

WARM SPRINGS TRIBAL CODE

CHAPTER 490

PROTECTION AND MANAGEMENT OF ARCHAEOLOGICAL, HISTORICAL AND CULTURAL RESOURCES

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WARM SPRINGS TRIBAL CODE

CHAPTER 490

PROTECTION AND MANAGEMENT OF ARCHAEOLOGICAL, HISTORICAL AND CULTURAL RESOURCES

490.001 Tribal Policy and Legislative Intent. The Confederated Tribes of the Warm Springs Reservation of Oregon does affirm its authority and commitment to preserve, protect and promote tribal culture and heritage. This trust includes the management of ancient and contemporary cultural use sites and materials which are fundamental in the recognition of traditional lifeways, values and histories of the Tribes. These cultural sites and materials include those associated with traditional foods and other natural resources, other sacred sites as designated by the Tribes, 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. In keeping with this intent, the following policies are established:

- (1) A program shall be established to increase efforts in locating, documenting, and evaluating ancient, cultural, and historic sites. This information will provide a record of the past for future generations, and will be incorporated into land use management planning. Information on sites recorded in the ceded area will also be collected and evaluated.
- (2) Tribal laws and policies are established by this Chapter that will protect archaeological, cultural, and historical sites and materials. Other federal and state laws also impact this subject. Those federal and state acts include, but are not limited to, 16 U.S.C. § 461, Historic Sites, Buildings, and Antiquities; 16 U.S.C. § 469, Reservoir Salvage Act of 1960; 16 U.S.C. § 469(a)(1), Archaeological and Historic Preservation; 16 U.S.C. § 4709, National Historic Preservation; 376 C.F.R. 800, Protection of Historic and Cultural Property; 42 U.S.C. § 4321, National Environmental Policy; 42 U.S.C. § 1996, American Indian Religious Freedom Act; ORS 273.705, Removal of Historical and Other Valuable Materials; ORS 358.905, Archaeological Objects and Sites; ORS 97.740, Protection of Indian Graves; ORS 358.605, Historic Preservation Plan; ORS 358.475, Classification of Historic Property; ORS 358.635, Preservation of Property of Historic Significance; ORS 390.805, Scenic Waterways; ORS 390.410, Columbia River Gorge; ORS 271.715, Conservation Easements; OAR 345–26, Thermal Power Plants; OAR 345–95, Uranium Mills; ORS Chapter 197, Comprehensive Land Use Planning Coordination; OAR LCDC Goal 5; OAR 660–16, Procedures for Complying With Statewide Goal 5.
- (3) All persons knowing the locations of archaeological, historical or cultural sites are urged to report this information to the Tribal Culture and Heritage Committee or the tribal archaeologist.

- (4) All land use actions taken pursuant to the tribal Land Use Code shall take into consideration the possible impact of the land use action on archaeological, historical and cultural sites and materials.
- (5) The proposed museum and cultural center being developed by the Middle Oregon Indian Historical Society will be the repository of cultural materials from tribal land and will house an information archive of all known ancient, historical and cultural sites on lands under tribal control. The center will also contain cultural site information from ceded lands. Access to the collections and archives for educational and research purposes will be controlled by the Tribal Council.
- (6) All tribal members are encouraged to adhere to the above policies with reference to their own properties.
- (7) The Tribes encourage all property owners, land managers and developers in the Central Oregon area to adhere to federal, state and tribal laws protecting archaeological, cultural and historical properties.
- (8) The Tribes recognize that activities to preserve and maintain the Indian culture of its people is a legitimate and necessary tribal governmental function, and may require the expenditure of tribal funds.
- (9) The cultural education of tribal members is of equal or greater importance to the long-term welfare of the Tribes and its members, as is traditional schoolroom education in that it provides the foundation for the continuance of the Tribes as a distinct political and cultural entity perpetually.
- (10) It is the policy of the Tribes to recognize, respect and foster the wide range of cultural and traditional diversity present among the three constituent tribes, Reservation families, and individual Indians.
- (11) This chapter should be read broadly to effectuate the intent of the Tribes to protect tribal interests on the Reservation, in the ceded area, and outside the ceded area. Nothing in this chapter should be construed to in any way limit Tribal Treaty rights.
- (12) This chapter should not be interpreted to encourage excavation or studies. They are not encouraged because of the interest of the Tribes and their members in protecting the privacy and nondisturbance of their Reservation, persons and property. The intent of this chapter is to merely strictly control such activity when it does take place.

490.010 Definitions.

- (1) "Archaeological material" means material evidence of cultural activities of the past, at least 50 years in age.

- (2) "Archaeological site" means a geographical locality which contains archaeological materials or features in contextual association with each other and the surrounding environment.
- (3) "Ceded area" means that area ceded to the United States by the tribes and bands of Middle Oregon in the Treaty with the Tribes of Middle Oregon dated June 25, 1855.
- (4) "Cultural material" means materials or objects designated by the Tribal Council as having cultural significance that are obtained from (a) protected lands or (b) outside the Reservation, if associated with treaty rights or other tribal rights. Cultural materials may include such things as eagle feathers, fish, game, roots, berries, cedar bark, Indian medicines and water having special significance.
- (5) "Cultural site" means an area designated as such by the Tribal Council which has particular cultural, religious, or traditional value to the Confederated Tribes and which requires the protection of this Chapter to prevent damage, abuse, or deterioration.
- (6) "Historic site" means an area designated as such by the Tribal Council which has particular historical value to the Confederated Tribes and which requires the protection of this Chapter to prevent damage, abuse, or deterioration.
- (7) "Indian" means, unless otherwise specified, a member of The Confederated Tribes of the Warm Springs Reservation of Oregon, or any other person of Indian blood who is a member of a federally recognized Indian tribe or any other person on the Reservation who is recognized by the community as an Indian, including a Canadian Indian or an Alaska native.
- (8) "Protected lands" means:
 - (a) all lands within the Reservation and
 - (b) all lands outside the Reservation which are owned by the Tribes or held by the United States in trust for the Tribes or its members.
- (9) "Protected objects" means archaeological materials and objects of cultural or historic significance obtained from cultural or historic sites.
- (10) "Protected sites" means archaeological, cultural, and historical sites.
- (11) "Reservation" means all territory within the external boundaries of the Warm Springs Reservation of Oregon.
- (12) "Tribal Council" means the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon.

- (13) "Tribes" means The Confederated Tribes of the Warm Springs Reservation of Oregon.

II. PROTECTION RULES AND REGULATIONS

490.100 Prohibited Conduct.

- (1) No person knowing or having reason to know that a protected site or object is involved shall excavate, injure, remove, damage, destroy, or alter a protected site, or systematically remove a protected object located on protected lands unless that activity is authorized by a permit issued by Tribal Council.
- (2) No person knowing or having reason to know that a protected object is involved shall sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange 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) The prohibitions contained in this Section shall take effect on July 29, 1987. Nothing in subsection (2) of this Section shall be deemed applicable to any person with respect to a protected object which was in the lawful possession of such person prior to July 29, 1987.

490.105 Criminal Penalties. Any Indian who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in WSTC 490.100 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 WSTC 490.110.

490.110 Civil Penalties. Any person violating the provisions of this Chapter commits a civil infraction punishable by fine or exclusion from the Reservation pursuant to WSTC Chapter 300. The infraction shall be punishable by a maximum fine of \$500. 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. There shall be no appeal from a judgment involving such an infraction.

490.115 Civil Damages. Any person violating the provisions of this Chapter shall be liable to the Confederated Tribes of the Warm Springs Reservation of Oregon for civil damages to be assessed by the Tribal Court after a hearing without a jury. "Civil damages" shall be interpreted liberally by the Tribal Court to include, but not be limited to, the following:

- (1) Costs of restoration of the protected site.

- (2) Enforcement costs associated with the enforcement of the provisions of this Chapter.
- (3) Costs associated with disposition of protected objects, including reburial.
- (4) Costs associated with documentation, testing, and evaluation of the protected site in order to assess the characteristics of the site.

490.120 Forfeiture of Contraband. All protected objects obtained in violation of the provisions of this Chapter shall be deemed contraband and forfeited to the Confederated Tribes after a hearing without a jury in Tribal Court.

490.125 Seizure of Security. In the discretion of the citing 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 which 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 seized. The officer shall further advise the defendant of his right to post security pursuant to WSTC 200.725. The seizure and disposition of security pursuant to this Chapter shall be conducted in accordance with the provisions of WSTC 200.700 through WSTC 200.740.

490.130 Removal from Reservation. The citing officer may remove or escort from the Reservation any person committing a violation of this Chapter, other than Reservation residents, employees of the Confederated Tribes, or employees of the federal government assigned to Warm Springs.

III. ARCHAEOLOGICAL, HISTORICAL AND CULTURAL STUDIES

490.200 Tribal Council Permission Required.

- (1) A person knowing or having reason to know that a protected site or protected object is involved may not excavate or alter 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, or systematically remove from protected lands any protected object, without first obtaining a permit issued by the Tribal Council.
- (2) Persons conducting historical or cultural studies on the Warm Springs Reservation shall first obtain a permit issued by the Tribal Council.
- (3) The Land Use Committee shall develop procedural rules for the issuance of such permits.

490.205 Violation of Permit Terms. Any person violating the terms of a permit issued pursuant to WSTC 490.200 shall be subject to the provisions of WSTC 490.110 through WSTC 490.130 in connection with such violations.

IV. PROTECTION OF TREATY RIGHTS OUTSIDE THE WARM SPRINGS RESERVATION

490.300 Treaty Terms, Tribal Policy and Legislative Intent

. The Treaty with the Tribes of Middle Oregon entered into on June 25, 1855, between certain tribes and bands of Indians residing in Middle Oregon and the United States reserved to the Indians certain important treaty rights in lands ceded by the Indians to the United States. The exterior boundaries of that ceded area are described as follows:

"Commencing in the middle of the Columbia River, at the Cascade Falls, and running thence southerly to the summit of the Cascade Mountains; thence along said summit to the forty-fourth parallel of north latitude; thence east on that parallel to the summit of the Blue Mountains, or the western boundary of the Sho-sho-ne or Snake country; thence northerly along that summit to a point due east from the head-waters of Willow Creek; thence west to the head-waters of said creek; thence down said stream to its junction with the Columbia River; and thence down the channel of the Columbia River to the place of beginning."

Contained within those boundaries was the Reservation area which was reserved by the Treaty for the exclusive use of the Tribes and whose boundaries are described in the Treaty as follows:

"Commencing in the middle of the channel of the De Chutes River opposite the eastern termination of a range of high lands usually known as the Mutton Mountains; thence westerly to the summit of said range, along the divide to its connection with the Cascade Mountains; thence to the summit of said mountains; thence southerly to Mount Jefferson; thence down the main branch of De Chutes River; heading in this peak, to its junction with Deschutes River; and thence down the middle of the channel of said river to the place of beginning."

Among the important rights reserved by the Indians are those described in the Treaty as follows:

"That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians; and at all other usual and accustomed stations, in common with citizens of the United States, and of erecting suitable houses for curing the same; also the privilege of hunting, gathering roots and berries, and pasturing their stock on unclaimed lands, in common with citizens, is secured to them."

It is the intent of the Confederated Tribes that the provisions of WSTC 490.300 through 490.340 are to protect the tribal rights of hunting, gathering roots and berries, and pasturing stock on unclaimed lands outside the Warm Springs Reservation. It shall be the right and duty of the Tribal Council to define the nature and scope of such treaty rights. It is also recognized that off-Reservation Treaty rights are not restricted solely to the ceded area. The Treaty tribes historically, both before and after the signing of the Treaty, exercised fishing, hunting and food

gathering rights outside the ceded area. The Treaty contains no words limiting the exercise of off-Reservation rights to the ceded area.

490.310 Tribal Policy with Regard to Management Activities Outside the Warm Springs Reservation. It is the policy of the Confederated Tribes to encourage management activity by state and federal agencies outside the Warm Springs Reservation which will enhance, protect and preserve the treaty rights of the Confederated Tribes. It shall also be the policy of the Confederated Tribes to oppose all activity outside the Warm Springs Reservation that adversely affects the treaty rights of the Confederated Tribes. The Tribes encourage the establishment of memoranda of agreement with appropriate persons and agencies to effectuate the policies contained in this section.

490.320 Reports of Significant Activity Outside the Warm Springs Reservation. Members of the Tribes, tribal employees, and others are hereby encouraged to report to the Confederated Tribes all activity outside the Warm Springs Reservation which might adversely affect tribal treaty rights.

490.330 Exercise of Treaty Rights Outside the Warm Springs Reservation. Members of the Confederated Tribes shall exercise treaty rights outside the Warm Springs Reservation as follows:

- (1) Hunting Rights. Hunting rights shall be exercised in accordance with the provisions of WSTC 350.510.
- (2) Root and Berry Gathering Rights. Root and berry gathering rights shall be exercised in accordance with tribal custom and tradition.
- (3) Pasturing Rights. Pasturing rights shall be exercised in accordance with terms of a permit issued by the Tribal Council. Members knowingly violating the terms of the permit shall be deemed guilty of a crime, and if found guilty may be punished by imprisonment for a term not to exceed six (6) months or by imposition of a fine not to exceed \$500.00, or both.

490.340 Revocation of Privilege to Exercise Treaty Right Outside the Warm Springs Reservation. Tribal members exercising treaty hunting, gathering and pasturing rights in violation of the terms of WSTC 490.330 may have those privileges revoked or suspended by the Tribal Council after a hearing. A Tribal Council resolution shall establish the terms and period of suspension or revocation.

490.350 Access to Sites for the Exercise of Treaty Rights. Tribal members exercising treaty rights pursuant to the provisions of WSTC 490.300 to 490.350 shall treat with respect the private property rights of owners of land adjacent to unclaimed lands in which treaty rights are exercised. Tribal members shall endeavor to obtain the consent of the landowner to gain access to the unclaimed lands. Tribal members are encouraged to report to the office of the Secretary-Treasurer instances in which private landowners have denied access to adjoining unclaimed lands.

V. AMERICAN INDIAN RELIGIOUS FREEDOM ACT

490.400 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 ceremonials and traditional rites." It is the policy of the Confederated Tribes to support this act.

490.410 Protection of Indian Religious Freedom. The Tribal Council of the Confederated Tribes shall, upon the advice of traditional Indian religious leaders, take such actions as are necessary to implement the provisions of the American Indian Religious Freedom Act. Traditional Indian religious leaders shall be responsible for expression and definition of traditional religious practices on the Warm Springs Indian Reservation. It shall be the prerogative and the duty of the Tribal Council, only, after consultation with traditional Indian religious leaders and the Culture and Heritage Committee to define traditional Indian religious practices insofar as they relate to the exercise of tribal Treaty rights.

490.420 Protection of Sacred Sites and Recovery of Sacred Materials. The Tribal Council shall take such actions as are necessary to protect sacred sites identified as such by traditional Indian religious leaders. The Tribal Council shall disseminate information regarding the nature of tribal sacred objects as identified by traditional Indian religious leaders, and take such actions as are necessary to recover sacred objects that have been illegally obtained.

490.430 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.

VI. PROTECTION OF CULTURAL MATERIALS

490.500 Tribal Policy and Legislative Intent. It is the intent of this Chapter to protect materials of particular cultural significance to the Confederated Tribes. This regulation is intended to prevent abuse of tribal privileges by individual members, to protect cultural materials so that they may be available for future generations, and to define what are included as cultural materials so that the public may be aware that they have special significance to the Confederated Tribes.

490.510 Designation of Tribal Cultural Materials. The following materials are hereby designated as cultural materials for the purposes of this Chapter. The list is not exhaustive and may be expanded by amendment to this Chapter.

- (1) Pelts.
- (2) Huckleberries.
- (3) Choke cherries.

- (4) Elderberries.
- (5) Deer.
- (6) Elk.
- (7) Otter.
- (8) Salmon.
- (9) Trout.
- (10) Eels.
- (11) Sturgeon.
- (12) Indian herbal medicines.
- (13) Cedar bark.
- (14) Eagles.
- (15) Tule reeds.
- (16) Wild celery.
- (17) Camas.
- (18) Bitterroot.
- (19) Biscuitroot.
- (20) Luksch (desert parsley).
- (21) Wild onion.
- (22) Wild or Indian potatoes.
- (23) Yellow bells.
- (24) Pine nuts.
- (25) Acorns.
- (26) Sunflowers.
- (27) Bear.
- (28) Cougar.

- (29) Water.
- (30) Mistletoe.
- (31) Pine black lichen.
- (32) Wild rose bushes.
- (33) Pine moss.
- (34) Scraping rocks.
- (35) Obsidian.
- (36) River bottom rocks.
- (37) Ochre.
- (38) Willow.
- (39) Red willow.
- (40) Alder.
- (41) Chinkapin.
- (42) Kinnick Kinnick.
- (43) Blackberries.
- (44) Pine needles.
- (45) Juniper.
- (46) Black sagebrush.
- (47) Beaver.
- (48) Mushrooms.

490.520 Prohibited Acts. No tribal member shall gather, collect, possess, sell, barter, exchange, purchase, offer to sell, purchase or exchange, or transport any cultural material in violation of tribal laws, traditions or customs. Any tribal member doing so shall, in addition to any sanctions imposed by any other applicable law, be subject to such traditional sanctions as may be determined by the Tribal Culture and Heritage Committee.

VII. OREGON ACT FOR PROTECTION OF INDIAN GRAVES

490.600 Tribal Policy and Legislative Intent

. Oregon Revised Statutes 97.740 through 97.760 provide for the protection of Indian graves. It is the policy of the Confederated Tribes to support enforcement of this Act. ORS 97.750 provides:

"(1) If such action is necessary to protect the burial from imminent destruction, and upon prior notification to the State Historic Preservation Office and to the appropriate Indian tribe in the vicinity of the intended action, a professional archaeologist may excavate a Native Indian cairn or grave and remove material objects and human remains for subsequent reinterment under the supervision of the Indian tribes.

"(2) Except as provided in subsection (1) of this section, any proposed excavation by a professional archaeologist of a Native Indian cairn or grave shall be initiated only after prior written notification to the State Historic Preservation Office and with the prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within 30 days of its mailing shall be deemed consent. All material objects and human remains removed during such an excavation shall, following scientific study, be reinterred at the archaeologist's expense under the supervision of the Indian tribe.

"(3) In order to determine the appropriate Indian tribe under this section and ORS 97.745, a professional archaeologist or other person shall consult with the Commission on Indian Services which shall designate the appropriate tribe."

It is the intent of WSTC 490.610 to provide a mechanism for expeditiously determining whether or not written consent for an excavation shall be given pursuant to ORS 97.750(2).

490.610 Procedures for Obtaining Consent. A request for consent to excavate pursuant to ORS 97.750 shall be presented to the Secretary–Treasurer for the Confederated Tribes. The Secretary–Treasurer shall direct appropriate representatives of the Confederated Tribes to conduct an investigation of the matter and make a formal written report to the Tribal Council within 20 days recommending whether or not consent to the excavation be granted and if any granted, what if any conditions should be imposed on the excavation.

VIII. TRIBAL PURCHASE OF ARTIFACTS

490.700 Purchase of Artifacts By the Middle Oregon Indian Historical Society. The Confederated Tribes have chartered the Middle Oregon Indian Historical Society to assist in the protection and preservation of the Tribes' culture. The Middle Oregon Indian Historical Society has an accessions program to purchase or receive donations of artifacts and other materials having significance to the Confederated Tribes. It is the policy of the Confederated Tribes that persons possessing materials with religious, historical, or cultural significance to the

Confederated Tribes be encouraged to offer for sale or donate these materials to the Middle Oregon Indian Historical Society in order to prevent the dispersion and loss of materials important to the preservation of the culture of the Confederated Tribes.

IX. OREGON LAND CONSERVATION AND DEVELOPMENT COMMISSION GOAL 5 IMPLEMENTATION

490.800 Tribal Policy and Legislative Intent. Among other things, Goal 5 adopted by the Oregon Land Conservation and Development Commission provides for inventorying and protecting historical, archaeological and cultural sites. A copy of LCDC Goal 5, "Open Spaces, Scenic and Historic Areas, and Natural Resources", is attached to this Chapter. It is the policy of the Confederated Tribes to support the implementation of Goal 5 and it is the purpose of WSTC 490.800 through 490.840 to establish a tribal mechanism to interact with state and local governments charged with implementing LCDC Goal 5. The Middle Oregon Indian Historical Society, the Tribal Culture and Heritage Committee, and the Tribal Cultural Department, under the overall supervision of the Secretary–Treasurer of the Confederated Tribes, shall develop and present to the Tribal Council for adoption a plan for identifying, inventorying, and reporting significant historic, cultural, and archaeological sites for designation as such by the Tribal Council in areas outside the Reservation boundaries. The inventory plan shall contain objective and subjective criteria to be used in deciding which historic, cultural, and archaeological sites are significant and warrant special protection.

490.820 Tribal Council Designation of Significant Historical, Cultural and Archaeological Sites. The Tribal Council shall designate significant historic, cultural, and archaeological sites as those terms are defined by WSTC 490.010 outside the Warm Springs Reservation, and shall cause to be prepared a report detailing such sites in appropriate form to be presented to state and local officials to aid in the implementation of LCDC Goal 5.

490.830 Tribal/State Coordination. The Tribal Council of the Confederated Tribes shall have the responsibility for coordination with state and local governments implementing LCDC Goal 5. The tribal point of contact for such coordination shall be the office of the Secretary–Treasurer of the Confederated Tribes.

490.840 Expedited Procedures for Sites in Developing Areas. The Secretary–Treasurer of the Confederated Tribes shall develop expedited procedures for the evaluation of historic, cultural, and archaeological sites located in areas under development. The Confederated Tribes recognize that rapid response to requests for information by state and local governments is necessary for the effective implementation of LCDC Goal 5, and to prevent hardship on the users of land.