

TITLE 10 - NATURAL RESOURCES AND THE ENVIRONMENT

CHAPTER 10-9 HUMAN REMAINS AND FUNERARY OBJECTS

10-9-1 Background

The Cultural Resource Protection Program (CRPP) within the Department of Natural Resources (DNR), coordinates protection and management of archaeological sites and the process of repatriation of human remains and funerary objects not in the custody of museums, universities, federal agencies, institutions, other tribes or persons.

Archaeological excavation and repatriation is made upon the advice and direction of Tribal Council.

10-9-2 Purpose

The purpose of this Code is to provide procedures for (1) Repatriation of human remains and funerary objects and (2) Archaeological excavation of human remains and funerary objects.

10-9-3 Definitions

The following definitions shall apply to this Code:

(a) Ancestral Territory of the Tribes - the ancestral lands within the following legal description (*Tribal Council 91-010*) or as provided for by future Tribal Council action:

“Starting at a point twelve (12) nautical miles West of the Continental Shelf, and running due East to the mouth of a creek known as Ten Mile Creek, in Section 27, Township 15 South, Range 12 West, Lane County, Oregon; thence East to the watershed between the waters of the junction of the Calapooia Range, near the head water of the Siuslaw River, in Township 21 South, Range 4 West; thence in a Westerly direction following the summit of the ridge between the waters of the Smith and Umpqua Rivers, to a point due north of the head of tidewater on the Umpqua River; thence South across the Umpqua River to the summit of the mountains dividing the waters of Camp Creek from the waters of the Umpqua River; thence in a Southeasterly direction along the summit of the Coast Range Mountains, to the summit of the divide separating the waters of Looking Glass Creek from the waters of the South Fork of Coos River, in Township 27 South, Range 8 West, Douglas County, Oregon; thence West to a point of rocks known as the Five Mile Point, in Section 19, Township 27 South, Range 14 West, Willamette Meridian, Coos County, Oregon; extending due West to a point twelve (12) nautical miles beyond the Continental Shelf”.

(b) Archaeologist - a professional scholar who studies the past using scientific

methods with the goal of recording, interpreting, and preserving knowledge of ancient and contemporary cultures and who meets the Secretary of Interior's Standards for an Archaeologist [National Historic Preservation Act (NHPA) 36 CFR 61].

- (c) Archaeological Deposit – soil, artifacts and features that are part of an Archaeological Site.
- (d) Archaeological Excavations - a method of data collection in which Archaeologists remove the soil matrix and observe and record the location and context of archaeological finds.
- (e) Archeological Sites - a site that contains the remains of past human activity in its original context. Archaeological Sites include sites found on the surface or below the surface of the ground and including submerged and submersible lands and the bed of the sea.
- (f) Associated Funerary Objects - objects placed intentionally with Human Remains and still physically associated in space with such Human Remains. The location of objects within the grave fill or in immediate proximity to Human Remains shall be understood to be evidence of intentional placement with Human Remains.
- (g) Burial Sites - any place of interment, by any means, natural or a physically prepared location, whether originally below, on or above the surface of the ground and including submerged and submersible lands and the bed of the sea and where remains and or Associated Funerary Objects are deposited, as part of the death rites or ceremonies of the Tribes.
- (h) Cemetery - a Burial Site in which two (2) or more individuals were buried.
- (i) Cultural Items - those items that are Unassociated Funerary Objects, sacred objects and items of cultural patrimony.
- (j) Culturally Affiliated Indian Tribes - a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe. Cultural affiliation is established when the preponderance of the evidence -- based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion.
- (k) Cultural Resource Protection Program (CRPP) - the program of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians within the Cultural Division of the Department of Natural Resources responsible for the protection of archaeological resources.
- (l) Disturb - defacing, mutilating, injuring, exposing, removing, destroying, desecrating or molesting in anyway Archeological or Burial Site(s).

- (m) Human Remains - the physical remains of the body of a person of Native American or probable Native American ancestry buried within the Ancestral Territory of the Tribes. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets.
- (n) Inadvertent Discovery -the unanticipated encounter or detection of Human Remains, Funerary Objects, sacred Objects, or objects of cultural patrimony found under or on the surface of the ground or water.
- (o) Lead Response – direction and principle responsibility in the process of repatriation as defined in this policy by the Tribes in whose ancestral territory the Human Remains or Cultural Items were found or with which are most likely to be associated.
- (p) Natural Disturbance - any natural process such as erosion or burrowing animals that disturb or expose Archaeological Sites including Burial Sites.
- (q) Osteologist - a scientist that is an expert on anatomy that deals with the structure and function of bones.
- (r) Repatriation - the transfer of legal interest in and physical custody of Native American Human Remains and or Cultural Items to lineal descendants or Culturally Affiliated Indian tribes.
- (s) Scope of Work (SOW) - a written plan for the excavation of Archaeological or Burial Sites that is duly approved by the Tribes.
- (t) Tribal Lands – all reservation and trust lands of the Tribes.
- (u) Tribal Fee Lands – all land owned in fee status by the Tribes
- (v) Unassociated Funerary Objects - objects intentionally placed with Human Remains but whose association has been disturbed through past Archaeological Excavation, Natural Disturbance or other Disturbance activities.

10-9-4 Excavation of Human Remains, Funerary Objects and Cultural Items

(a) Policy

Tribal Burial Sites are sacred. It is the Policy of the Tribes not to disturb Burial Sites unless subject to CLUSITC 10-9-4(b).

(b) Intentional Excavation

Intentional excavation of Burial Sites shall be done in conformity with CLUSITC 10-9-10 of this Code and shall be the responsibility of the CRPP. Intentional excavations may

be permitted if the Burial Site is in the following situations as determined by the Tribes' Archaeologist:

- (1) Imminent danger of natural disturbance or illegal human-caused disturbance(s); or
- (2) When avoidance of the Burial Site would impose an extreme hardship on the owner, manager or lawful user of the land in which the Burial Site is located.

10-9-5 Repatriation of Human Remains, Funerary Objects and Cultural Items

(a) Human Remains

(1) The process to Repatriate Human Remains and associated funerary objects that are held in temporary custody by museums, universities, state or federal agencies, institutions or other tribes who have the expertise to make these determinations, and that need no further investigation to determine they are Native American Human Remains, and are not associated with any criminal activity such as looting of Archaeological or Burial Sites shall be performed under the responsibility of the Cultural Department.

(2) The process to Repatriate remains and associated funerary objects that need further investigation to determine if they are human and whether they are Native American Human Remains or are or may be associated with any criminal activity such as looting of Archaeological or Burial Sites shall be performed under the responsibility of the CRPP as outlined in section 10-9-8. Situations where further investigation may be needed include but are not limited to:

- (A) inadvertent Discoveries
- (B) possible criminal activities associated with the looting of Archaeological or Burial Sites
- (C) a request by institutions, agencies or the public for the CRPP to investigate a location suspected to contain Human Remains or an object suspect to be Human Remains

(b) Cultural Items

(1) The process to Repatriate Cultural Items that are held in temporary custody by museums, universities, state or federal agencies, institutions or other tribes who have the expertise to make these determinations, and that need no further investigation to determine they are Cultural Items, and are not associated with any criminal activity such as looting of Archaeological or Burial Sites shall be performed under the responsibility of the Cultural Department.

(2) The process to Repatriate Cultural Items that need further investigation to determine if they are cultural items, or are or may be associated with any criminal activity such as looting of Archaeological or Burial Sites, shall be performed under the responsibility of the CRPP as outlined in section 10-9-8. Situations where further investigation may be needed include but are not limited to;

(A) inadvertent discoveries

(B) possible criminal activities associated with the looting of Archaeological or Burial Sites

(C) a request by institutions, agencies or the public for the CRPP to investigate a location suspected to contain Cultural Items or an object suspect to be a Cultural Item.

10-9-6 Re-interment of Human Remains and Funerary Objects

(a) Human Remains

Human remains shall be reburied as follows:

(1) Together with all Associated Funerary Objects as soon as shall be reasonably practical, consistent with applicable state, federal or Tribal laws;

(2) As close to the original Burial Site as practical. If this is not practical, reburial shall occur in a designated Tribal burial location such as Baldich (Gregory Point) (Miluk); Wu'alach (Pioneer Cemetery) (Hanis); Takimiya (Umpqua Eden) (Lower Umpqua); or Ka'aich (Drew Cemetery) (Siuslaw); and

(3) In a manner consistent with procedures set forth by the Tribal Chief and the Cultural Committee, *provided that*, such procedures have first been approved by the Tribal Council unless otherwise delegated by the Tribal Council to the Chief.

10-9-7 Coordination with Other Interested Tribes

(a) Re-interment coordination shall be made in conformity with written resolutions made between these Tribes and other interested tribes if such resolutions have been adopted.

(b) When Human Remains or Funerary Objects are found within the Ancestral Territory of the Tribes as provided for in Resolution 91-010 or a successor resolution, the Tribes shall exercise the Lead Response, but may invite an interested tribe to participate in the repatriation, excavation, or re-interment of the Human Remains. It is the responsibility of the Tribal Chief, in consultation with the Culture Committee Chair, or the Chief's designee to notify and coordinate with other tribes of the Tribes' intent to

exercise the Lead Response for the process to repatriate, excavate, or re-inter.

10-9-8 Procedure

(a) Inadvertent Discovery

(1) In the event of an Inadvertent Discovery or Disturbance of a Burial Site, or in the event of a report of known or suspected Human Remains or Funerary Objects which have become disassociated from a Burial Site or Archaeological Deposit, the CRPP shall coordinate the response to the Inadvertent Discovery. The CRPP shall report to the Director of the DNR in consultation with the Tribal Administrator, the Tribal Chief, the Culture Committee Chair and Tribal Police Chief.

(2) The CRPP shall track the discovery, return, or repatriation process and issue a written report within thirty (30) days of the conclusion of the matter.

(b) CRPP Responsibilities

The CRPP shall follow the following procedures upon receipt of notification of the inadvertent discovery of known or suspected Human Remains:

(1) Notification of possible Inadvertent Discovery is made to the DNR Director, Tribal Administrator, Tribal Chief, Tribal Police Chief, and Culture Committee Chair.

(2) The CRPP investigates the discovery to determine if;

(A) The remains are really human;

(B) The Human Remains are Native American, and

(C) The Human Remains are isolated or associated with a disturbed Burial/Archaeological Site.

(3) When a Human Remains determination is made, whether Native American or not, the CRPP will call the State Police and Tribal Police Chief.

(4) If a Human Remains determination cannot be made, the CRPP will seek a determination from the County Medical Examiner.

(5) If a Human Remains determination is made, but a determination cannot be made as to whether the remains are Native American Human Remains, the CRPP will call the State Police and Tribal Police Chief, and the CRPP will seek confirmation from the County Medical Examiner.

(6) If the Human Remains are determined to be Native American and are not believed to be part of a forensic case and are located on State, private or Tribal Fee Lands, the Commission on Indian Services (CIS) and the State Historic

Preservation Office (SHPO) will be contacted by the CRPP and other appropriate tribe(s) will be contacted by the Tribal Chief or his designee. If the discovery is found on federal lands, it is the responsibility of the land managing agency to contact CIS, SHPO and the appropriate tribe(s) and other appropriate tribe(s) will be contacted by the Tribal Chief or his designee. If the discovery is found on Tribal Lands as defined in 10-9-3(t), the CRCP will contact the DNR Director, Tribal Administrator, the Tribal Chief, the Culture Committee Chair, Tribal Police Chief, and BIA and other appropriate tribe(s) will be contacted by the Tribal Chief or his designee

(c) Decision on Whether or Not to Excavate a Burial Site

The Tribal Chief will consult with the Tribal Council and Culture Committee Chair regarding the discovery. The final decision as to whether or not to excavate the Burial Site will be made by the Tribal Council.

10-9-9 Permit Requirements

(a) Prior to beginning any ground disturbing activities, the Tribes, or individuals and organizations contracting with the Tribes, shall have the following permit(s):

- (1) For State, private, or Tribal Fee Lands, the permit shall be issued by the State Historic Preservation Office (SHPO).
- (2) For federal land, the permit shall be issued by the land managing agency as provided for under applicable federal law.
- (3) On Tribal Lands, unless otherwise required by federal law, the permit shall be issued by the Tribes.

10-9-10 Intentional Excavation of Human Remains

Archaeological Excavations of Human Remains shall be conducted and completed by an Archaeologist. In addition, assistance may be provided by an Osteologist as provided for in CLUSITC 10-9-10(a).

(a) Scope of Work

The CRPP develops a Scope of Work (SOW) that is approved by the Tribal Chief in consultation with the Tribal Administrator and Culture Committee Chair.

The SOW shall include the following:

- (1) Identification and documentation of Human Remains shall take place in the field and will involve visual inspection and measurements to aid in the determination of age, gender, stature and to note any other distinguishing features such as disease, injury or other osteological pathologies.

(2) Some light cleaning of the bones will be allowed for the Archaeologist and/or Osteologist to complete their field analysis and potentially re-associate isolated bone elements to determine the number of individuals present for reburial.

(3) The remains of the Tribes' people shall not be subjected to destructive skeletal analysis unless preapproved by the Tribal Council in consultation with the Culture Committee Chair.

(4) Any additional analysis recommended from the Archaeologist and/or Osteologist shall be considered and approved on a case-by-case basis by the Tribal Chief.

(5) The Burial Site and the Human Remains may be photographed but all photographs shall be kept confidential within a separate burial appendix from the main archaeological report. This separate appendix shall only be accessed by written permission by the Tribal Chief in consultation with the Culture Committee Chair and, when not otherwise addressed in the archaeological excavation SOW, subject to the provisions of the Tribal Research Ordinance.

(6) All non-funerary items will be recovered from the excavation and removed for analysis by the Archaeologist conducting the excavation. When possible, all excavated materials will be returned to the Tribes for curation.

(7) The CRPP will coordinate the funding for the excavation.

(8) The CRPP will solicit requests for proposals for the excavation with the approved SOW. The CRPP will recommend to the Tribal Chief the contractor to complete the excavation, and the Tribal Chief will select the contractor. Standard Tribal procurement policies may be waived at the discretion of the Tribal Chief. Excavation can also be conducted internally by the CRPP if resources are available.

(9) The CRPP coordinates the excavation. At all times during the process of disturbing any Human Remains or Associated Funerary Objects, the CRPP and as available the Tribal Chief and Culture Committee Chair shall be available on-site to assist and ensure that the parties employed to remove or expose any Human Remains or Associated Funerary Objects carry out the procedure along the guidelines set forth in the SOW.

(10) The Tribal Chief and/or a designated tribal member will place the excavated Human Remains and Funerary Objects in an appropriate container (previously approved by the Tribal Chief).

(11) The CRPP, Tribal Chief or designated tribal member will personally transport the Human Remains and Funerary Objects to the administration building and secure them in the designated repository until reburial or until the end of the

waiting period required under NAGPRA for federal lands. The Tribal Chief may immediately reburial the Human Remains and Funerary Objects if the excavation is not subject to NAGPRA in conformity with 10-9-11 of this Policy.

(12) If the excavation is subject to NAGPRA, the land managing agency (federal) or CRPP places a Notice of Intended Disposition in the local newspaper at least thirty (30) days prior to reburial. Two notices are required fifteen (15) days apart. Once the thirty (30) day waiting period is over, the CRPP notifies the Tribal Chief. If the reburial location needs prior approval from the CRPP, land managing agency and/or SHPO, the CRPP coordinates this process.

10-9-11 Reburial

Human Remains shall be reburied, together with all Associated Funerary Objects as soon as shall be reasonably possible. The Tribal Chief and Culture Committee Chair shall coordinate the reburial with a Tribal representative of the particular tribe - Miluk Coos or Hanis Coos, Lower Umpqua, or Siuslaw - with which the Human Remains are likely associated.

APPENDIX A
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

HUMAN REMAINS AND FUNERARY OBJECTS

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the Human Remains and Funerary Objects Ordinance, Resolution No. 10-060, Ordinance No. 089, at a Regular Tribal Council meeting on May 16, 2010. Vote was 7 (for), 0 (against), and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the Human Remains and Funerary Objects Ordinance, Resolution No. 10-036, Ordinance No. 089, at a Regular Tribal Council meeting on April 11, 2010. Vote was 7 (for), 0 (against), and 0 (abstaining).