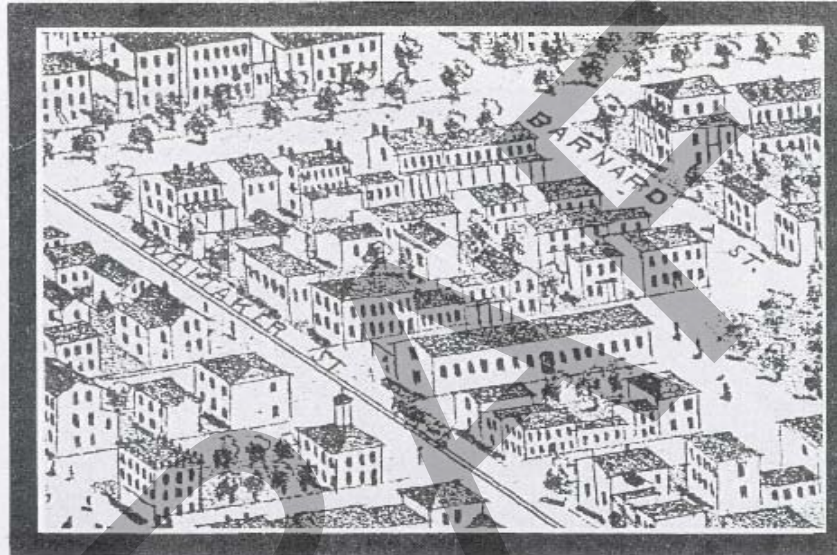
I.D. No. 195-00133-012.39N
S.R. 50 Connector over Flint River



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THE REALITY OF THE CITY

Urban Archaeology at the Telfair Site
Savannah, Georgia



Betha Tydings, Heathcote Ward, Savannah - 1871

Nicholas Honerkamp, R. Bruce Council
and Charles H. Fairbanks

The Jeffrey L. Brown Institute of Archaeology
The University of Tennessee at Chattanooga

December 1983



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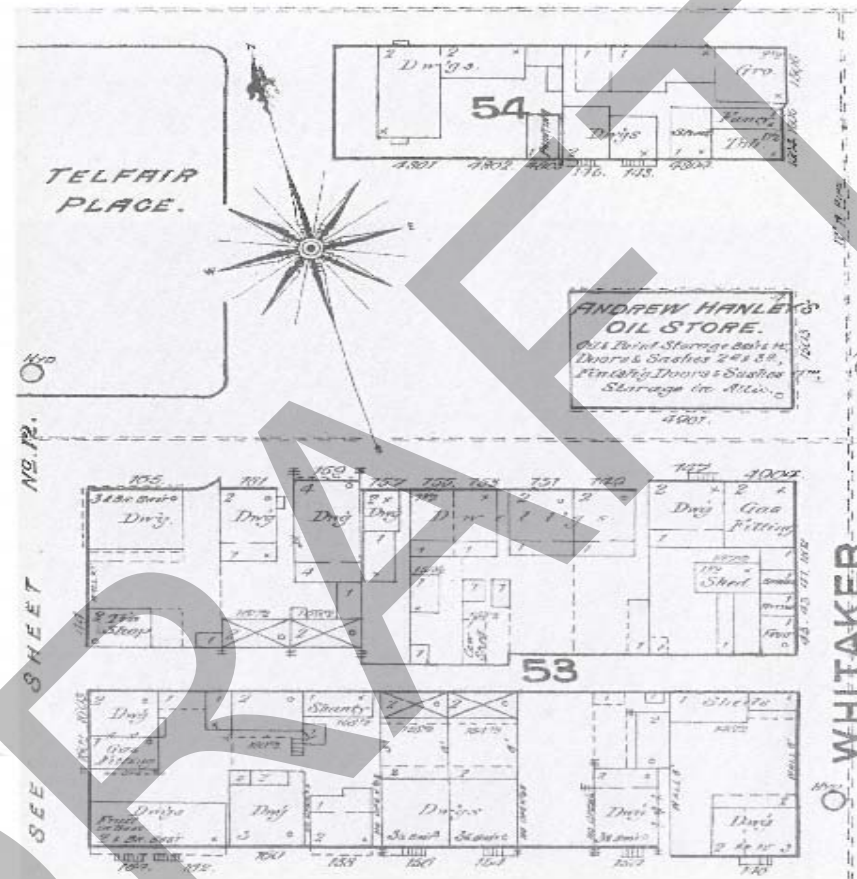


Figure 5. The Sanborn Map of 1884. At this date, wooden structures dominated the project area.





Figure 1. Bull Brook artifacts: (a) fluted point; (b) unifacial flake-shaver; (c) endscraper; (d) graver; (e-h), d. scraper. Photographs by Erica Cooper, courtesy of Robert S. Peabody Museum (a, i) and Peabody Essex Mu

ing events. These include two AMS dates on individual fragments of *Pinus* sp. charcoal from Locus 24 (9380 ± 60 B.P., Beta 89307, 8790–8480 cal B.C., 2σ) and Locus 32 (9520 ± 60 B.P., Beta 240631, 9180–8710 cal B.C.) and one on carbonized pitch from Locus 6 (8790 ± 50 B.P., Beta 112176, 8180–7660 cal B.C.). Charcoal identification by Nancy Asch Sidell from multiple locations (Loci 6, 11, 16, 24, 32, and 34) yielded *Pinus strobus* (white pine), *Pinus* sp., *Quercus* sp. (white oak group), *Quercus* sp. (red oak group), and one hazelnut shell, but no *Picea* sp. (spruce). Pollen core and macrofossil data indicate that spruce was

or calcined bone provided an alternative Bull Brook. The method dates structural in the crystal lattice of bio-apatite (calc phosphate) with good agreement between charcoal dates (Lanting et al. 2001) an laboratories (Naysmith et al. 2007). Well fragments of burned bone were recovered Bull Brook with one burned bone fragment Locus 18 described in detail (Byers 1998:210). Caribou (*Rangifer tarandus*) beaver (*Castor canadensis*) bone have been identified (Spiess et al. 1998:208). Two samples of calcined long bone from Bull Brook were dated





Two world-famous images made of renowned Georgia marble, found in the Elowah mounds.



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TEST PIT #16 – PROFILE

POINTING TO CHARRED DEBRIS LAYER AT BASE OF SHELL



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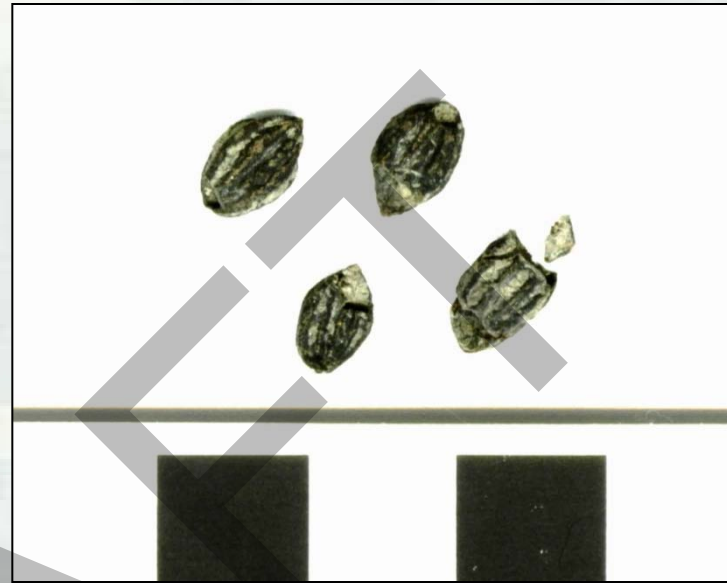


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CENTIMETER SCALES



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36 C.F.R. 800

Protection of Historic Properties

- Advisory Council on Historic Preservation's regulation for defining how Federal agencies meet their statutory responsibilities under the NHPA
- Three Sections:
 - ▶ A: Purposes and Participants
 - ▶ B: The Section 106 Process
 - ▶ C: Program Alternatives



The Section 106 Process

- Taking into Account Effects of Actions (Undertakings) on Historic Properties
 - ▶ Step (Phase) 1: Identify Historic Properties and Potential Historic Properties (Inventory)
 - ▶ Step (Phase) 2: Evaluate (Assess) Historic Properties: i.e., apply National Register criteria of eligibility (36 CFR 60.4, and other guidance)
 - Done by agency in consultation with SHPO
 - ▶ Determine Undertaking's Effects to Properties determined eligible or listed in National Register
 - Done by agency in consultation with SHPO



Determination of Effect

- **Three Possible Effect Determinations**
 - ▶ **No Historic Properties affected/No Effect to Historic Properties:** if SHPO concurs, no need to notify Advisory Council, and Section 106 concludes
 - ▶ **No Adverse Effect:** (will not [adversely] alter the characteristics that make the property eligible for inclusion in the National Register); if SHPO concurs, no need to notify Advisory Council and Section 106 concludes
 - ▶ **Adverse Effect:** must notify Advisory Council of Corps' Determination of Adverse Effect



Resolution of Adverse Effects

- Notify Council and Determine Council Participation
- Involve Consulting Parties
- Involve the Public
- Resolve Adverse Effects
 - ▶ Without Council participation
 - ▶ With Council participation



Mechanisms for Avoiding, Lessening or Mitigating Adverse Effects to Historic Properties

- **Consultation with applicant** concerning changes to Conceptual Design, or Design details of undertaking that would result in reduced adverse effect, or avoid adverse effect altogether; consult with SHPO and applicant
- **Permit Special Conditions**, without MOAs or Pas: useful when mitigation/minimization measures are simple, not complex, and do not require a great deal of description as to the standard to which these will be performed; not advised when archaeological data recovery mitigation excavations proposed, or HABS/HAER documentation above a local level of significance or level 3 documentation
- **Memoranda of Agreement (MOAs)**, attached as part of Permit
- **Programmatic Agreements (Pas)**, attached as part of permit



Treatment of Historic Properties: Methods of Minimization of Adverse Effect and Mitigation

- Project Redesign/Design Revision
- Exclusion and protection of historic property from the development, e.g., as perhaps a “green space area”
- Archaeological Data Recovery Excavation Programs
 - ▶ Historic Archaeological Sites
 - ▶ Prehistoric Archaeological Sites
- Written Documentary, Archival and Historic Documentation and Photographic Documentation, for Historic Buildings, Structures (e.g., bridges), non-archaeological sites such as battlefields
 - ▶ Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) documentation
 - ▶ Non-HABS/HAER recordation, for local significance only



MOA, PA, OR PERMIT CONDITION?

- If mitigation measure is simple, straight-forward, and easily spelled out in a few sentences, a permit condition should suffice
- If mitigation measures require more complex description or detailed stipulations, and all of APE is surveyed and all historic properties and eligibility statuses are known, an MOA is appropriate



MOA, PA, OR PERMIT CONDITION? (Cont'd)

- If not all of APE surveyed, not all historic properties known, or not all effects are fully known, within reasonable foresight, then a project-specific “Programmatic Agreement” is appropriate, with one caveat:
 - ▶ Project Development should not preclude alternatives for sites found during later phases of development that would have otherwise been available when project first initiated



33 C.F.R. 325.4

Conditioning of Permits

- District Engineers will add special conditions to DA permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirement. Permit conditions will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable.”



Permit Area Vs. Area of Potential Effect

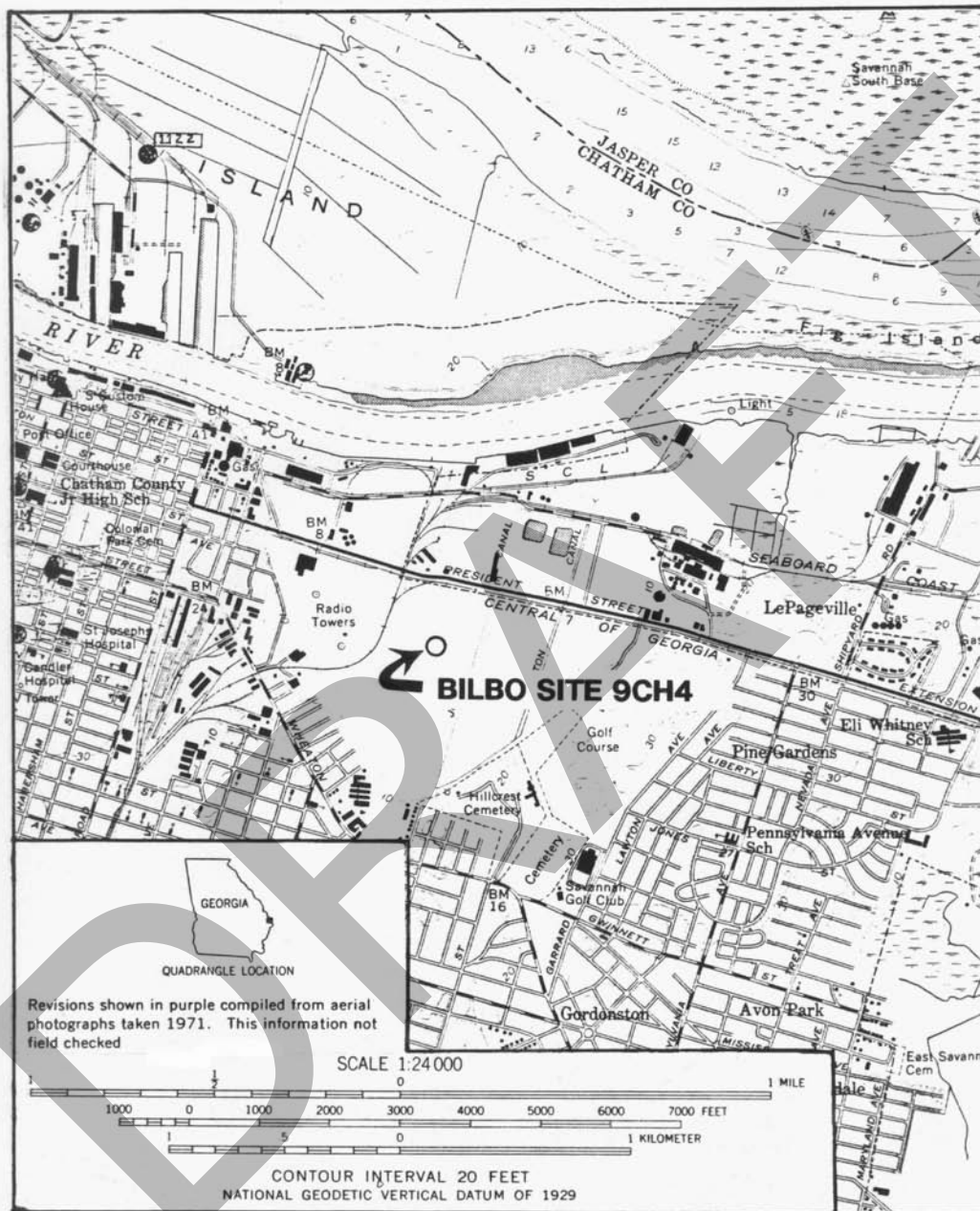
- **Permit Area (App. C):**
- Those areas comprising the waters of the United States that will be directly affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures;
- 3 “tests” for activity outside the waters of US to be included in “Permit Area”
- **Area of Potential Effect (800):**
 - ▶ Means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character and use of historic properties
 - ▶ Influenced by scale and nature of undertaking
 - ▶ May vary for different sorts of effects



Undertaking vs. Undertaking

- **Undertaking (App.C):**
 - Means the work structure or discharge that requires a DA permit
- **Undertaking (800):**
 - Means a Project, Activity or Program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal Agency; those carried out with Federal financial assistance and those requiring a Federal permit, license or approval





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TEST PIT #14 – EXCAVATION IN PROGRESS



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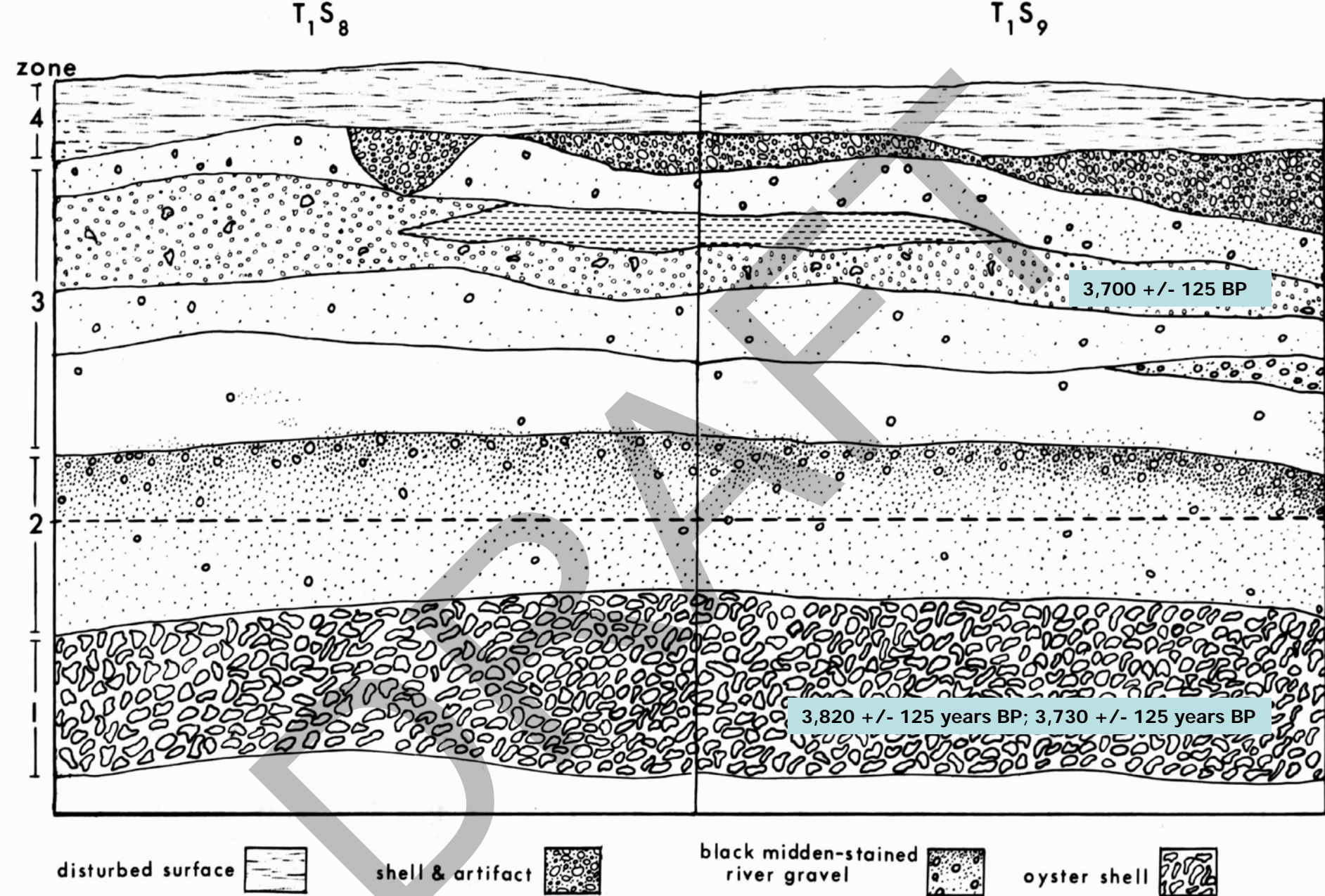


FIG. 54. Profile of Squares T_1S_8 and T_1S_9 showing the main midden zones recognized at Bilbo.

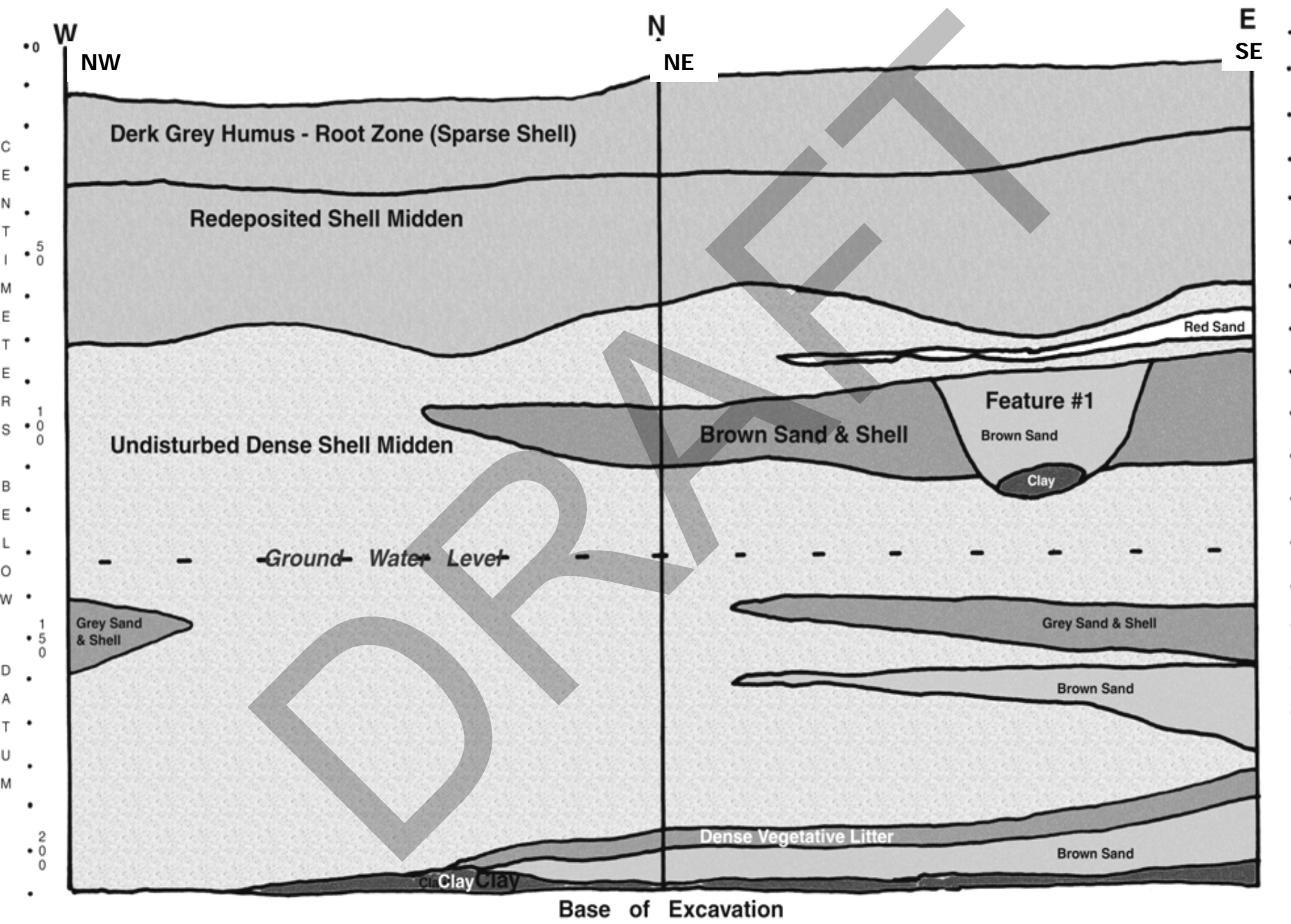


TEST PIT #14 – PROFILE OF NW WALL (Range Pole Divisions are 50cm)



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Profile - Test Pit #14 (1.5m x 1.5m sqr)

















CHALCATZINGO 1974
TERRACE 27
BURIAL 1
O-1E, O-2S
30-50 CM 15 FEB

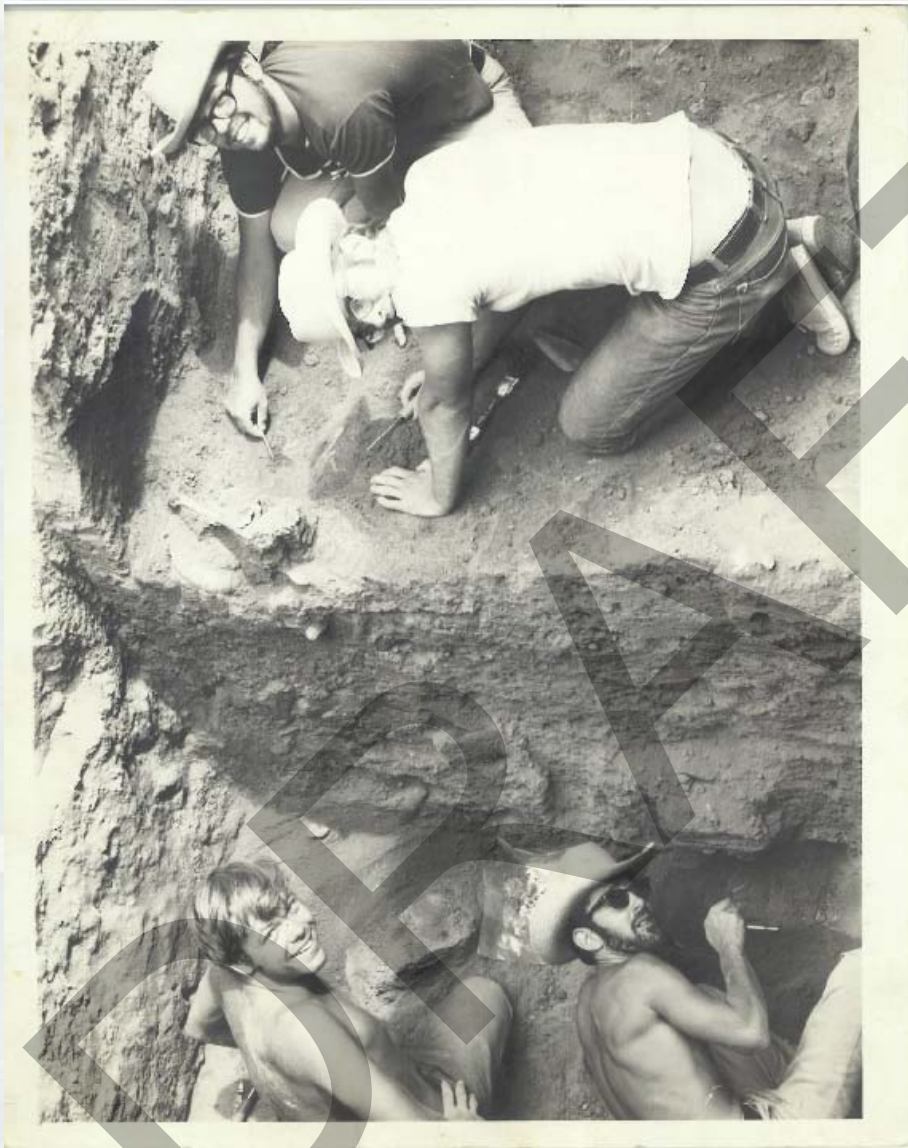


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APRIL 3



DRAFT





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