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# Title 36

## Cultural Resources

### Protection and Management

**NOOKSACK TRIBE**  
**CULTURAL RESOURCES PROTECTION AND MANAGEMENT**

Title 36

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**36.04.010 Title**

This title shall be known as the Nooksack Cultural Resources Protection and Management Act.

**36.04.020 Statement of Policy and Purpose**

The Nooksack Tribe affirms its authority and commitment to preserve, protect and promote Nooksack Tribal culture and heritage. This trust includes the management of ancient and contemporary cultural use sites and resources that are fundamental in the recognition of traditional life ways, values and histories of the Nooksack Tribe. These cultural sites and resources include those associated with traditional foods and other natural resources, all Sacred Sites, wherever located, and designated as Sacred Sites by the Tribe, habitations, and historical events and personalities.

It is recognized that these are an invaluable, irreplaceable and endangered Tribal resource. It is a basic Tribal intent that these resources be protected and preserved within the traditional Tribal territorial limits. It is the intent of the Nooksack Tribe to protect, preserve and manage Cultural Resources by the use of policy, statutory requirements and prohibitions, and regulations. In keeping with this intent, the following policies are established:

- A. It is a policy of the Nooksack Tribe to encourage all persons knowing the locations of archaeological, historical or cultural sites to report this information to the Cultural Resources Management Office (CRMO).
- B. It is a policy of the Nooksack Tribe to encourage all property owners, land managers and developers in the Tribe's Traditional Areas to adhere to federal, state and Tribal laws protecting archaeological, cultural and historical properties.
- C. It is a policy of the Nooksack Tribe to recognize that all activities to preserve and maintain the culture of its people are a legitimate and necessary Tribal governmental function, and may require the expenditure of Tribal funds.
- D. It is a policy of the Nooksack Tribe that the cultural education of Tribal members is of equal or greater importance to the long-term welfare of the Tribe and its members, as is schoolroom education in that it provides the foundation for the perpetuation of the Nooksack Tribe as a distinct political and cultural entity.
- E. It is the policy of the Nooksack Tribe to recognize, respect and foster the wide range of cultural and traditional diversity present among Tribal families and individual Indians.
- F. It is a policy of the Nooksack Tribe to discourage excavations because of the interest of the Tribe and its members in protecting the privacy and non-disturbance of persons, places and property, both on and off Nooksack Tribal Lands. This chapter should not be interpreted to encourage excavations or studies on or off Nooksack Tribal Lands. The intent of this chapter is to regulate and strictly control such activity when and if it does take place.

G. It is a policy of the Nooksack Tribe to encourage the Tribal Membership to participate in the decision making process regarding the Native American Graves Protection and Repatriation Act. The Tribe shall endeavor to include the Tribal Membership for guidance, counsel and direction regarding the repatriation of ancestral human remains through open meetings and other means as appropriate.

H. It is a policy of the Nooksack Tribe, to the extent that other Tribal laws or regulations are not affected, to manage and protect all Cultural Resources within the territorial jurisdiction of the Tribe in a manner that preserves, protects and/or enhances the vitality of the resource.

I. In addition to other areas of Cultural Resources protection and management, it is a policy of the Nooksack Tribe that this Chapter provides guidance and authorization for the CRMO and the TCPA Committee, to undertake actions which assist the Tribe in preserving, protecting and perpetuating the Tribe's legends and lore, songs, dances, art, music, crafts, technology, cosmology and fostering the restoration of the Tribe's customary or adopted native languages.

J. In addition to relevant federal and state laws, Tribal laws and policies are established by this Chapter to protect sacred, archaeological, cultural, and historical sites and resources.

#### **36.04.030 Definitions**

The following definitions apply throughout this title unless specifically defined elsewhere or unless the context clearly indicates otherwise.

"Adverse effect" means a reasonable likelihood of more than moderate adverse consequences for Cultural Resources in any given site or area, the determination of which is based on (1) the context of a proposed action or development; (2) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence; (3) the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and (4) proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant effects to an insignificant level.

"Agricultural use" means the current employment of land for the primary purpose of obtaining a monetary profit by raising, harvesting and selling of crops or by the feeding, breeding, management and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees or for dairying and/or the sale of dairy products or any other agricultural or horticultural use. Current employment of land for agricultural use includes:

- (a) The operation or use of farmland subject to any agriculture-related government program;
- (b) Land lying fallow for one (1) year as a normal and regular requirement of good agricultural husbandry;

- (c) Land planted in orchards or other perennial prior to maturity; and
- (d) Land under buildings supporting accepted agricultural practices. Current employment does not include livestock feedlots.

"Ancestral Burial Site" or "Burial Site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which there was intentionally deposited, as part of the death rites or ceremonies of a culture, the remains of a deceased individual or individuals. All Ancestral Burial Sites shall also be considered Sacred Sites and be defined as a "Protected Site."

"Ancestral human remains" or "human remains" means the physical remains, articulated or unarticulated bones and bone fragments, artifacts, and the surrounding soil matrix where decomposition has occurred of any deceased human remains that are reasonably believed to be of Native American, or any deceased human individual of historic or prehistoric origin that is known, or has been identified, through available evidence, as Native American.

"Archaeological resource" means resource evidence of cultural activities of the past, at least 100 years in age.

"Archaeological site" means a geographical location that contains archaeological resources or features in contextual association with each other and the surrounding environment. Archaeological sites may also be defined as "Protected Sites."

"Buffer zone" means an area adjacent to a Cultural Resources site or area that is established and managed to protect Cultural Resources from human or livestock disturbance.

"Ceded area" means that area ceded to the United States by the Nooksack Tribe, and others, in the Point Elliot Treaty of 1855.

"Ceremonial Objects" means those Sacred Objects used for ceremonial purposes. See definition for Sacred Object.

"Clearance" means that, prior to the issuance of a Clearance Permit, a report has been completed and submitted to the CRMO which illustrates appropriate and adequate research regarding any proposed ground disturbing activity or any activity which may result in an adverse impact to known or suspected Cultural Resources.

"Clearance Permit" means the written authorization, issued by the CRMO, to proceed with a proposed development or activity.

"Committee" or "TCPA Committee" means the Tribal Cultural Preservation Advisory Committee of the Nooksack Tribe.

"Consultation" means the formal, direct face-to-face contact with the CRMO, or other representative designated by the Tribal Council, by any governmental agency or private entity. Such contact or "consultation" is for the specific purpose of seeking Tribal participation in co-managing Cultural Resources.

"Council" or "Tribal Council" means the Tribal Council of the Nooksack Tribe.

"Cultural Resources" means objects or products of human activity, or any object or place given significance by human action or belief including Cultural Resource material gathering sites.

"Cultural Resources Management Office" (CRMO) means that office of the Nooksack Tribe that, among other duties, has been designated to manage and enforce the provisions of this chapter.

"Cultural Resources studies" means actions conducted to determine if Cultural Resources are present in an area that would be affected by proposed uses or development. Cultural Resources studies may include, but are not limited to, archival research, surface surveys, subsurface testing, underwater surveys, mitigation/data recovery and ethnographical/ethnohistoric research.

"Cultural Site" means an area identified and listed on the inventory of Cultural Sites maintained by the CRMO. Some, but not all, of these sites may have a particular cultural, religious, or traditional value to the Nooksack Tribe which may require appropriate management measures to prevent damage, abuse, or deterioration to the site. Cultural Sites may also be defined as a "Protected Site."

"Cumulative effects" means the combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

"Funerary object" means any artifact or material:

- (a) that was intentionally placed with a deceased individual, either at the time of burial or at some subsequent time thereafter, as part of the death rites or ceremonies of a culture, and
- (b) which is present at a Burial Site or which has been identified, through available evidence, as having been removed from a Burial Site.

"General Membership" means the entire membership of the Nooksack Tribe over the age of 18 years, or as otherwise defined by the Nooksack Tribe Constitution and Bylaws.

"Genetic descendent" means any person or persons known, or reliably assumed to have a relationship to a specified human individual or group of individuals.

"Ground disturbing activity" means any activity that disturbs the surface of the ground, such as construction, digging, logging, farm practices on uncultivated soil, dredging, drilling, filling and mining.

"Historic site" means an area designated as such by the TCPA Committee which has particular historical value to the Nooksack Tribe and which requires the protection of this chapter to prevent theft, damage, abuse, or deterioration. Historic sites may also be defined as a "Protected Site."

"Human remains" means the physical remains of any deceased human individual.

"In situ" means any undisturbed intact human remains or portions thereof, including Burial Sites, in their original depositional setting at the time of burial. In situ shall also mean the undisturbed intact artifacts that form a part of an archaeological site.

"Indian" means, unless otherwise specified, a member of the Nooksack Tribe, or any other person of Indian blood who is a member of a federally recognized Indian tribe or any other person who is recognized by the community as an Indian, including a Canadian Indian or an Alaska Native.

"Mitigation" means the use of any or all of the following actions: (1) Avoiding the impact altogether; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected Cultural Resources and/or environment; or (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

"Museum collections" means any private, local, state, or federal agency, including institutions of higher education, that has control or possession of Tribal Cultural Resources.

"Native American" has that same meaning given for "Indian."

"Objects of cultural patrimony" means any object having ongoing historical, traditional, or cultural importance to the Nooksack Tribe, rather than property owned by an individual Tribal member, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Nooksack Tribe or any other tribe, and such objects shall have been considered inalienable by the Nooksack Tribe at the time the object was separated from the Tribe.

"Post-depositional disturbance" means any disturbance by natural or man-made processes that alters or degrades the integrity of a known or potential site.

"Protected Lands" means: (a) all Tribal Lands within the Nooksack Reservation and (b) all Tribal Lands outside the Reservation which are owned by the Nooksack Tribe or held by the United States in trust for the Nooksack Tribe or its individual members.

"Protected Objects" means burial goods, human remains, significant archaeological resources and objects of cultural, ceremonial, or historic significance obtained, directly or indirectly, from cultural or historic sites, Nooksack Traditional Areas, or from a Nooksack tribal member.

"Protected Object classification" means those resources or objects which have religious, traditional, spiritual, social, educational and/or artistic value to the Nooksack Tribe and its membership, and are considered worthy of uncompromising protection. The CRMO shall maintain an inventory of all Protected Objects recorded, collected, or otherwise known of, or possessed by the Tribe.

"Protected Site" means any Tribally recorded religious, sacred, cultural, or historic site and significant archaeological sites.

"Reburial" means the physical replacement of disinterred human remains and/or funerary objects into the ground at their original location, or at other specified locations deemed appropriate by the Tribe.

"Reconnaissance survey" means a cursory field study of an area to gauge the potential of Cultural Resources being present. A reconnaissance survey is used only to determine what level of further survey work may be required to fully understand what Cultural Resources are extant in the area.

"Re-interment" means the ritual aspect of reburial that is conducted under strict cultural rules of practice by a traditional religious practitioner.

"Repatriation" means the physical return of any cultural item or artifact, including human remains, to its place of origin or home to its people and culture.

"Reservation" means (a) all lands within the Reservation and (b) all Tribal Lands outside the Reservation which are owned by the Nooksack Tribe or held by the United States in trust for the Tribe or its individual members.

"Sacred Objects" means specific ceremonial objects that are needed by Tribal members for the practice of traditional Indian religions by present day adherents.

"Sacred Site" means any site that has been determined by the Nooksack Tribe as having religious, cultural or spiritual significance. All Sacred Sites will be listed on the Tribal Register of Cultural Sites.

"Significant Cultural Resources" means: (1) those resources that meet the criteria for eligibility to the National Register of Historic Places; or (2) those resources or sites that can be demonstrated to be a Traditional Cultural Property as defined in the Guidelines published by the National Park Service, or (3) those resources that are classified by the Tribe as a Protected Object or Protected Site and may be eligible for inclusion on the Tribal Register of Cultural Sites.

"Traditional Areas" means the Reservation, ceded lands, traditional use areas, and other areas of importance to the Tribe. The term is to be construed broadly.

"Tribal Register of Cultural Sites" means all of those sites inventoried and recorded by the CRMO.

"Tribe" means the Nooksack Indian Tribe.

"Undertaking" means any project, activity, program or development or change in land uses that can result in changes in the character or use of a Cultural Resource, if any such Cultural Resource is located in the area of potential effects. For federal undertakings, the project, activity or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements (36 CFR 3600.2(o)).

#### **36.04.040 Cultural Resources Management Office**

A. A Cultural Resources Management Office (CRMO) shall be established to increase efforts in protecting, locating, documenting, and evaluating cultural and historic sites and resources. This information will provide a record of the past for future generations. Information on sites recorded in the Traditional Areas will also be collected and evaluated. The establishment of the CRMO is hereby authorized by the enactment of this chapter.

B. The CRMO shall, in many circumstances, function in the same capacity as the Washington State Historic Preservation Office and shall be the repository of Cultural Resources information. The CRMO shall house an information archive of all known prehistoric, historic, and contemporary Cultural Sites and Resources. The CRMO will also contain Cultural Site information from Traditional Areas. Access to the collections and archives for educational and research purposes will be controlled by the CRMO. All documents and information regarding Cultural Resources contained with the repository are considered to be sensitive and confidential. The CRMO is authorized to develop rules and procedures for the use and disclosure of sensitive and confidential information, with Tribal Council approval.

C. Pursuant to the provisions contained in this chapter, the CRMO is also authorized to:

1. Promulgate regulations, with the oversight of the TCPA Committee, the Tribal Attorney, and approval of the Tribal Council, for the implementation of this chapter;

2. Seek and obtain the assistance of the Nooksack Law Enforcement, other law enforcement agencies, the Tribal Attorney, the Tribal Prosecutor, the United States Attorney, and local District Attorneys for the investigation, prosecution and enforcement of any provision of this chapter, and assist Law Enforcement when requested concerning the investigation of all criminal/civil activities;

3. Seek funding from federal, state and private sources to aid in the management and enforcement of this chapter; and
4. Take all other actions reasonably necessary to manage and enforce this chapter.

**36.04.050 Tribal Cultural Preservation Advisory Committee (TCPA Committee)**

The Tribal Cultural Preservation Advisory Committee (TCPA Committee) shall be established as the advisory body for all Cultural Resources management activities and programs. The Committee shall designate Protected Sites, Protected Objects, and Cultural Sites to the Tribal Register of Cultural Sites. The Committee shall operate pursuant to a set of bylaws approved by the Tribal Council. It is the intent of the Nooksack Tribe that this Committee perform its duties in a manner consistent with established policy and law and that the Committee make every reasonable attempt to coordinate its efforts with other all other Tribal committees, as appropriate and necessary.

**36.04.060 Protection of Cultural Resources; General Rules**

It is the intent of this Section to protect resources of particular cultural significance to the Nooksack Tribe. This Section is intended to prevent the willful and/or the inadvertent destruction, damage, loss, desecration, theft and/or illegal sale of Cultural Resources. The following rules are established to provide general protection of Cultural Resources.

- A. All land use actions taken pursuant to Nooksack Tribal law shall take into consideration the possible impact of the land use action on archaeological, historical and Cultural Sites and Resources.
- B. The CRMO shall conduct a reconnaissance survey of all proposed land use developments and/or proposed ground disturbing activities. The CRMO may issue a conditional Clearance Permit if the proposed development has already been surveyed or the probability of adverse effect to Cultural Resources has been determined to be nonexistent or negligible.
- C. All proposed land use developments, whether industrial, agricultural, forest practices, home development, or commercial in nature, must have a "clearance" from the CRMO pursuant to this section and section 36.04.090 of this chapter. For the purposes of this section, "clearance" means that adequate research has been completed to the satisfaction of the CRMO. In order to proceed with development, the results of such research must indicate that no adverse effect will occur to significant Cultural Resources as a result of any land use development.
- D. Any proposed land use development which has been determined through research to pose adverse effect to significant Cultural Resources, may proceed only after a mitigation plan has been developed which reduces adverse effect to an insignificant level. All proposed mitigation plans must be approved by the CRMO.

E. The following land uses and activities shall be exempt from the Permit process unless the CRMO determines that a clearance Permit will be required under subsection (B) above:

1. Home gardens less than one (1) acre in size;
2. Tree, grass and shrubbery planting and existing nursery operations. This includes wildlife habitat enhancement projects that do not require or include additional ground disturbing activities;
3. Fence construction, telephone and power pole placements;
4. Home dwelling/building additions, modifications and renovations appended to existing structures.
5. Buildings/structures less than two hundred (200) square feet in area which are accessory to an existing dwelling or building;
6. General landscaping around home dwellings/structures;
7. Root, food and shellfish gathering and processing operations;
8. Agricultural uses as defined, except new cultivation. New cultivation shall be defined as any operation that would cultivate land that has not been cultivated, or has lain idle for more than five (5) years; and
9. Maintenance, repair or operation of cemeteries, existing roads, railroads, utility facilities, ditches and irrigation canals.

**.36.04.070 Designation of Tribal Cultural Resources**

The following resources are hereby designated as Cultural Resources for the purposes of this chapter. The list is not exhaustive and may be expanded by amendment to this chapter.

A. Earth, air and water. To the extent that other Tribal laws, rules or regulations do not provide general protection of these resources, Cultural Resources shall include earth, air and water.

B. Human Remains. Any Native American human remain or parts thereof, whether or not the remains are found in a cemetery or Burial Site. Human remains shall also include any human remains that have been obtained by any federal, state or local agency, and any public or private foundation, company, educational institution, museum or individual.

C. Burial goods. Any jewelry, regalia, tools, Sacred Objects, clothing, works of art or any other thing which are reasonably thought to have been found or obtained at or near a burial site.

D. Native wild plants. Any native wild plant, or plant parts, plant extract, tree or tree parts, tree extract, grasses, root, bark, seed, or berry used for sustenance, clothing, lodging, regalia, ceremony, arts and crafts, tools, nets, weapons and healing, by Indian people, traditionally, historically, and contemporarily.

E. Medicines. Any plant, animal, or animal parts, mineral, object, water, or in any combination thereof, used for medicinal purposes by Indian peoples, traditionally, historically and contemporarily.

F. Native wild animals. Any wild mammal, bird, fish, insect, reptile or amphibian, parts, hides, skins, bones, teeth, hair, or feathers, not used for sustenance, but that have traditional, historical and contemporary value to the Tribe in preserving Tribal culture, tradition, history, rights and interests.

G. Archaeological materials. Stones, stone tools, stone works of art, stone flakes, bones, bone tools, shells, fiber, and any other objects commonly associated with archaeological finds or undertakings.

H. Petroglyphs, pictographs and petroglyphs. Any work of art that has been etched into stone, with or without the use of pigment, or any work of art that has been placed upon stone by the mere use of pigment. Petroglyphs, pictographs, and petroglyphs shall include only those works of art that have been identified to have traditional and/or historic value to the Tribe and shall not include contemporary works of art, or "graffiti."

#### **36.04.0360 Tribal Register of Cultural Sites; Protected Site Status**

The CRMO shall develop and maintain a register of all known burial, sacred, cultural, archaeological and historic sites. All such listed properties on Nooksack Tribal Lands shall be accorded "Protected Site" status. The CRMO shall work with federal and state agencies to include Tribally-registered, off-Tribal Lands, sites on National or State Registers of Historic Sites or Places. All proposed developments or activities that may adversely affect a Protected Site on Tribal Lands must be approved by the Tribal Council and the CRMO with the recommendation of the TCPA Committee. The register shall be developed and maintained in compliance with the following:

- A. A status report regarding the register shall be made once annually to the Tribal Council and to the General Membership. Such report shall be made by the TCPA Committee and the CRMO.
- B. Criteria for site selection and registration shall be developed by the CRMO and approved by the Tribal Council, with recommendation of the TCPA Committee.
- C. The TCPA Committee may recommend to the Tribal Council regulations to restrict public access to portions of the Tribal Register of Cultural Sites. Many of the sites will require security measures to prevent public promulgation of their location and content. This section is intended to prevent the potential adverse effect if site

information is publicly released. In restricting public access, the TCPA Committee and Tribal Council need only consider the nature of the sites contained in the Register proposed for public access restriction and the potential for adverse effect if the sites are not restricted. The decision to publicly release or not release information regarding any Protected Site is within the discretion of the Tribal Council, which may delegate authority to the CRMO to administer and manage release of information. Any person may file an appeal of the decision of the CRMO to the Nooksack Tribal Court pursuant to section 36.04.160 of this chapter.

**36.04.090 Cultural, Ethnographical, Historical, and Archaeological Studies; Permission Required**

A. A person knowing or having reason to know that a Protected Site or Protected Object is involved may not excavate, alter or conduct any phase of construction on or near a Protected Site on Protected Lands, conduct a field investigation, or make an exploratory excavation on Protected Lands to determine the presence of a Protected Site, remove from Protected Lands any Protected Object, without first obtaining a Permit issued by the CRMO. Any person found to be in violation of this section, is subject to the penalties described in sections 36.04.170 through 36.04.220 of this chapter.

B. Persons conducting historic, cultural or ethnographic research on Nooksack Tribal Lands shall first apply for and obtain a Permit issued by the CRMO in conformance with this section. Denial of a permit may be appealed as provided in 36.04.150 of this chapter.

C. Any person conducting archaeological excavations, surveys, or any fieldwork, shall submit original copies of all results of work performed on Tribal Lands to the CRMO. All reports shall conform to the report format standards developed by the Cultural Resource Management Office (CRMO). Until such time that the CRMO and the TCPA Committee develop such standards, this chapter shall recognize the report standards developed by the Washington State Historic Preservation Office (SHPO) as Tribal standards. Any such reports submitted not in conformance with the SHPO or CRMO standards shall be treated as a violation of a Permit term, punishable under sections 36.04.180 and 36.04.190 of this chapter.

D. The CRMO, with the TCPA Committee, shall develop procedural rules and regulations for the issuance of Permits described in this section for approval by the Tribal Council.

E. The CRMO and/or Nooksack Law Enforcement shall develop any and all forms, permits, violation cards, citations, notices, appeal forms, report formats, and any other administrative forms as necessary to implement this section.

F. The CRMO, with the TCPA Committee, shall develop procedures for the acquisition, archiving, curation, storage, and security, for all administrative and archival records, documents, reports, photos, and objects so acquired and housed within the CRMO.

G. The CRMO, with the advice of the TCPA Committee, and the approval of the Tribal Council, is authorized to place conditions on any Permits issued. Such conditions may include, but are not limited to, the use of Tribal members to serve on field crews, as interpreters, and as monitors. Conditions may also be placed, with the approval of the Tribal Council, upon Permits regarding when, where, how, and with whom historic, cultural and/or, ethnographic research is conducted. Noncompliance with the conditions placed upon a Permit shall be treated as a violation of Permit terms, punishable pursuant to sections 36.04.170 through 36.04.220 of this chapter.

H. The CRMO may suspend a Permit for cause upon determining that any term or condition of a Permit is not being met by a Permit-holder.

I. The CRMO may issue a stop work order and suspend a Permit for cause upon determining that continuation of activities under a Permit would not be in the best interests of the Tribe. Such a suspension is made without liability to the Tribe, its agents or employees. Such a suspension shall not prejudice the ability of the Permit holder to hold or obtain other Permits. Any stop work order or suspension of a Permit by the CRMO shall have the force of law, and noncompliance with a stop work order or suspension shall be actionable and punishable pursuant to the provisions contained in sections 36.04.170 through 36.04.220 of this chapter.

J. Any Tribal member conducting research into family history for personal use only, or conducting Cultural Resources research for family or personal use only, is exempted from the Permit requirements of this Section, except where such research involves ground disturbing activities that would otherwise require a Permit.

#### **36.04.100 Offenses Against the Tribe**

##### **A. General Offenses.**

1. It shall be unlawful for any person who, knowing or having reason to know that a Protected Site or Protected Object is involved, shall excavate, injure, remove, damage, destroy, or alter a Protected Site on Tribal Lands, or remove a Protected Object located on Protected Lands on Tribal Lands unless that activity is authorized by a Permit issued pursuant to section 36.04.090 of this chapter.

2. It shall be unlawful for any person who, knowing or having reason to know that a Protected Object is involved, shall sell, purchase, exchange, transport, barter, receive, or offer to sell, purchase, exchange, or barter any Protected Object if such object was excavated or removed from Protected Lands in violation of: (a) the prohibition contained in subsection (1) of this Section; or, (b) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Tribal, federal, or state law.

3. It shall be unlawful for any person to undertake any activity or program that may result in changes in the character or use of Protected Lands on Tribal Lands unless that undertaking is authorized by Permit pursuant to section 36.04.090 of this chapter.

4. It shall be unlawful for any person, firm, association, company, partnership, holding company, club, society, or Tribal, state, or federal agency, to undertake any ground disturbing activity on Tribal Lands without having first obtained a Permit pursuant to section 36.04.090 of this chapter. Any person conducting any ground disturbing activity without a Permit is subject to the criminal and, or civil penalties described in sections 36.04.170 through 36.04.220 of this chapter.

5. It shall be unlawful for any person to make an unauthorized disclosure of sensitive or confidential information that results in the destruction, damage or loss of any Cultural Resource. Violations of this section are subject to the penalties described in sections 36.04.170 through 36.04.190 of this chapter.

6. It shall be unlawful for any person to knowingly disobey, disregard or fail to comply with a stop work order as duly issued by the CRMO. Violations are subject to criminal and, or civil penalties described in sections 36.04.170 through 36.04.220 of this chapter.

B. Indian Offenses.

1. It shall be unlawful for any Indian person to gather, collect, possess, sell, barter, exchange, purchase, offer to sell, purchase or exchange, or transport any Protected Objects. Any Indian person doing so shall, in addition to any criminal or civil sanctions imposed by the provisions contained in this chapter, or any other applicable law, be subject to such traditional sanctions as may be determined by the Tribe.

2. It shall be unlawful for any Indian person to gather, collect, possess with intent to sell, sell or offer to sell, buy or offer to buy, receive, barter, or transport any Cultural Resources which have been classified as "Protected Objects" under this chapter.

3. It shall be unlawful for any Indian person to permit any Cultural Resource within their control or possession to needlessly go to waste or to knowingly and willingly engage in activities that cause adverse effects to Cultural Resources.

C. Violation of Permit Terms. It shall be unlawful for any person to not fully comply with the terms of a Permit issued pursuant to section 36.04.090 of this chapter. Violators of this subsection shall be subject to civil prosecution pursuant to section 36.04.110 of this chapter, and may be subject to the penalties described under sections 36.04.1360 through 36.04.220 of this chapter in connection with such violations.

**36.04.110 Tribal Court Jurisdiction**

The Nooksack Tribal Court shall have original criminal and civil jurisdiction to hear all cases arising under this chapter. All criminal cases, including appeals, arising under this chapter shall be governed by the Nooksack Law and Order Code, Title 20 and Title 80 of the Nooksack Tribal Code, and this chapter. All civil cases shall be prosecuted by the Tribal Prosecutor and the Tribe shall have

the burden of proving any civil pleading by a preponderance of the evidence. The Tribal Court shall issue warrants for criminal violations of this chapter in conformance with established procedural rules contained in Title 20 of the Nooksack Tribal Code. The Tribal Court may issue Administrative Warrants for civil violations of this chapter pursuant to procedural rules established by the Tribe. All civil trials shall be to the Court without a jury. Nothing in this chapter shall be construed to be a waiver of the Tribe's sovereign immunity from suit.

#### **36.04.120 Tribal Prosecutor**

The Nooksack Tribal Prosecutor, in conjunction with Nooksack Law Enforcement and the CRMO shall be responsible for the investigation and for the criminal and civil prosecutions of all cases arising under this chapter.

#### **36.04.130 Nooksack Law Enforcement**

Nooksack Law Enforcement, with the assistance of the CRMO and any other relevant law enforcement agency, shall be responsible for the investigation and enforcement of the provisions contained in this chapter.

#### **36.04.140 Appeals**

The Nooksack Tribal Court of Appeals shall have jurisdiction to hear all appeals arising under this chapter. Except as otherwise specified in this chapter, Title 80 of the Nooksack Code shall govern all appeals brought under this chapter. Where the provisions of Title 80 and this section conflict, the provisions of this section shall apply.

All cases filed in the Nooksack Tribal Court as civil causes of action, may be appealed to the Nooksack Tribal Court of Appeals as follows:

A. Notice of Appeal. Any party wishing to appeal shall file a Notice of Appeal with the Nooksack Tribal Court and the Nooksack Tribal Court of Appeals within ten (10) days after the decision being appealed is rendered.

B. Grounds for Appeal. A party may appeal a final order of the Nooksack Tribal Court to the Nooksack Tribal Court of Appeals upon an allegation, made in good faith, that an error was made by the Tribal Court that prejudiced the outcome of the proceeding before the Court or that an error was made by that Court in the interpretation of law.

C. Bond. The party filing the Notice of Appeal shall accompany his/her Notice of Appeal to the Nooksack Tribal Court with a bond in the amount of \$50.00, which will be returned if he or she prevails on appeal, and will be forfeited if he or she does not.

D. Record on Appeal. The record on appeal shall consist of the transcript of proceedings in the Tribal Court and all documents, exhibits, motions, briefs and memoranda filed therein in that case along with all rulings, opinion, findings of fact, and conclusions of law issued by the Court

therein. The Tribal Court is authorized to establish a fee to cover the costs of developing and transmitting the record on appeal.

E. The Tribal Court of Appeals shall establish a briefing and argument schedule.

F. Upon the completion of the briefing schedule, receipt of the record on appeal and the hearing of arguments in the case, the Tribal Court of Appeals shall render a written decision with such concurring and dissenting opinions as the Judges shall deem necessary and a copy of that decision shall be sent to the parties.

G. Review by the Appeals Court shall be limited to ensuring that the decision of the Tribal Court complies with Tribal Law. The Appeals Court shall not substitute its discretion for that of the Tribal Court.

#### **36.04.150 Administrative Appeals; Appeal of CRMO Decisions**

Any administrative action or decision made pursuant to this chapter by the CRMO that is deemed a final action of the Tribe, may be appealed by any party adversely affected by such action. Any appellant adversely affected by an administrative action taken by the CRMO shall be entitled to review of the action by the Tribal Administrator as follows:

A. Notice of Appeal under the provisions of this part must be filed with the Tribal Administrator within ten (10) days of receipt of notice of a final action by the CRMO.

B. Review by the Tribal Administrator shall be limited to ensuring that the decision or administrative action taken by the CRMO complies with Tribal Law. The Tribal Administrator shall not substitute his or her discretion for that of the CRMO.

C. Upon official receipt of any filed Notice of Appeal, the Tribal Administrator shall, within fifteen (15) days, review all relevant materials and render a written decision regarding the appeal. Until a written decision is rendered by the Tribal Administrator, the decision or action of the CRMO on appeal shall stand.

#### **36.04.160 Administrative Appeals; Appeal of Tribal Administrator Decision**

Any appellant adversely affected by a Tribal Administrator decision on appeal, shall be entitled to a review of such decision in the Nooksack Tribal Court. Judicial Review of any such decision shall be conducted as follows:

A. Any party wishing to appeal shall file a Notice of Appeal with the Nooksack Tribal Court within ten (10) days after the decision being appealed is rendered.

B. Grounds for Appeal.

1. A party may appeal a final order of the CRMO to the Nooksack Tribal Court upon an allegation, made in good faith, that an error was made by the CRMO that prejudiced the outcome of the review by the Executive Director or that an error was made by the Tribal Administrator in the interpretation of law; and

2. The party filing the Notice of Appeal shall accompany his or her Notice of Appeal to the Nooksack Tribal Court with a Bond in the amount of \$50.00, which will be returned if he or she prevails on appeal or forfeited if he or she does not.

3. Record on Appeal. The record on appeal shall consist of all documents, exhibits, reports, and memoranda filed therein with the CRMO, along with all decisions, rulings, opinion, and findings issued by the CRMO and/or Tribal Administrator therein. The CRMO may establish a fee to cover the costs of developing and transmitting the record on appeal.

4. The Court shall establish a briefing and argument schedule.

5. Upon the completion of the briefing schedule, receipt of the record on appeal and the hearing of arguments in the case, the Nooksack Tribal Court shall render a written decision on the appeal and a copy of that decision shall be sent to the parties.

6. The Nooksack Tribal Court shall issue such orders or writs as necessary to enforce the provisions of this section. Except as explicitly provided, nothing in this chapter shall be construed to waive the Tribe's sovereign immunity from suit.

7. The decision of the Nooksack Tribal Court shall be subject to an appeal to the Nooksack Tribal Court of Appeals as provided in section 36.04.140.

8. Review by the Court shall be limited to ensuring that the decision or administrative action taken by the CRMO complies with Tribal Law. The Court shall not substitute its discretion for that of the CRMO.

#### **36.04.170 Criminal Penalties**

Any Indian who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in this chapter shall, upon conviction, be fined not more than \$500 or imprisoned not more than six months, or both. Such person may also be subject to the civil penalties provided for in 36.04.180, 36.04.190, 36.04.200, 36.04.210 and 36.04.230. Any criminal prosecution of an Indian person for a violation of this Chapter shall be governed by the Nooksack Tribal Code, including all rules of the Tribal Court regarding criminal prosecutions.

#### **36.04.180 Civil Penalties**

Any person violating the provisions of this chapter commits a civil infraction punishable by fine and/or exclusion from all Nooksack Tribal Lands. The infraction shall be punishable by a

maximum fine of \$5,000.00. The trial of any such infraction shall be by the Court without a jury and the prosecution shall have the burden of proving the alleged infraction by a preponderance of the evidence.

#### **36.04.190 Civil Damages**

Any person violating the provisions of this chapter shall be liable to the Tribe for civil damages, including costs and attorney fees, to be assessed by the Tribal Court after a hearing without a jury, except the Court may not order the Tribe to pay damages, costs or attorney fees. "Civil damages" shall be interpreted liberally by the Tribal Court to include, but not be limited to, the following:

- A. Costs of restoration of a Protected Site;
- B. Enforcement costs associated with the enforcement of the provisions of this Chapter;
- C. Costs associated with disposition of Protected Objects, including, reburial; and
- D. Costs associated with documentation, testing, and evaluation of a Protected Site in order to assess the characteristics of the site.

#### **36.04.200 Forfeiture of Contraband**

All Protected Objects obtained in violation of the provisions of this chapter shall be deemed contraband and forfeited to the Tribe after a hearing, without a jury, in the Tribal Court.

#### **36.04.210 Suspension of Privilege to Exercise Treaty Rights On and Off Tribal Lands**

In addition to any other criminal or civil penalty imposed, Tribal members exercising treaty fishing, hunting, or gathering rights in violation of the terms of any provision of this chapter, may have those privileges suspended by the Tribal Court after a hearing. The Tribal Court may impose such a suspension after receipt of a recommendation for a suspension from the Tribal Prosecutor. The Tribal Prosecutor may only make such a recommendation with the concurrence of the Tribal Council. The Tribal Court shall establish the terms and period of suspension not to exceed two (2) years.

#### **36.04.220 Seizure of Security**

In the discretion of the citing law enforcement officer, the officer may seize such property in the possession of the defendant as the officer deems reasonably necessary to secure payment of any fine or civil damages that may be levied upon the defendant upon conviction of the infraction or crime. The officer shall, at the time of seizure, give to the defendant a receipt accurately describing the item(s) seized.

**36.04.230 Removal from Tribal Lands**

The citing law enforcement officer may remove or escort from the Nooksack Tribal Lands any person committing a violation of this chapter, other than Reservation residents or employees of the Tribe.

**36.04.300 Reserved**

**36.04.400 Protection of Treaty Rights Outside Nooksack Tribal Lands; Treaty Terms; Tribal Policy and Legislative Intent**

The Treaty of Point Elliot, entered into on January 22, 1855, between the Signatory Tribes, including the Nooksack Tribe, and the United States, reserved to the Indians certain important treaty rights in lands ceded by the Indians to the United States and in other Traditional Areas. The exterior boundaries of that ceded area are described as follows:

*“Commencing at a point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence eastwardly, running along the north line of lands heretofore ceded to the United States by the Nisqually, Puyallup, and other Indians, to the summit of the Cascade range of mountains; thence northwardly, following the summit of said range to the 49th parallel of north latitude; thence west, along said parallel to the middle of the Gulf of Georgia; thence through the middle of said gulf and the main channel through the Canal de Arro to the Straits of Fuca, and crossing the same through the middle of Admiralty Inlet to Suquamish Head; thence southwesterly, through the peninsula, and following the divide between Hood's Canal and Admiralty Inlet to the portage known as Wilkes' Portage; thence northeastwardly, and following the line of lands heretofore ceded as aforesaid to Point Southworth, on the western side of Admiralty Inlet, and thence around the foot of Vashon's Island eastwardly and southeastwardly to the place of beginning, including all the islands comprised within said boundaries”*

It is recognized by the Nooksack Tribe that the area described in the treaty as the original homeland of the Signatory Tribes is not altogether complete. There are many locations outside of this geographical area that have been traditionally used for fishing, subsistence purposes, resources gathering, and for carrying on trade and social and religious events. It is the policy of the Nooksack Tribe to manage and protect all Cultural Resources and other resources protected by the Treaty, on all lands within the Traditional Areas. It is the intent of the Tribe to manage all of these resources in a manner which preserves the viability of the resources for future generations.

It is the policy of the Nooksack Tribe, when applicable, to ensure protection of these resources through the Treaty of 1855. It is through the Treaty that the right for Tribal members to resort to areas with these resources is protected. Therefore, the management of these areas and the resources extant thereon, correlate directly to the Treaty and the rights protected under the Treaty.

**36.04.410 Tribal Policy with Regard to Management Activities Outside Nooksack Tribal Lands**

It is the policy of the Nooksack Tribe to reaffirm and reacquaint all federal agencies with their trust responsibility to the Tribe. The trust responsibility means that proper and adequate management regimes are in place to provide the optimum level of trust protection for important natural resources and ecosystems that provide much of the Tribe's Cultural Resources. It is through this trust responsibility that comprehensive and meaningful Cultural Resources management may be developed and fostered. It is the policy of the Nooksack Tribe to encourage management activity by city, county, state and federal agencies outside the Reservation that will enhance, protect and preserve the treaty rights of the Tribe.

It is also the policy of the Nooksack Tribe to seek, negotiate and obtain contracts with federal, state and private agencies to perform Cultural Resource Protection surveys, studies and excavations that ultimately enhance, protect and preserve the cultural, historical interests and treaty rights of the Nooksack Tribe. The Tribe encourages the establishment of memoranda of agreement with appropriate persons and agencies to effectuate the policies contained in this section.

**36.04.420 Reports of Significant Activity Outside Nooksack Tribal Lands**

Members of the Nooksack Tribe, Tribal employees, and others are hereby encouraged to report to the Nooksack Tribe all activity outside Nooksack Tribal Lands which might adversely affect Tribal treaty rights and interests.

**36.04.430 Exercise of Treaty Rights On and Off Nooksack Tribal Lands**

Members of the Nooksack Tribe shall exercise treaty rights on and off Nooksack Tribal Lands as follows:

A. Hunting and fishing Rights shall be exercised in accordance with the provisions of Tribal Hunting and Fishing Laws and Regulations;

B. Root, berry and food gathering rights shall be exercised in accordance with Tribal custom and tradition;

C. To the extent that the Tribe has not issued any rule or regulation, the CRMO, with the advice of the TCPA Committee and approval of the Tribal Council, may issue rules and regulations regarding the harvest, possession, sale, trade, barter or use of any Cultural Resources. Such rules or regulations may include but are not limited to:

1. Seasons. The CRMO may establish seasons when Cultural Resources may be harvested.

2. Locations. The CRMO may establish closures on and off Nooksack Tribal Lands. This section means that specific Cultural Resources may not be harvested by Tribal members in Closed areas.

3. Sale or Trade. Rules and regulations restricting the sale, offer for sale, trade, barter, possession and use of Cultural Resources not in a protected class status. Such rules or regulations may include the prohibition of any sales or commercial activity of Cultural Resources in a Protected Object status.

4. Any such rule or regulation must have as its purpose the protection and/or preservation of Cultural Resources, and/or to prevent the waste, abuse or adverse effect to an identified Cultural Resource.

#### **36.04.440 Access to Sites for the Exercise of Treaty Rights**

Tribal members, exercising treaty rights pursuant to the provisions of section 36.04.430 of this chapter, shall treat with respect the private property rights of the landowners on or adjacent to lands in which treaty rights are exercised. Tribal members shall endeavor to obtain the consent of the landowner to gain access to the lands. Tribal member, and all other community members, are encouraged to report to the CRMO, the TCPA Committee, the Natural Resources Committee, and/or Tribal Law Enforcement, instances in which private landowner have denied access to lands. Any department notified must report incident to the Nooksack Law Enforcement Department. Any person legally exercising a Treaty Right who is harassed and/or negatively approached while exercising a Treaty Right should report the incident to the Nooksack Law Enforcement Department.

#### **36.04.450 American Indian Religious Freedom Act**

A. Tribal Policy and Legislative Intent. On August 11, 1978, the Congress of the United States enacted Public Law 95-41 (92 Stat. 469), known as the "American Indian Religious Freedom Act," which provides "on or after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of Sacred Objects, and the freedom to worship through ceremonial and traditional rites." It is the policy of the Tribe to support this Act.

B. Protection of Indian Religious Freedom. The Tribal Council may take such actions as are necessary to implement the provisions of the American Indian Religious Freedom Act. The Committee and the CRMO may assist in the expression and definition of traditional religious practices on the Reservation. It shall be the prerogative and the duty of the Tribal Council, after consultation with the TCPA Committee and the CRMO, to define traditional Indian religious practices insofar as they relate to the exercise of Tribal Treaty rights. The CRMO, with the assistance of the TCPA Committee and the approval of the Tribal Council, shall develop and enforce regulations, rules or policies to effectuate the protection of Indian Religious Freedom.

C. Protection of Sacred Sites and Recovery of Sacred Resources.

1. The Tribal Council shall take such actions as are necessary to protect Sacred Sites identified as such by the CRMO and/or other persons employed by the Tribe for the purpose of site identification. The Tribal Council shall take such actions as are necessary to recover Sacred Objects that have been illegally obtained, or obtained without the consent or authorization by the Tribe.

2. The CRMO, with the assistance of the TCPA Committee and the approval of the Tribal Council, shall develop and enforce any regulations, rules or policies to effectuate protection of Sacred Sites.

3. The CRMO is authorized and encouraged to negotiate memoranda of agreement with other tribes, state, federal and local agencies which outline specific measures to protect Sacred Sites. The final authority to sign such agreements rests with the Tribal Council.

D. Receipt of Artifacts and Cultural Resources Donated or Purchased. It is the policy of the Tribe that persons possessing resources, objects, or other materials with religious, historical, or cultural significance to the Tribe are encouraged to donate these resources to the Tribe in order to prevent the dispersion and loss of resources important to the preservation of the culture of the Tribe. The Tribe strongly discourages the use of sale or purchase to acquire these resources. However, as a last resort, the purchase of these resources may be authorized only after approval by the Tribal Council.

E. The Tribe reserves the right to seek legal redress through the appropriate Court to obtain an order for the return of Cultural Resources.

F. Access to Sacred Sites. The Tribal Council shall take such actions as it deems necessary to ensure that Tribal members are granted access to Sacred Sites.

#### **36.04.500 Protection of Indian Graves**

Chapter 27.44 of The Revised Code of Washington (RCW) provides for the protection of Indian graves. It is the policy of the Tribe to support enforcement of these statutes. It is the intent of this section 36.04.500 to provide a mechanism for expeditiously determining whether or not written consent for any activities under Chapter 27.44 shall be given.

#### **36.04.510 Procedures for Obtaining Consent**

A request to conduct activities under Chapter 27.44 of the RCW shall be presented to the CRMO. The CRMO shall direct appropriate representatives, employees and/or professionals under contract with the Tribe to conduct an investigation of the matter and make a formal written report to the Tribal Council within 20 days recommending whether or not to grant consent to the activity, and if consent is granted, what if any conditions should be imposed on the activity. Such conditions shall

include the option of the Tribe to perform any excavations or other activities in full or in part and any other survey or preliminary work in full or in part, under contract with the requesting party.

#### **36.04.520 Native American Graves Protection and Repatriation Act**

The Native American Graves Protection and Repatriation Act (NAGPRA) provides for the protection of Native American graves and for the return and repatriation of human remains, burial artifacts, unassociated burial artifacts, Sacred Objects and objects of cultural patrimony. It is the policy of the Tribe to support the enforcement and administration of this Act.

A. The CRMO, with consultation with the TCPA Committee, is vested with the authority to administer the provisions of the NAGPRA. The CRMO shall administer NAGPRA related issues in conjunction with the TCPA Committee and/or the Tribal Council.

B. The CRMO, with consultation with the TCPA Committee, shall develop administrative procedures to implement the provisions of Tribal consultation with federal agencies and others, regarding the proper handling and disposition of human remains, burial artifacts, Sacred Objects and objects of cultural patrimony.

C. The CRMO shall, with consultation with the TCPA Committee, the Tribal Council, and Tribal Attorney, initiate administrative and/or legal action to enforce the provisions of NAGPRA.

D. The CRMO, in conjunction with the TCPA Committee, shall identify non-Tribal lands suitable for repatriation activities. Any lands so acquired shall be administered by the CRMO.

E. The CRMO, in conjunction with the TCPA Committee, with review by the Tribal Attorney and approval of the Tribal Council, is authorized and encouraged to negotiate memoranda of agreement with other tribes regarding protocol of repatriation activities. The CRMO, in conjunction with the TCPA Committee, is also authorized, with review by the Tribal Attorney and approval of the Tribal Council, to negotiate memoranda of agreement with private landowners, local, state and federal agencies regarding the availability and suitability of setting aside lands suitable for repatriation activities. The final authority to sign any such agreement rests with the Tribal Council.

F. Upon agreement by the Nooksack CRMO, the Nooksack TCPA Committee, and the Tribal Council, identified objects that meet the policy criteria of each may be transferred to the CRMO. At no time will the CRMO assume the responsibility of the Tribal Council outside of the agreed policies.

#### **36.04.530 Standards and Procedures for the Discovery and Handling of Ancestral Human Remains**

A. Applicability. The procedures describe the necessary steps to be followed in the discovery and subsequent handling of ancestral human remains found on Protected Lands or in the Traditional Areas of the Nooksack Tribe. The intent of these procedures is to ensure that such

remains are treated with dignity at all times and, when applicable, are accorded appropriate handling as specified by a Tribal representative.

B. As a guiding principle, the Tribe recognizes and reaffirms the belief that Native American ancestral human remains hold paramount religious significance to many contemporary Nooksack people. To better protect and enhance our traditional cultural values, the Tribe establishes the following policies:

1. All encountered human remains are to be treated as Native American until available evidence indicates otherwise.
2. Preference shall be given to the preservation of ancestral human remains "in-situ."
3. The repatriation of ancestral human remains will occur as expeditiously as possible and in the same location whence the remains came whenever possible.

Preservation in situ is not always feasible. Therefore, alternative protective measures must be implemented and carried out in a manner consistent with the recommendations of the Tribe. Given the complexity of each potential discovery, ample opportunity must be given to the Tribe to participate in and/or oversee any identification or removal procedure immediately thereafter from the time of discovery.

C. Procedures regarding the Discovery of Human Remains.

1. All suspected in-situ human remains and/or burials that have been exposed as a result of adverse impact or disturbance, must be reported immediately to the Tribal Council, the Committee, Nooksack Law Enforcement, the Washington State Police, and the appropriate Medical Examiners Office by the CRMO. If the discovery occurs on state or federal lands, a detailed letter or report from the agency with administrative jurisdiction over such lands shall be requested.
2. In the event that suspected remains are endangered due to adverse impacts or other occurrences, then interim protective measures shall be developed and implemented by the CRMO.
3. The TCPA Committee and the Tribal Council shall be notified by the CRMO regarding opportunities to inspect any Burial Site and ancestral human remains.
4. Coordinated efforts to inspect Burial Sites, and/or human ancestral human remains, should include members of the Tribal Council, members of the Committee, appropriate law enforcement personnel, archaeologist, and/or anthropologist, and CRMO staff, and may include land managers upon consensus of other participants. The CRMO shall

ensure that all law enforcement agencies with jurisdiction and the appropriate Medical Examiner are informed of any planned inspection of a Burial Site.

5. Burial inspections shall determine if the skeletal remains are human, and if human, if the remains are modern or ancient. Burial inspection procedures shall be limited to nondestructive observational analysis by a qualified physical anthropologist. The inspection procedure will terminate if the remains are determined to be of modern origin, and possibly under the jurisdiction of a law enforcement agency. The inspection team shall also determine evidence of desecration or other violations of law such as the Archeological Resources Protection Act (ARPA). If there is evidence of such violations, then the team shall thoroughly document the violation using the best available investigative techniques.

6. If the discovery is determined not to be within the jurisdiction of law enforcement, then the inspection team shall determine, using the best available evidence, whether the human remains are Native American or non-Native American in origin. The inspection procedure will terminate if the inspection team determines that the remains are non-Native American. If the inspection team determines that the remains are of Native American origin, the inspection team shall initiate interim measures to secure the site until a formal plan is developed by the TCPA Committee and the CRMO.

7. No parts of human remains, including associated funerary objects or artifacts, shall be handled, removed, collected or photographed unless otherwise specified in writing by the CRMO.

8. If human remains and/or burials are discovered in-situ during the course of any ground disturbing activity, the activity is to be halted until an on-site inspection is completed.

9. If planned construction and/or ground disturbing activities are such that destruction of the exposed remains is imminent, emergency removal and exhumation procedures shall be developed and implemented immediately.

10. If ancestral human remains and/or burials are discovered in-situ during the course of an archeological excavation, excavation activities shall cease and the CRMO shall be notified. Once the inspection team has concluded its inspection, and if conditions favor preservation in-situ, the CRMO, in consultation with the TCPA Committee, shall develop a plan for re-interment. If conditions do not favor preservation in-situ, then the remains may be exhumed pursuant to a plan developed by the CRMO in consultation with the TCPA Committee, and approved by Tribal Council.

D. Procedures for the Analysis of Human Remains.

1. Once any human remains are determined to be Native American, in all cases, the Tribe reserves the right to reburial without scientific study. However, when deemed

appropriate, the Tribe will allow human remains to undergo limited nondestructive observational analysis by a qualified physical anthropologist.

2. In all cases, the Tribe reserves the right to the reburial of associated funerary objects without scientific study.
3. In all cases, prior permission for scientific study shall be obtained in writing from the CRMO with approval by the Tribal Council.
4. No method of study shall be employed that diminishes the integrity of the remains or associated funerary objects.
5. A reasonable effort shall be made to retain all organic materials contained in, or on the surface of any human bone or associated funerary object for the purposes of reburial.

E. Procedures for the Re-interment of Human Remains

1. The Tribe reserves the right to reburial of any ancestral remains and/or funerary objects without prior notification.
2. The CRMO, in conjunction with the TCPA Committee, shall, upon notification that ancestral human remains have been discovered, develop the appropriate plan to re-inter the human remains.
3. The CRMO, with assistance from the TCPA Committee, shall determine whether there are any known relatives to the ancestral remains. If there are no known relatives, the CRMO shall promulgate a summary of the discovery, seeking participation of the General Membership whenever possible through meetings. Such meetings shall be held for the purpose of identifying family members who can with reasonable certainty demonstrate a relationship to the human remains and to allow participation of known relatives. The CRMO may take any reasonable steps to assure that such meetings are not used as a forum for curiosity seekers.
4. The TCPA Committee shall post the summary at the Tribal Office and the Tribal Council Office. The summary shall include a brief description of the discovery, and also invite members of the Tribal Council, the General Membership and traditional leaders from the community to meet with the Committee in a work session. The work session shall focus on the details of the re-interment. A plan shall be drafted by the CRMO at the conclusion of the work session.
5. Whenever possible, re-interment shall occur at the original location of discovery. All information regarding the existence of known burials should be safeguarded and not announced publicly.

### **36.04.600 Tribal Contracting with Federal and State Agencies**

The CRMO, with advice from the TCPA Committee, review by the Tribal Attorney, and approval of the Tribal Council, is authorized to contract with federal and state agencies to perform Cultural Resource surveys, ethnographical research, file literature searches, archaeological excavations, archaeological restorations, re-internment operations, archival research and recovery projects, test excavations, and other related fields of operations and research related to Cultural Resource protection.

### **36.04.610 Miscellaneous Provisions**

A. Application; interpretation. This chapter should be interpreted broadly to effectuate the intent of the Tribe to protect Tribal interests in Traditional Areas. Nothing in this chapter should be construed to in any way limit Tribal Treaty rights.

B. Severability. If any provision of this chapter, or the application thereof to any person, court or circumstances, is held invalid by the Tribal Court, or any federal or state Court, the invalidity shall not affect other provisions of this chapter which can be given effect, and to this end the provisions of this Act are severable.

C. Amendments. The TCPA Committee shall petition the Tribal Council for any proposed or recommended amendments to this Code. The Tribal Council shall take action on the petition for amendments to this Code only after review and consideration of the proposed amendments and in accordance with all applicable law.