Washington State Law

WAC 25-48-070

Notification to Indian tribes

(of archaeological site)
WAC 25-48-070

Notification to Indian tribes.

(1) Upon receipt of a completed application form for archaeological excavation of a native Indian cairn or grave or the removal of glyptic or painted records, the office, at least thirty days before issuing such a permit, shall notify the affected Indian tribe which may consider the site to be of historic or cultural significance.

(2) Notice by the office shall be sent to the chief executive officer or other designated official of the tribe. Any native Indian tribe or other native American group may supply the office in advance with sites or locations for which such tribe or group wishes to receive notice under this section.
(3) Upon request during the thirty-day period, the office may meet with official representatives of any native Indian tribe or group to discuss their interests, including, but not limited to, the proposed excavation methods. Mitigation measures, including stipulations pertaining to the disposition of human remains, may be incorporated into the terms and conditions of the permit.

(4) When the office determines that a permit applied for under this chapter must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the office shall so notify the appropriate tribe.

(5) The tribes with whom the office has consulted shall be promptly notified in writing of the issuance of the permit.

12/19/89, effective 1/19/90; 86-13-001 (Order 11), § 25-48-070,
Federal Law
PUBLIC LAW 101-601—
NOV. 16, 1990

NATIVE AMERICAN GRAVES
PROTECTION AND REPATRIATION
ACT
The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if--

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (93 Stat. 721; 16 U.S.C. 470aa et seq.) which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and

(4) proof of consultation or consent under paragraph (2) is shown.
(d) INADVERTENT DISCOVERY OF NATIVE AMERICAN REMAINS AND OBJECTS.—

(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands—after the date of enactment of this Act—shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group.

If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.
SEC 3. OWNERSHIP.
(a) NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.—

The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after the date of enactment of this Act shall be (with priority given in the order listed)-

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American;
C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph

(1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.
(2) "cultural affiliation" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.
Section 2(9) of Public Law 101-601 currently reads:

(9) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

Suggested amendment:
"Native American" means of, or relating to, a tribe, people, or culture that is OR WAS indigenous to the United States.