

# HISTORIC PRESERVATION CODE

## CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

**HISTORIC PRESERVATION CODE**

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## **HISTORIC PRESERVATION CODE**

### **CHAPTER 1. GENERAL PROVISIONS**

#### **SECTION 1.01. CITATION**

This Code shall be cited in full form as the "Historic Preservation Code of the Confederated Tribes of the Umatilla Indian Reservation", and in short form as the "Historic Preservation Code."

#### **SECTION 1.02. DEFINITIONS**

- A. "Adverse effect" means alteration to the characteristics of a cultural resource qualifying it for inclusion in or eligibility for the Tribal Register or National Register of Historic Places.
- B. "Advisory Council" means the Advisory Council on Historic Preservation established by section 201 of the NHPA.
- C. "Archaeological resource" means any material remains of past human life or activities. No item shall be treated as an archaeological resource unless such item is at least 50 years of age, unless such item is of such significance to warrant that determination by the Confederated Tribes.
- D. "Archaeological site" means any location where physical remains of past (50 years or older) human activities exist in their contextual association.
- E. "Archaeological survey" means a pedestrian survey of a discrete area, typically at an evenly spaced transect interval of twenty meters or less, to identify and document archaeological resources visible on the surface. Archaeological testing is not considered survey.
- F. "Archaeological testing" means the process of excavating either round shovel test probes or square excavation units (such as 50 x 50 cm or 1 x 1 meter units) and screening the materials through hardware mesh in an attempt to identify archaeological artifacts and features.
- G. "Archives" means the repository within the Cultural Resources Protection Program/Tribal Historic Preservation Office where historical, archaeological, anthropological, ethnographic and other documents are maintained because of their cultural value to the Confederated Tribes.
- H. "Area of potential effect" means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. Effects may include reasonably foreseeable effects caused by the undertaking that may occur at a later time.
- I. "ARPA" means the Archaeological Resources Protection Act, 16 U.S.C. § 470aa, et. seq.
- J. "Board of Trustees" or "Board" means the governing body of the Confederated Tribes of the Umatilla Indian Reservation, established by Article VI of the Constitution and Bylaws of the Confederated Tribes of the Umatilla Indian Reservation.
- K. "Burial" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as part of the death rite or ceremony individual human remains are deposited.
- L. "Confederated Tribes", "Tribes" and "Tribal" mean or refer to the Confederated Tribes of the Umatilla Indian Reservation, a federally recognized American Indian tribal government, which entered into a Treaty with the United States in 1855 (12 Stat. 945).

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended Through Board Resolution 16-003 (January 25, 2016)***

- M. “Confidential Cultural Resources Information” means information maintained by the Confederated Tribes that is designated as confidential, proprietary or otherwise a trade secret, including but not limited to information concerning the location of archaeological sites or objects, other cultural resources, and oral histories of members of the Confederated Tribes.
- N. “Consultation” means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the cultural resources clearance process or section 106 process.
- O. “Cultural resources” means any materials, objects, or places which have cultural or religious significance to the Confederated Tribes. These may include, but are not limited to archaeological resources, First Food resources, traditional medicines, built environment resources, and geographic areas associated with an event, activity, or person or exhibiting other cultural or aesthetic values.
- P. “Effect” means alteration to the characteristics of a cultural resource.
- Q. “Funerary Objects” means objects that, as a part of the death rite or ceremony are reasonably believed to have been placed with individual human remains either at the time of death or later, or exclusively made for burial purposes or to contain human remains.
- R. “Historic district” means an area which contains (a) historic properties, (b) buildings having similar or related architectural characteristics, (c) cultural cohesiveness, or (d) any combination of the foregoing.
- S. “Historic property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the Tribal Register or National Register, includes artifacts, records, and material remains related to such a property or resource.
- T. “Human remains” means the physical remains of the body of a person.
- U. “Isolated find” means a single artifact in a location that reflects a single event or activity.
- V. “Mitigation” means a specific plan or document that records the terms and conditions agreed upon to resolve the potential or identified adverse effects of an action or undertaking on cultural resources. Mitigation plans can take the form of a memorandum of agreement, programmatic agreement or some other document binding on the entity proposing the action.
- W. “National Register” means the National Register of Historic Places established under section 101 of the NHPA and maintained by the Secretary of the Interior.
- X. “National Register criteria” means the criteria established by the Tribal Historic Preservation Officer or the Secretary of the Interior for use in evaluating the eligibility of properties for the Tribal Register or National Register (36 CFR part 60).
- Y. “National Historic Preservation Act” or “NHPA” means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.
- Z. “Native American Graves Protection and Repatriation Act” or “NAGPRA” means the Native American Graves Protection and Repatriation Act, 25 USC 3001 et seq.
- AA. “Preservation” or “historic preservation” includes cultural resources identification, evaluation, recordation, documentation, curation, acquisition, protection, avoidance, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities, or any combination of the foregoing activities.
- BB. “Sacred Objects” means specific ceremonial objects which are or were utilized for the practice of traditional Native American religions.

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- CC. “Sites of religious and cultural significance” include:
1. Historic properties of religious and cultural significance to the Confederated Tribes;
  2. “Sacred sites” which means any delineated location that is identified by the Confederated Tribes as sacred by virtue of its religious significance; and
  3. “Traditional Cultural Properties” including properties that are eligible for inclusion on the National Register of Historic Places because of their association with cultural practices and beliefs that are (1) rooted in the history of a community, and (2) are important to maintaining the continuity of that community’s traditional beliefs and practices.
- DD. “Tribal Historic Preservation Officer” or “THPO” means the tribal official appointed by the tribe’s chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.
- EE. “Tribal lands” means all lands within the exterior boundaries of the Umatilla Indian Reservation, any additional lands held in trust for the Confederated Tribes by the Secretary of Interior, any lands owned by the Confederated Tribes subject to a restriction on alienation, and any dependent Indian communities of the Confederated Tribes formally recognized as such by the Department of the Interior.
- FF. “Tribal Projects” means projects undertaken by or on behalf of the Confederated Tribes, its governmental departments, tribal corporations, tribal enterprises, and the Confederated Tribes’ members on the Umatilla Indian Reservation, including projects undertaken by third parties on Confederated Tribes trust lands.
- GG. “Tribal Register criteria” means the criteria set forth in section 4.03 for use by the Tribal Historic Preservation Officer in evaluating the eligibility of properties for the Tribal Register.
- HH. “Tribal Register of Historic Places” means a record of cultural resources on tribal lands maintained by the Tribal Historic Preservation Office.
- II. “Undertaking” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including (a) those carried out by or on behalf of the federal agency; (b) those carried out with Federal financial assistance; (c) those requiring a Federal permit, license, or approval; and (d) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

**SECTION 1.03. PURPOSE, POLICY, AND SCOPE**

- A. The purpose of this Code is to provide a framework to preserve, protect, and perpetuate the cultural resources of the Confederated Tribes. It is not the purpose of this Code to define or regulate the culture or traditional practices of the members of the Confederated Tribes.
- B. It shall be the policy of the Confederated Tribes to:
1. Support the American Indian Religious Freedom Act of 1978 [Public Law 95-41 (92 Stat. 469)].
  2. Ensure that members of the Confederated Tribes are granted access to sacred sites.
  3. Support Oregon and Washington Statutes regarding the protection of Indian graves.

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4. Support the enforcement, implementation and administration of the Native American Graves Protection and Repatriation Act of 1992.
5. Implement the Confederated Tribes' Policy and Procedure Manual for the Repatriation of Ancestral Human Remains and Funerary Objects.
6. Prevent trafficking of cultural resources.
7. Protect sites of religious and cultural significance and all other cultural resources.
8. Support the enhancement and cultural access to the Confederated Tribes' First Foods.
9. Ensure compliance with and enforcement of all federal, state and tribal cultural resource laws and policies.
10. Prohibit the non-permitted collection of artifacts.

**CHAPTER 2. CULTURAL RESOURCES COMMITTEE**

**SECTION 2.01. ESTABLISHMENT AND PURPOSE**

The Board of Trustees established the Cultural Resources Committee through Resolution 01-078 (July 30, 2001) as an Advisory Committee for the purpose of "protection of ancestral human remains and cultural resources, including: NAGPRA items, archaeological resources and treaty-reserved resources" and "support of cultural practices associated with the Confederated Tribes."

**SECTION 2.02. POWERS AND DUTIES**

Consistent with the Confederated Tribes' Advisory Committee Code, the Cultural Resources Committee is responsible for:

- A. Developing a specialized understanding of the policy aspects of the cultural resources of the Confederated Tribes;
- B. Advising and assisting Tribal staff and the Board of Trustees in developing policy concerning cultural resources and ancestral remains;
- C. Advising Tribal staff on the implementation of established policy of the Confederated Tribes concerning cultural resources and ancestral remains;
- D. Coordinating with other subsidiary bodies of the Confederated Tribes regarding topics and policies that involve cultural resources policy issues; and
- E. Representing the Confederated Tribes in a policy capacity in meetings with Tribal members or outside entities concerning cultural resource issues.

**CHAPTER 3. CULTURAL RESOURCES PROTECTION PROGRAM**

**SECTION 3.01. ESTABLISHMENT**

The Confederated Tribes has established a Cultural Resources Protection Program operating within its Department of Natural Resources.

**SECTION 3.02. PURPOSE**

The purpose of the Cultural Resources Protection Program is to promote the protection, preservation, and perpetuation of the Confederated Tribes' culturally significant places and resources for the benefit of current and future generations.

### SECTION 3.03. DUTIES

The duties of the Cultural Resources Protection Program include, but are not limited to, the following:

- A. Protection and preservation of the graves, funerary objects and sacred items of the Confederated Tribes' members and ancestors;
- B. Protection and preservation of culturally significant places and resources on the Umatilla Indian Reservation, as well as within the Confederated Tribes' ceded lands and traditional use areas.
- C. Management of data and records relating to the cultural resources and traditional uses of the Confederated Tribes.
- D. Educating the public, outside entities and the tribal community about the importance of the Confederated Tribes' cultural resources, and federal, state and tribal cultural resource laws.
- E. Providing technical support regarding cultural resources to the Board of Trustees and the Confederated Tribes' committees, commissions, and departments.

### SECTION 3.04. ARCHIVES

The CRPP maintains an archive of cultural resources information and materials. Much of this data is sensitive and confidential, may otherwise be exempt from disclosure under the Freedom of Information Act, and requires permanent records retention.

- A. Research Requests.
  - 1. Students/Non-CTUIR Members/Public. All requests for information or access must be submitted in writing using the *CTUIR Research Permit Application* to the Communications Director.
  - 2. Cultural Resource Professionals. All requests for information or access must be submitted in writing using the *Request for Cultural Resource Investigation* form to the THPO.
  - 3. Members of the Confederated Tribes. All requests for information or access must be submitted in writing using the *Request for Culturally Sensitive Information & Oral History Information* form to the CRPP Manager.
  - 4. If a Tribal Member's research request is denied, the applicant may appeal the denial by submitting a letter to the Cultural Resources Committee. The Cultural Resources Committee may, at its discretion, hold an informal hearing regarding the matter. The Cultural Resources Committee will then issue a recommendation to the Board of Trustees for a final decision.
- B. Educational Loan Agreements. Certain materials that are maintained in the CRPP Archives may be loaned out for educational purposes. Requests for access to the educational collection must be submitted in writing to the CRPP Manager. If the request is approved, a CRPP Loan Agreement must be entered into prior to transfer of any materials.
- C. Approval or denial of all requests for information in the Archives is at the discretion of either the Communications Director, THPO, or CRPP Manager, as applicable.

## **CHAPTER 4. TRIBAL HISTORIC PRESERVATION OFFICE**

### **SECTION 4.01. TRIBAL HISTORIC PRESERVATION OFFICE (THPO)**

Pursuant to the Section 101(d)(2) of the National Historic Preservation Act the Confederated Tribes has assumed certain functions of the State Historic Preservation Officer (SHPO) with respect to Tribal lands. Such functions shall be carried out by the Tribal Historic Preservation Officer.

### **SECTION 4.02. TRIBAL REGISTER OF HISTORIC PLACES**

The Tribal Historic Preservation Office shall maintain a record of documented cultural resources and historic properties, historic districts, sites, buildings, structures and objects significant in the history, architecture, archaeology, traditional culture and religion of the Confederated Tribes. Any person may propose cultural resources for inclusion in the Tribal Register by submitting a request to the Tribal Historic Preservation Office. As cultural resources are documented on tribal lands, the THPO will add such resources to the register. Information contained in the Tribal Register is considered confidential cultural resource information of the Confederated Tribes and shall only be disclosed at the discretion of the THPO or as otherwise required by federal law.

### **SECTION 4.03. TRIBAL REGISTER CRITERIA**

The THPO will use the following criteria to evaluate whether a cultural resource will be added to the Tribal Register of Historic Places:

- A. Cultural resources associated with events that have made a significant contribution to the broad patterns of our history; or
- B. Cultural resources associated with the lives of significant persons; or
- C. Cultural resources that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. Cultural resources that have yielded or may be likely to yield, information important in history or prehistory; or
- E. Cultural resources that have an important value to the Confederated Tribes people due to associations with cultural practices once carried out, or still carried out, at the property or due to traditional beliefs, events or oral accounts, these associations being important to the Confederated Tribes' history and cultural identity.

### **SECTION 4.04. NHPA §106 PROCESS FOR UNDERTAKINGS ON TRIBAL LANDS**

All proposed federal undertakings on Tribal Lands shall be subject to the following review process and any additional requirements set forth in 36 C.F.R. § 800. The CRPP may collect fees from project proponents depending on the nature and extent of the clearance work required.

- A. For all proposed undertakings, the project proponent shall contact the Tribal Historic Preservation Office and any other consulting parties regarding the area of potential effect including the horizontal and vertical extent (above and below ground) of the proposed undertaking. The THPO would subsequently notify the CRPP of the undertaking.
- B. If the THPO, working with the lead federal agency, determines that the project is not an undertaking the project can proceed without further review under this section with written concurrence from the THPO.
- C. If the project is determined an undertaking with no potential to adversely affect historic properties, then the project can proceed with written concurrence from the THPO.



- D. If the undertaking has the potential to affect historic properties, the lead federal agency and the THPO will consult on the appropriate level of effort to identify such historic properties. If fieldwork is to be conducted, it shall be consistent with all applicable tribal and federal requirements, including but not limited to sections 5.03 and 5.04 below.
- E. If the THPO concurs that no historic properties are affected or that there will be no adverse effect to historic properties, the project may be implemented after written concurrence from the THPO.
- F. If historic properties will be adversely affected, an agreement to resolve the adverse effects is required. The THPO and lead federal agency, at a minimum, will be parties to this agreement. At its request, the Confederated Tribes shall also be a party to the agreement.
- G. If the THPO and lead federal agency disagree regarding the determination of effect, either party can forward documentation relevant to the dispute to the Advisory Council requesting assistance resolving the dispute. The parties will take into account the Advisory Council's recommendations on the dispute.

## **CHAPTER 5. CULTURAL RESOURCE REVIEW OF TRIBALLY PERMITTED OR REVIEWED PROJECTS**

### **SECTION 5.01. CULTURAL RESOURCES CLEARANCES**

- A. THPO Clearance for Uses requiring Tribal Permits.
  - 1. Cultural resources clearance must be obtained prior to the issuance of any of the following permits. Certain activities may be exempted pursuant to subsection A(2) of this section.
    - a. Any construction, ground disturbing activity or land use on the Umatilla Indian Reservation requiring issuance of a development permit, conditional use permit, or other approval pursuant to the Confederated Tribes' Land Development Code;
    - b. Any Water Code permit;
    - c. Any other ground disturbing activity requiring the issuance of a tribal permit.
  - 2. Exempted Activities.

A list of activities expected from the requirements of this section is attached hereto as Appendix B. The THPO, in coordination with the Tribal Planning Department shall, from time to time, review the list of exempted activities and shall have the authority to make modifications as necessary.
  - 3. THPO Clearance Process.
    - a. The project proponent shall submit a description of the proposed action to the THPO outlining the area of potential effect including the horizontal and vertical extent (below and above ground) of the proposed project. This includes all areas that will be impacted by the project including staging areas. Typically, such descriptions shall be submitted using the *Request for Cultural Resources Investigation Form* (Attachment A). The requirement to submit this form may be waived by the THPO in the event that the project proponent has submitted all the required project information as part of a permit application.
    - b. The THPO will respond to the applicant in writing within 15 days regarding the type and level of cultural resource work to be completed prior to the commencement of the project. This may be conducting research, oral

histories, archaeological survey, testing, and/or monitoring, or no additional work.

- c. Any cultural resources work required must comply with applicable professional standards. With the exception of CRPP staff, all persons conducting cultural resources work required under this section shall meet the Secretary of Interior professional qualification standards at 36 CFR 61. If fieldwork is to be conducted, it shall be consistent with all applicable tribal and federal requirements, including but not limited to Sections 5.02 and 5.03 below.
- d. All non-CRPP personnel must submit any cultural resource report requires by this section to the THPO for review. The THPO shall review and either concur or not concur with the findings of the report within 30 days.
- e. If the cultural resource work is undertaken by the CRPP, either the *Results of Cultural Resource Investigation Form* or a full cultural resource report will be submitted to the THPO.
- f. Clearance shall be granted by the THPO if one of the following conditions is satisfied:
  - i. The action has no potential to cause an effect to cultural resources; or
  - ii. The action has no effect to cultural resources; or
  - iii. The action will have no adverse effect to cultural resources; or
  - iv. The action will have an adverse effect to cultural resources and a mitigation plan to resolve those effects has been approved by the THPO and CRPP Manager.

**B. THPO Clearance for Tribal Projects not requiring a Permit.**

- 1. Submittal of Project Information. The project proponent shall complete and submit a *Request for Cultural Resources Investigation Form* (Attachment A) to the THPO.
- 2. Project Location Planning. Prior to the selection of potential locations the project proponent shall consider the likelihood of the project impacting burial sites and cultural resources that may be within or adjacent to the proposed project's area of potential effect. Methods to be involved in making this assessment may include but not be limited to literature reviews, oral history reviews, archaeological survey and/or testing, remote sensing, and traditional use investigation as recommended by THPO.
- 3. Selected Project Location. Once a preferred project location has been chosen the THPO shall recommend the appropriate level of cultural resource investigation to be conducted. Methods to be involved in this assessment may include but not be limited to literature reviews, archaeological survey and/or testing, remote sensing investigation, and/or traditional use investigations as recommended by THPO. The THPO will respond to the applicant in writing within 15 days regarding the type and level of cultural resource work to be completed prior to the commencement of the project.
  - a. Any cultural resources work required must comply with applicable professional standards. All non-CTUIR contractors shall comply with the Secretary of Interior professional qualification standards at 36 CFR 61. If fieldwork is to be conducted, it shall be consistent with all applicable tribal requirements, including but not limited to Section 5.02 below.

- b. The associated cultural resource report must be sent to the THPO for review. The THPO shall review and either concur or not concur with the findings of the report within 30 days.
- c. Clearance shall be granted by the THPO if one of the following conditions is satisfied:
  - i. The action has no potential to cause an effect to cultural resources; or
  - ii. The action has no effect to cultural resources; or
  - iii. The action will have no adverse effect to cultural resources; or
  - iv. The action will have an adverse effect to cultural resources and a mitigation plan to resolve those effects has been approved by the THPO.

C. For federal NHPA undertakings please see Chapter 4.

#### **SECTION 5.02. TRIBAL ARCHAEOLOGICAL PERMITS**

A permit is required to conduct archaeological survey and/or testing on all tribal lands and any lands owned in fee by the Confederated Tribes. Applicants must submit a research design prior to or in conjunction with their permit application. Such permits will be issued at the discretion of the THPO, taking into account such factors as prior permit violations or inappropriate research design. The CRPP is exempt from the requirement to obtain Tribal Archaeological Permits. The terms of the permit will include allowed work, permitted personnel, timeframe for completion of fieldwork and report, distribution of report, and details about the disposition of artifacts. State archaeological excavation permits may also be required for off-reservation tribal fee lands.

#### **SECTION 5.03. BIA ARCHAEOLOGICAL PERMITS FOR TRUST LANDS**

An individual may be required to obtain an ARPA permit from the Bureau of Indian Affairs prior to conducting archaeological surveys and/or testing on individual allotted trust or tribal trust lands. The CRPP is not subject to such permits pursuant to 16 U.S.C. 470cc(g)(1). BIA permit does not supersede the need to obtain a tribal archaeological permit.

### **CHAPTER 6. INADVERTENT DISCOVERIES ON TRIBAL LANDS**

#### **SECTION 6.01. CULTURAL RESOURCES**

The following steps shall be required of all persons who inadvertently discover cultural resources on tribal lands:

- A. If items suspected to be cultural resources are observed, cease activities occurring within 100 feet of the discovery in order to protect the integrity of such resources. Reasonable steps shall be taken to secure the area. No cultural resources will be further disturbed or transported from its original location, unless approved by the THPO.
- B. Contact the THPO. If a federal agency is involved in the undertaking, also contact the agency's cultural resource personnel.
- C. If cultural resources are located as part of a project, the federal agency or project proponent's archaeologist shall assess the find in consultation with the THPO.
- D. If there is no federal agency or project proponent, the CRPP will assess the find in consultation with the THPO.

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- E. The THPO and appropriate consulting parties will determine the next steps. These may include, but shall not be limited to, documentation, avoidance, excavation, determining site eligibility, or no additional work needed.
- F. Activities in the area of the find may resume only after receipt of written approval from the THPO.

**SECTION 6.02. HUMAN REMAINS**

Inadvertent discoveries of human remains on tribal lands will follow 43 CFR §10.4 of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq. [November 16, 1990].

- A. The person who makes the discovery must immediately notify the THPO, Umatilla Tribal Police Department, and Bureau of Indian Affairs by telephone and provide written confirmation to the THPO and any federal agency that is involved.
- B. If the inadvertent discovery occurred in connection with an on-going activity, activities must immediately cease within 100 feet of the inadvertent discovery. Reasonable steps will be taken to secure the area.
- C. There shall be no collection of human remains, funerary objects, sacred objects, or cultural resources unless, in consultation with the THPO and CRPP, it is determined that there is an immediate need to do so. No photographs should be taken unless requested by the THPO or Umatilla Tribal Police Department.
- D. No later than three working days after receiving written notification, the THPO shall acknowledge receipt of the notification and take immediate steps, if necessary, to further secure and protect the inadvertent discovery.
- E. The THPO, in consultation with the Cultural Resources Committee, shall develop a plan of action in accordance with Confederated Tribes Policy and Procedures Manual for the Repatriation of Ancestral Human Remains and Funerary Objects.
- F. Activity in the discovery area may resume upon written clearance from the THPO.
- G. The proponent of any Tribal project or federal undertaking that results in the inadvertent disturbance of human remains will cover the expense for the Confederated Tribes to reinter the human remains and associated funerary objects.

**CHAPTER 7. PROHIBITED ADVERSE EFFECTS TO CULTURAL RESOURCES**

**SECTION 7.01. PROHIBITED ACTS**

No person shall engage in the following acts on tribal lands:

- A. Intentional archaeological survey and or archaeological excavation without a permit;
- B. Surface collection of archaeological resources without a permit;
- C. Trafficking in archaeological resources;
- D. Development or ground disturbance without obtaining cultural resources clearance as required by Chapter 5;
- E. Unauthorized disclosure of confidential cultural resources information;
- F. Violation of any permit issued pursuant to this Code;

- G. Vandalism or otherwise intentionally damaging or altering cultural resources of the Confederated Tribes;
- H. Negligent damage to cultural resources of the Confederated Tribes;
- I. Intentional or negligent disturbance of burials or cairns.

## **CHAPTER 8. ENFORCEMENT**

### **SECTION 8.01. VIOLATIONS**

It shall be unlawful for any person to perform any act which is prohibited under this Code, or to fail to perform any act which is required by this Code. Any such violations shall be subject to the enforcement provisions set forth below.

### **SECTION 8.02. UMATILLA TRIBAL COURT**

The Umatilla Tribal Court is vested with jurisdiction to enforce all provisions of this Code against any person violating the same on tribal lands.

### **SECTION 8.03. CIVIL PENALTIES**

Any person who violates a provision of this Code may be subject to civil penalties including the following:

- A. Withdrawal of the privilege of doing business with the Confederated Tribes and/or within the boundaries of the Umatilla Indian Reservation;
- B. Reimbursement to the Confederated Tribes for investigation costs, mitigation costs and any other financial impacts caused by the violation.
- C. A fine of not more than \$5,000 per offense. Fines are in addition to investigation, mitigation, or other costs.
- D. Forfeiture, by order of the Umatilla Tribal Court, of any personal property used in the commission of a violation of this Code.
- E. Daily fines for ongoing permit violations not remedied after being notified of the violation by the permitting authority.

### **SECTION 8.04. CRIMINAL PENALTIES**

Any knowing, willful, intentional, or reckless violation of this Code may be charged as a criminal offense pursuant to the Confederated Tribes' Criminal Code.

- A. Persons subject to the criminal jurisdiction of the Confederated Tribes may be subject to the following penalties for violations of this Code:
  - 1. Misdemeanors. Any criminal offense not defined as a felony shall be subject to a term of imprisonment of not more than one year or a fine of \$5,000, or both.
  - 2. Felonies. Any criminal offense which is comparable to an offense that could be punished by more than one year of imprisonment under federal law or any of the states may be charged as a felony. A felony offense shall be subject to a term of imprisonment of not more than three years, or a fine of \$15,000, or both.
  - 3. Restitution. In addition to the fines outlined above, the Umatilla Tribal Court may levy damage assessments and restoration costs against the offender, payable to the Confederated Tribes.

- B. In addition to the civil penalties outlined in section 8.03 of this Code, persons not subject to the criminal jurisdiction of the Confederated Tribes may be subject to state or federal prosecution for violation of applicable laws protecting the Confederated Tribes' cultural resources.

## **CHAPTER 9. MISCELLANEOUS**

### **SECTION 9.01. SEVERABILITY**

If any provision, part or parts of this Code or the application thereof to any person or circumstance is held invalid, the validity of the remaining portions of this Code shall not be affected.

### **SECTION 9.02. NO WAIVER OF SOVEREIGN IMMUNITY**

The Confederated Tribes does not waive sovereign immunity for itself, any of its entities, businesses, employees or agents in any form, even if a more specific chapter, section, sentence, phrase, word, or any other part of this Code might otherwise be interpreted as a waiver of sovereign immunity.

## APPENDIX A

### LEGISLATIVE HISTORY

The Historic Preservation Code was enacted in Board of Trustees Resolution 16-003 (1-25-2016). It has not been amended.

## **APPENDIX B**

### **LIST OF EXEMPTED ACTIVITIES PURSUANT TO SECTION 5.01(A)(2)**

The following activities requiring Tribal permits are exempt from the THPO clearance requirements of Section 5.01(A).

1. Development Permits for electrical, mechanical, or construction work when the proposed work does not involve ground disturbance and the structure(s) involved are less than 50 years old.

Examples:

- Interior remodeling to a home less than 50 years old.
  - Interior remodeling to an existing commercial building.
  - Exterior electrical or mechanical work that requires no digging or other ground disturbance.
2. Development Permits for electrical, mechanical, or construction when the proposed construction is located within a previously disturbed vertical and horizontal footprint of a structure or project previously located on the parcel. Evidence of the previous disturbance must be provided to the Planning Office for review.

Examples:

- Pulling an electrical line through existing conduit where no new holes are dug to access the conduit.
- Replacing an existing concrete pad and mechanical unit with a new one in the same location.
- Replacement of an existing/prior home and foundation with a new home and foundation that does not extend deeper or beyond the existing/prior one.

If the project is to be conducted on tribal trust land, the Planning Office will contact the Tribal Historic Preservation Office.

If there are questions as to whether the activity is exempt, the Planning Office will contact the Tribal Historic Preservation Office to discuss. Together they will determine if the activity is exempt under either of the two categories set forth above.