

**TITLE XXXII
CULTURAL RESOURCE CODE**

Chapter 1. Short Title

32-101. Title

This code may be cited as the Cultural Resource Code.

Chapter 2. Findings and Purpose

32-201. Findings

The Standing Rock Sioux Tribe finds and declares:

- (a) The Standing Rock Tribal Historical Preservation Office (THPO) recognizes and adheres to the Fort Laramie Treaty of 1868, the Tribal Constitution and Tribal Law;
- (b) The preservation of Lakota/Dakota cultural heritage is in the best interest of the Lakota/Dakota people and is an important aspect of community life;
- (c) The spiritual, physical, mental and emotional well-being of the Standing Rock Sioux Tribe and its members is directly related to the preservation of the culture and traditions of the Lakota/Dakota people;
- (d) The increased knowledge of our Lakota/Dakota culture will improve the planning of federal, state, tribal and other projects on the reservation;
- (e) It is the policy of the Tribe to protect sacred and historic properties within its aboriginal territory;
- (f) In order to preserve and protect the cultural, archaeological resources and paleontological specimens located on tribal lands, the Standing Rock Sioux Tribe hereby declares the ownership of these resources and specimens to be vested in the Standing Rock Sioux Tribe.
- (g) The Standing Rock Sioux Tribe has a 100 percent survey policy to ensure that all lands within the exterior boundaries of the Standing Rock Sioux Reservation are surveyed;
- (h) Pursuant to the Agreement entered into between the National Park Service (Department of Interior) and the Standing Rock Sioux Tribe on August 14, 1996, the Tribe has assumed certain responsibilities and functions under the National Historic Preservation Act of 1966 and as amended in 1992, within the exterior boundaries of the Standing Rock Sioux Reservation;

- (i) It is the policy of the Standing Rock Sioux Tribe to honor the National Historic Preservation Act of 1966 and its 1992 amendments, Archaeological Resources Protection Act of 1979, Native American Graves Protection and Repatriation of 1990, National Environmental Policy Act of 1970, American Indian Religious Freedom Act of 1978, Antiquities Act of 1906, regulations, and other related cultural resource laws.

32-202. Purpose

The purpose of this Act is to secure for the present and future benefit of the Standing Rock Sioux Tribe, the protection and preservation of all cultural, archaeological resources or paleontological specimens located within the exterior boundaries of the Standing Rock Sioux Reservation.

Chapter 3. Definitions

32-301. Definitions

- (1) **Archaeological Resource** – Any material of human life activities or remains which are at least 100 years of age.
- (2) **Area of Potential Effect (APE)** – The geographic area, or areas within which a planned activity may directly or indirectly cause change to the landscape; including audio or visual effects; and to the character or use of any Cultural Resource within; whether beneficial or adverse;
- (3) **Burial Site** – Any natural or prepared physical location, whether originally below, on, or above the surface of the earth into which as a part of the death rite or ceremony of a cultural, individual human remains are deposited.
- (4) **Class I Survey** – A literature and file search for documents concerning the area of potential effect.
- (5) **Class III Survey** – An intensive pedestrian survey, under which a permitted qualified professional walks the area and carefully examines the project area. With each crew there must be at least one archaeologist meeting the Federal Register Part IV vol. 48, no. 190 (44738-44739) qualifications.
- (6) **Code** – The Standing Rock Code of Justice, as amended from time to time.

- (7) **Tribal Lands** – All lands within the exterior boundaries of the Standing Rock Sioux Indian reservation, as defined by the Constitution of the Standing Rock Sioux Tribe, Article I, the Native American Graves Protection and Repatriation Act of 1990 and the National Historic Preservation Act of 1966.
- (8) **Cultural Resource** – Any product of human activity or any object or place given significance by human action or belief. Places that may be a Cultural Resource includes buildings and other structures, land forms, archaeological sites, traditional cultural properties, and districts. This includes, but is not limited to, pottery, basketry, weapons, projectiles, tools, structures, rock paintings, graves, human skeletal material, organic waste, by-products from manufacture, landscape, rock cairn, burial mound, rock shelters, apparel, shipwreck, or any part of the above items, land site, sacred site, human skeletal and tissue material, and/or animal skeletal and tissue material, and textile material or animal skin or parts, including natural organic and inorganic material.
- (9) **Economics Committee** – The Economics Committee of the Standing Rock Sioux Tribal Council.
- (10) **Federal Undertaking** – A project, activity, or program under the direct or indirect jurisdiction of a federal agency that can result in changes in the character or use of historic and archaeological properties, if any such properties are located in the area of potential effects. It includes any project, activity, or program that is carried out by or on behalf of the agency; is financed in whole or in part with federal assistance; requires a federal and Tribal permit, license or approval, including any agency authority to disapprove or veto the project, activity, or program; or is subject to state or local regulation administered pursuant to a delegation or approval by a federal agency. Federal undertaking includes new and continuing projects, technical assistance pertaining to a specific site and related to the provision of federal financial assistance, activities, or programs, renewal or pre-approvals of such assistance, activities or programs.
- (11) **Historic Property** – Any prehistoric or historic district, site, building, traditional cultural property, or structural eligible for inclusion in the National Register of Historic Places and/or the Standing Rock Historic Register.
- (12) **Memorandum of Agreement or Programmatic Agreement** – A document that records terms and conditions to mitigate effects or management to a cultural resource, that agencies, programs and other entities agree upon.

- (13) **National Register of Historic Places** – The list maintained by the Secretary of the Interior pursuant to the National Historic Preservation Act 16 U.S.C.470-et seq.
- (14) **New Cultivation** – An agricultural operation on more than five acres that would cultivate land that has not been cultivated or has been idle for more than five years.
- (15) **Officer** – The Tribal Historic Preservation Officer.
- (16) **Person** – Any individual or any federal, state or tribal government, agency, corporation, or other entity.
- (17) **Planned Activity** – Any federal undertaking or any construction project, mining activity or other project that disturbs the earth, that has the potential to unearth or impact cultural resources and that is:
- (a) conducted by any person or proponent, on tribal lands within the Reservation;
 - (b) conducted by an Indian person or proponent on any tribal lands within the reservation;
 - (c) conducted by a non-Indian person or proponent, on tribal lands where such activity has a direct effect on the resources, political integrity, the economic security or the health and welfare of the Standing Rock Sioux Tribe; provided,
 - (1) For the purposes of this code, the following undertakings shall be exempt as a Planned Activity with the provision that there shall be compliance with the existing law: any agricultural activity, except new cultivation; fence construction; telephone and power line replacement; home dwelling or building additions; modifications and renovation where they are appended to existing structures; building structures less than two hundred (200) square feet in area which are accessory to an existing dwelling or building; general landscaping; root and food gathering; maintenance, repair or operation of cemeteries, or current existing roads.
- (18) **Professional** – A person qualified under the Department of Interior’s guidelines, Federal Register Part IV Vol. 48, No. 190 (44738-44739) to conduct any survey, investigation, or excavation of a site. These qualifications are: a minimum of a graduate degree in archeology,

anthropology, or closely related field plus at least one year of full-time professional experience in archaeology.

- (19) **Proponent** – Any person or Agency seeking to undertake a Planned Activity.
- (20) **Reservation** – Any and all lands within the exterior boundaries of the Standing Rock Sioux Reservation.
- (21) **Tribal Historic Preservation Office (THPO)** – The Office created by the Tribal Council, to preserve and protect the archaeological and cultural resources or paleontological specimens located on the Standing Rock Sioux Indian reservation.
- (22) **Standing Rock Historic Register** – The list maintained by the Office, of sites of significance to the Tribe's history, culture and religion.
- (23) **Tribe** – The Standing Rock Sioux Tribe.
- (24) **Tribal Council** – The Standing Rock Sioux Tribal Council.
- (25) **Monitor** – A Tribal member who has completed an 80 hour Archeology class, sponsored by the THPO, and shall represent the THPO in an official capacity on project sites.
- (26) **Paleontological Specimens** – The remains, traces or imprints of animals, dinosaurs or other organisms that are at least ten thousand years old.

Chapter 4. Laws

32-401. **Applicable Law**

The THPO will honor treaties, Tribal and federal laws, regulations, executive orders, and including but not limited to;

- (1) Fort Laramie Treaty of 1868;
- (2) Standing Rock Sioux Tribal Constitution, any applicable Tribal Ordinance or Code related to such activity as may be defined;
- (3) The National Historic Preservation Act of 1966, as amended in 1992, and revised regulation 36 CFR Part 800;
- (4) The Archaeological Resources Protection Act of 1979;
- (5) The National Environmental Policy Act;
- (6) The Native American Grave Protection and Repatriation Act of 1990, and regulation 43 CFR Part 10;
- (7) The American Indian Religious Freedom Act;

- (8) The Historic Sites Act of 1936;
- (9) The Antiquities Act of 1906;
- (10) The Archaeological and Historic Preservation Act of 1960;
- (11) The Reservoir Salvage Act;
- (12) The Abandoned Shipwreck Act 1987;
- (13) Executive Order 13084, consultation with American Indian Tribal Governments;
- (14) Executive Order, Indian Sacred Sites 13007.

Chapter 5. Tribal Historic Preservation Office

32-501. Establishment

The Tribal Historic Preservation Office was established on August 14, 1996.

32-502. Administration and Supervision

The Tribal Historic Preservation Officer is authorized and empowered to administer and enforce this ordinance and to perform such other functions under tribal and federal law, as may be delegated by the Tribal Council.

32-503. Tribal Historic Preservation Officer

The Tribe shall hire the Officer, who shall be a person with knowledge of the requirements for the management and preservation of archaeological, cultural resources or paleontological specimens. The officer shall not simultaneously hold any other office in tribal government, and shall devote full-time to the service of the tribe in the discharge of his official duties, in consultation with the Economics Committee and the Tribal Council.

32-504. Assistance

The Officer is authorized to seek and obtain the assistance of the Standing Rock Sioux Tribe, the BIA law enforcement, other law enforcement agencies, Tribal prosecutor, and the United States Attorney for investigation, prosecution and enforcement of the provisions of this code and any applicable federal law.

32-505. Repository

The Tribal History Preservation Office is the official repository for information, data and archaeological, cultural or paleontological items

covered under this ordinance. Access to the collection and archives for education and research purposes, will be controlled by the Officer.

Chapter 6. Jurisdiction

32-601. Applicability

This Code shall apply to all lands within the exterior boundaries of the Standing Rock Sioux Indian reservation, to the fullest extent consistent with tribal and federal law.

Chapter 7. Notice

32-701. Notice of any Planned Activity and Class I Survey

- (a) Before any person may undertake a Planned Activity, such Person shall give written notice to the Officer. Such notice shall contain:
 - (1) A brief project description;
 - (2) Legal location including township, range, and section
 - (3) A Map of the project area using a USGS 1:24,000 quad.

- (b) Within thirty (30) days of receiving a complete notice as required under Section 29-701a, the Officer shall determine whether the area that may be affected by the Planned Activity had been surveyed and notify the Proponent that:
 - (1) The APE has been adequately surveyed and that it does not contain any recorded archaeological, cultural resources or paleontological specimens and the Officer recommends that no further actions to identify such resources or specimens is necessary; or
 - (2) The APE contains no recorded archeological, cultural resources or paleontological specimens in the area but the area has not been surveyed and a Class III survey of the area is required before the Planned Activity may commence; or
 - (3) There are known archaeological, cultural resources or paleontological specimens in the area and that further action by the Proponent in compliance with the provision of this Ordinance and/or federal law is required; or

(4) The proposed project is in a disturbed area with no integrity for archaeological, cultural resources or paleontological specimens and therefore a Class III survey is not needed.

(5) It may be determined that the project will not affect archaeological, cultural resources or paleontological specimens and therefore will not require a Class III survey.

The file search can be conducted by the THPO, however a fee will be charged. The lead Agency or proponent may conduct the file search.

Chapter 8. Class III Survey

32-801. Survey Requirements

(a) The Officer may require a Proponent to under take a survey for archaeological, cultural resources or paleontological specimens within the project area and the area of potential effect, if a survey has not already been conducted. The required survey will be a Class III survey, which requires a pre-approved Scope of Work. The Officer may determine that even if an area has been subject to a Class III survey, another Class III survey may be necessary to adequately assure compliance with the purpose of this title.

(b) A Class III survey must be conducted in accordance with a permit issued pursuant to this Ordinance.

32-802. Responsibility For Survey

Instances where the Officer requires a Class III survey in connection with a Planned Activity, the Proponent shall conduct or contract with a permitted professional, who meets the Secretary of Interior standards, to complete the survey. The cost of any survey shall be borne by the Proponent as a cost of the Planned Activity and as required.

32-803. Completion of Survey

(a) Upon completion of a survey in connection with a Planned Activity, the person conducting the survey shall complete an archaeological, cultural resource or paleontological specimen report. The report shall include:

Site forms specifying any archaeological, cultural resources or paleontological specimens identified and shall assess any potential effects on any discovered archeological, cultural resources or paleontological specimens that may be caused by the undertaking. This report should

include recommended project alternatives that may result in an avoidance or mitigation of any-discovered resources or specimens. The report shall included a title, author, lead agency, legal location, description of undertaking, project area, results of Class I file search, description of survey methods, fieldwork, field crew, visibility, results, and recommendations. Also a map of the survey area and any sites recorded, on a USGS 1:24,000 quad. The map or maps should include legal locations, quad names, and be of original size. Two copies of the report shall be filed with the THPO.

- (b) Upon completion of the survey requirements, the Officer shall either:
 - (1) Certify to the Proponent that the Planned Activity may proceed as planned, or
 - (2) Require further compliance with this code.

Chapter 9. Permit to Survey

32-901. Permit to Survey

- (a) No person may undertake a class III survey to identify any archaeological, cultural resource or paleontological specimens within the reservation without a permit from the Officer. Such permits may be issued when an application, as prescribed under this title, is filed. The Standing Rock Tribal Archaeologist, who will meet Federal Register Qualification, is exempt from this permit requirement.
- (b) An application for Class III survey non-collection permit within the reservation must be signed by the applicant and include a statement that he/she will comply with this Act and all tribal laws and include:
 - (1) The legal description of the particular project;
 - (2) A scope of work for the permit and a time line for completion;
 - (3) The individuals or group making the request;
 - (4) Proof of consent of the landowner is required before any survey may be conducted. In the case a allotted land, consent of at least 51 percent of the landowners is required;
 - (5) Proof that the applicant conducting the work meets the professional standards of the Department of the Interior to undertake this activity or is affiliated with a professional; and
 - (6) Other information as may be required by the Officer.

Each application must be accompanied by a fee of \$250 for an annual permit. The fee may be waived by the Officer under an agreement. A tribal monitor may be required on projects, as determined by the officer. All costs associated to a survey or permit for excavation will be assumed by the applicant.

Chapter 10. Determination of Effects

32-1001. Compliance with Procedures

No person shall undertake a Planned Activity without first complying with this Code. If no cultural, archaeological resources or paleontological specimens are located during the Class III survey and if there are no recorded or known resources or specimens in the Area of Potential Effect, then a “No Historic Properties Affected” determination should be made.

32-1002. Determination of Effect

Once the Proponent has completed a survey, which identifies a resource or specimen, or the Officer has informed the Proponent of the existence of known resource or specimen, the proponent, in consultation with the THPO Officer, shall make a determination of the potential effect of the planned activity on the known archaeological, cultural resource or paleontological specimen.

32-1003. Determination of No Historic Properties Affected

When completion of consultation and requirements under 32-901 are met, and the Officer determines that the undertaking will have no effect the Officer shall certify to the Proponent that the Planned Activity will have no effect and the Planned Activity may proceed.

32-1004. Determination of Adverse Effect

After completion of consultation and requirements under 32-1002 are met, and the Officer determines that the Planned Activity will have an Adverse Effect, it shall undertake negotiations with the Proponent to determine and appropriate method to mitigate the adverse affect of the Planned Activity on the Archaeological/Cultural Resource of paleontological specimen.

32-1005. Memorandum of Agreement

- (a) When the Proponent and the Officer reach and agreement as to how to mitigate the adverse effects on the Archaeological/Cultural Resource or paleontological specimen, the Proponent and the Officer shall enter into a

Memorandum of Agreement detailing the method for mitigating the adverse effect. The THPO shall submit the MOA to the Advisory Council on Historic Preservation for review and approval as a concurring signatory.

- (b) The Memorandum of Agreement shall be subject to approval by the Tribal Council.

32-1006. Negative Survey Report

A negative survey report shall be issued only when archaeological, cultural resources or paleontological specimens are not identified and the negative survey report has been signed off by the Officer.

Chapter 11. Excavation Permits

32-1101. Removal or Excavation of Cultural Resource

Any excavation or removal of any archaeological, cultural resource or paleontological specimen, except the gathering of plant resources, is strictly prohibited unless undertaken in accordance with a permit issued under this code.

32-1102. Permit to Excavate

- (a) A permit shall be required for the excavation of archaeological/cultural resources or paleontological specimens at a specific site described in the application for the permit. Such permit may be issued when an application as prescribed under this title is filed.
- (b) An application for a permit to excavate shall be signed by the applicant and include:
 - (1) The legal description of the particular site;
 - (2) A scope of work for the permit and a time for completion;
 - (3) A list of the individuals or group making the request;
 - (4) Proof that the person proposed to conduct the work meets the professional standards of the Department of the Interior Federal Register Vol. 48, No. 190: 44738-44739 to undertake this activity;
 - (5) A commitment that the person will not publish any information regarding the site, except in compliance with Chapter 32-1601 of this ordinance;
 - (6) Proof that the person has complied with all applicable federal laws;
 - (7) A commitment that the person agrees to comply with this ordinance and the requirements of tribal law;

- (8) Proof of consent of the landowner; and
 - (9) Any other information as may be required by the Officer.
- (c) Each application must be accompanied by a fee of \$250. It is a requirement that Tribal Monitors shall be present at all times during the excavation or removal of any archaeological, cultural resource or paleontological specimen.
- (d) After any excavation work authorized under this ordinance, the lands excavated shall be restored to their prior condition.

32-1103. Information in Connection With Permit

A legible original of all reports, papers, studies, photographs, field notes and maps generated in connection with any permit issued pursuant to this ordinance shall be provided to the Officer.

32-1104. Duration of Permit

The duration for each excavation permit, shall not exceed one year from the date of issuance. A new permit will be required thereafter.

32-1105. Monthly Reports

A permittee under Section 32-1002 shall make monthly written reports to the Officer. These reports shall contain a brief summary of the work, including a catalog of any collection found at the site and any photographs taken at the site.

32-1106. Notice to Revoke a Permit

- (a) The Officer may provide notice to permittee to revoke a permit because the permittee has:
- (1) failed to begin the work authorize under a permit, without good cause;
 - (2) failed to diligently prosecute work authorized under a permit, without good cause; or
 - (3) failed to comply with tribal law or any condition of the permit.
- (b) The notice must state the reason for the relocation.
- (c) The permittee has thirty days to respond or provide adequate documentation to comply with permit.

Chapter 12. Enforcement

32-1201. Indian and Public Land

On Indian and public land, as defined in the Archaeological Resource Protection Act (ARPA), the unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources is prohibited. The ARPA also prohibits the selling, purchasing, exchanging, transporting and receiving of these archaeological resources.

On lands within the jurisdiction of this Ordinance, the unauthorized excavation, removal, damage, alteration, defacement, sale, purchase, exchange, transportation or receipt of Cultural Resources or Paleontological Specimens is prohibited.

32-1202. Penalties

Any person who violates any prohibition in the ARPA may be assessed a civil penalty and imprisonment by federal authorities. The Penalty will be determined under regulations of this Act, and may include forfeitures of vehicles and equipment involved in the violations.

Additionally, any Indian who knowingly violates or counsels, procures, solicits, or assists in any prohibition of the ARPA or this Ordinance shall, upon conviction, be fined not more than \$1,000.00 or imprisoned not more than one year, or both, in Tribal Court.

Chapter 13. Inadvertent Discovery

32-1301. Inadvertent Discovery

Any persons who uncovers or discovers an archaeological, cultural resource or paleontological specimens within the reservation, shall make every effort to protect the resource discovered and shall immediately notify the THPO, Officer and all appropriate authorities. If the discovery took place in connection with any Planned Activity, the person shall cease that activity until notified by the THPO or Officer that the activity may resume.

32-1202 Survey

Upon notification that a site has been located or discovered, the THPO shall take all necessary steps to insure that the site is adequately documented and recorded. This may include a site survey.

32-1303. Permit

Once the site has been documented and/or surveyed, a permit shall be required if the archaeological, cultural resources or paleontological specimen will be disturbed.

Chapter 14. Protection of Burial Sites

32-1401. Policy

It is the policy of the Standing Rock Sioux Tribe to protect the contents of graves from disturbance.

32-1402. Repatriation

Where a Planned Activity disturbs human remains, the repatriation of human remains shall be done expeditiously, in consultation with the Officer.

32-1403. Tribal Burial Grounds

If the remains cannot be reinterred in the some location where they were found, they shall be moved to a location designated by the Tribe or the THPO.

32-1404. Opportunity for Ceremonies

Each restoration or reinternment shall provide on opportunity for appropriate tribal religious ceremony or ceremonies.

32-1405. Identity of Remains

All human remains discovered within the Standing Rock Reservation shall be determined as Native American, unless clear and convincing evidence is presented to the Officer within forty-eight hours, fro the date of discovery.

Chapter 15. Ownership

32-1501. Ownership

All archaeological or cultural resources or paleontological specimens found on tribal lands, are the property of the tribe. Any data generated off

of tribal trust lands, remains the property of the Tribe and must be turned over the THPO.

Chapter 16. Standing Rock Historic Register

32-1601. Standing Rock Historic Register

The Standing Rock Historic Register shall be the register of any district, site, building, structure, landscape, or object that meets the eligibility under 32-1602, which establishes the significance to the Tribe's history, culture, and religion, including any site that is significant because of a cultural resource found at the site.

32-1602. Criteria for Historic Register

The THPO shall develop and publish, after notice and public consultation, the criteria for accepting a nomination to the Standing Rock Historic Register.

32-1603. Nomination

Any person may request the THPO to consider a site for nomination to the Standing Rock Historic Register, by completing the following:

- (a) A written nomination may be filed with the Officer. The nomination must provide a written statement detailing how the site meets the criteria for sites eligible for listing on the Historic Register.
- (b) Upon receipt of a written nomination, the Historian shall consult with the community leaders, including religious leaders and elders, and any other person with knowledge of the nomination, its history, culture and traditions, to determine the significance of the site nominated.
- (c) Upon completion of the consultation, the Historian shall make a recommendation to the THPO. The THPO had the sole authority weather to accept or reject the nomination.

32-1604. Administration and Maintenance of the Historic Register

The THPO shall be responsible for the administration and maintenance of the Standing Rock Historic Register.

Chapter 17. Emergency Situations

32-1701. Imminent Threat

Where the Chairman of the Standing Rock Sioux Tribe or appropriate authorities, determine that an emergency exists that imposes an imminent threat to the public health or safety, the Tribal Council may develop alternative procedures, as provided in 36 CFR 800.12.

Chapter 18. Confidentiality

32-1801. Confidentiality

The Officer can withhold from disclosure to the public, information about the location, character, or ownership of a site if that information may:

- 1.) Cause a significant invasion of privacy;
- 2.) Risk harm to the resource; or
- 3.) Impede the use of a traditional religious site by practitioners.

32-1802. Release of Confidential Information

- (a) To obtain permission to publish information generated on compliance with this Ordinance, a person shall submit a written request to the Officer. The Officer shall submit the request with a written recommendation, to grant or deny the request to Tribal Council.
- (b) The Tribal Council's decision to grant or deny a request is final.

Chapter 19. Severability

32-1901. Severability

If any section or provision of this Ordinance is held to be invalid, the remaining sections or provisions of this Ordinance shall remaining full force and effect.

32-1902. Repeal of Inconsistent Ordinances

All prior inconsistent ordinances relating to cultural resources are hereby repealed by the acceptance of this Ordinance by the Standing Rock Sioux Tribe.