

# CULTURAL RESOURCE LANDS AND SACRED SITES ORDINANCE

Siletz Tribal Code § 9.001

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Original Date: December 16, 2000  
Subject: Cultural Resource Lands and Sacred Sites

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## PART I GENERAL PROVISIONS

### § 9.001 POLICY

This Ordinance is established to provide procedures to inventory, protect, preserve and manage cultural resource lands and sacred sites, and other historically or culturally significant sites, lands, and resources.

### § 9.002 AUTHORITY

The Siletz Tribal Council has authority to adopt this Ordinance pursuant to the Constitution of the Confederated Tribes of Siletz Indians of Oregon, Article IV, Section 1.

### § 9.003 DEFINITIONS

(a) Agricultural use means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling of crops or by the feeding, breeding, management and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other horticultural use. Current employment of land does not include livestock feedlots, but does include:

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

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(3) Land planted in orchards or other perennials prior to maturity; and

(4) Land under buildings supporting accepted agricultural practices.

(b) Archaeological activities means activities conducted as part of a study of past human life and activities, whether amateur or professional.

(c) Burial item or funerary object means any artifacts or objects that, as a part of a death rite or ceremony, are reasonably believed to have been placed with human remains either at the time of death or later.

(d) Ground disturbing activity means any action which moves the surface of the land, such as construction, digging, logging, farm practices on uncultivated soil, dredging, drilling, filling and mining.

(e) Human remains means the physical remains of a human body, including, but not limited to, bones, teeth, hair, ashes or mummified or otherwise preserved soft tissues of an individual.

(f) Land use action means any action that involves use of the land requiring ground disturbing activity.

(g) Object of Cultural Patrimony means an object having ongoing historical, traditional or cultural importance central to the Indian group or culture itself, rather than property owned by an individual, and which, therefore, cannot be alienated, appropriated or conveyed by an individual regardless of whether or not the individual is a member of a tribe.

(h) Person means any individual or group; any organization of any kind, whether organized for profit or not, and regardless of the form in which it does business; or government, including any part, subdivision or agency.

(i) Protected objects means burial items, human remains, significant archaeological resources, objects of cultural or historical significance, sacred objects and objects of cultural patrimony.

(j) Protected sites means any site or structure recorded or eligible to be recorded in any Tribal, State or Federal Register.

(k) Sacred object means an object that is demonstrably revered by any ethnic group, religious group or tribe as holy, is used in connection with the religious or spiritual service or

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worship of a deity or spirit power, or was or is needed by traditional Indian religious leaders for the practice of traditional Indian religion.

### **PART II CULTURAL RESOURCES PROTECTION PROGRAM**

#### **§ 9.004 CULTURAL HERITAGE COMMITTEE**

Pursuant to the Confederated Tribes of Siletz Indians Standing Committee Ordinance, STC § 2.500, the Cultural Heritage Committee shall assist and advise the Tribal Council in providing oversight over all cultural resource management activities and programs.

#### **§ 9.005 CULTURAL SPECIALIST**

The Council shall appoint, or delegate authority to the General Manager to appoint, a Cultural Specialist, or such other position or individual designated by the Council, who shall coordinate the Cultural Resources Protection Program. The Cultural Specialist or other designate shall work with and report to the Cultural Heritage Committee, and make reports and presentations to the Council as directed by the Councilor Committee or as provided in this Ordinance.

#### **§ 9.006 INVENTORY OF CULTURAL AND HISTORICAL SITES**

The Cultural Resources Protection Program shall develop regulations for monitoring, identification and inventory of protected objects and sites, subject to Council approval. The Program may make recommendations to the Council to include sites and places on a Tribal Register of Historic Properties and for inclusion on any state or federal registers.

#### **§ 9.007 RELEASE OF CONFIDENTIAL INFORMATION**

The Cultural Resources Protection Program shall develop procedures and standards for limited release of confidential information under appropriate circumstances; provided, such procedures and standards shall be subject to Council approval.

#### **§ 9.008 COOPERATION WITH STATE AND FEDERAL AGENCIES**

The Cultural Resources Protection Program shall cooperate to the fullest extent possible in keeping with the best interests of the Tribe with the State Historic Preservation Office and the National Historic Preservation Office, or their equivalent, in order to ensure the maximum

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protection of cultural resources and sites. The Program may enter into agreements with state and federal agencies for the protection of cultural resources, subject to Council approval.

## PART III CULTURAL PROTECTION CLEARANCE AND CONSULTATION

### Subpart A: Proposed Land Use Actions

#### **§ 9.009 LAND USE ACTION-CULTURAL RESOURCE PROTECTION CONSULTATION**

Any person, including tribal departments, seeking to carry out a proposed land use action on the Siletz Reservation or trust lands, or on lands owned in fee by the Confederated Tribes of Siletz Indians, must consult with the Cultural Resources Protection Program prior to commencement of ground disturbing activity. The Cultural Resources Protection Program may impose conditions on the ground disturbing activity. Consultation with the Cultural Resources Protection Program shall continue for the duration of the ground disturbing activity.

#### **§ 9.010 CONSULTATION STANDARD**

As used in this Ordinance, “consultation” means the meaningful and timely process of providing the Cultural Resources Protection Program with comprehensive information about a proposed land use action on the Siletz Reservation or trust lands, or on lands owned in fee by the Confederated Tribes of Siletz Indians.

#### **§ 9.011 DISCOVERY OF CULTURAL RESOURCES**

All ground disturbing activity and related work occurring on the Siletz Reservation or trust lands, or on lands owned in fee by the Confederated Tribes of Siletz Indians, must halt upon discovery of cultural resources. Work may not recommence until consultation with the Cultural Resources Protection Program has occurred and a plan developed to protect the resources. All plans for recommencement of work are subject to Council approval.

#### **§ 9.012 ENFORCEMENT OF CONDITIONS**

The Cultural Resources Protection Program shall monitor actions under Land Use Action - Cultural Resource Protection Consultation to ensure enforcement of any conditions and to ensure protection of any cultural resources.

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## § 9.013 EXEMPTIONS FROM CONSULTATION REQUIREMENT

(a) The following land uses and activities shall be exempt from the consultation requirement unless the Cultural Specialist determines that consultation is necessary to prevent adverse impacts to cultural resources or sites:

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

(b) Notwithstanding the above exemptions, all persons responsible for land uses and activities shall monitor their activities for the discovery of cultural resources and no person shall excavate, alter, or conduct any phase of construction on or near a protected site without first consulting with the Cultural Resources Protection Program. Upon discovery of signs of possible cultural resources, persons conducting land use activities shall halt work, inform the Cultural

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Resources Protection Program, and abide by any conditions issued by the Program with Council approval.

## **§ 9.014      TRIBAL COMMERCIAL DEVELOPMENT AND LOGGING**

Land use activities conducted for purposes of Tribal commercial development and Tribal commercial logging are exempt from the consultation requirements contained in this Ordinance. The Cultural Resources Protection Program shall survey the lands involved and advise the Council of any cultural resources located in the area, as well as any recommended mitigation plans to prevent adverse impact to such cultural resources. All land use actions taken pursuant to any tribal resource planning documents shall take into consideration the possible impact of the land use action on archaeological, historical, and cultural sites and resources.

### **Subpart B: Archaeological Activities**

## **§ 9.015      ARCHAEOLOGICAL PERMITS**

No person may conduct a field investigation, make any exploratory excavation, or remove any protected object from tribal lands without first obtaining a permit.

## **§ 9.016      APPLICATION FOR ARCHAEOLOGICAL PERMIT**

(a) Any person wishing to conduct archaeological activities must apply to the Cultural Resources Protection Program for an Archaeological Permit. The application shall include the following:

- (1) Description of the proposed activity;
- (2) Location of the proposed activity, including maps;
- (3) Reason for proposed activity.

(b) The Cultural Resources Protection Program shall develop a model application form for approval by the Council.

## **§ 9.017      ISSUANCE OF PERMIT**

The Cultural Resources Protection Program shall review all applications for Archaeological Permits and make recommendations to the Cultural Heritage Committee and

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Tribal Council to approve or deny the permit. The Program shall provide for public notice and comment, subject to Council waiver. The Council shall meet and decide whether to approve or deny the permit during the next regularly scheduled meeting or during a special meeting called for this purpose.

### **§ 9.018      REQUIRED PERMIT CONDITIONS**

- (a) All Archaeological Permits shall contain the following requirements:
- (1) All information obtained must be shared with the Cultural Resources Protection Program.
  - (2) All activities must be done in a manner respectful of the tribal culture and religion.
  - (3) No burial items may be moved without the express written permission of the Council.
  - (4) Periodic reports shall be issued to the Program throughout the activity period.

## **PART IV OFFENSES AND ENFORCEMENT**

### **Subpart A: Offenses**

### **§ 9.019      DAMAGE TO A PROTECTED SITE OR OBJECT**

It shall be unlawful for any person, knowing or having reason to know that a protected site or object is involved, to excavate, injure, remove, damage, destroy, or alter a protected site, unless that activity is authorized by a permit issued in accordance with this Ordinance.

### **§ 9.020      EXCHANGE OF PROTECTED OBJECT**

It shall be unlawful for any person, knowing or having reason to know that a protected object is involved, to sell, purchase, exchange, transport, barter, receive, or offer to sell, purchase, exchange, transport or barter any protected object, or any proviso, rule, regulation, ordinance or permit in effect under any other provision of Tribal, federal or state law.

### **§ 9.021      POSSESSION OF BURIAL ITEMS**

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(a) It shall be unlawful to willfully remove, mutilate, deface, injure or destroy any burial, human remains, funerary object, sacred object or object of cultural patrimony. Persons disturbing burials through inadvertence, including by construction, mining, logging agricultural activity, shall at their own expense reinter the human remains or funeral object under the direction and supervision of the Cultural Resources Protection Program.

(b) It shall be unlawful for any person to possess any burial items.

## **§ 9.022 UNDERTAKING ACTIVITY WITHOUT PROPER PERMIT**

It shall be unlawful for any person to undertake any activity requiring a permit under this Ordinance without having first obtained such permit.

## **§ 9.023 UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION**

It shall be unlawful for any person to make an unauthorized disclosure of sensitive or confidential information regarding cultural resources without first obtaining the permission of the Council.

## **§ 9.024 FAILURE TO COMPLY WITH PERMIT TERMS**

It shall be unlawful for any person to fail to fully comply with the terms of a permit issued pursuant to this Ordinance.

### **Subpart B: Enforcement**

## **§ 9.025 STOP WORK ORDER**

(a) The Cultural Specialist, Tribal Police or other official authorized by the Council may issue a Stop Work Order in writing and suspend a permit for cause for the following reasons:

- (1) The person does not possess a valid permit; or
- (2) The person has failed to comply with permit conditions.

## **§ 9.026 CRIMINAL PENALTIES**

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Any person who knowingly violates, or counsels, procures, solicits or employs any other person to violate, any prohibition contained in this Ordinance shall, upon conviction, be fined not more than five thousand dollars (\$5,000), or imprisoned for not more than one (1) year, or both, per infraction. Violation of any prohibition contained in this Ordinance shall constitute a Class A offense. Such person may also be subject to civil penalties and damages.

### **§ 9.027      CIVIL PENALTIES**

Any person violating the provisions of this Ordinance commits a civil infraction punishable by a fine of five thousand dollars (\$5,000) and/or exclusion from tribal lands. Such person may also be subject to criminal penalties and civil damages.

### **§ 9.028      CIVIL DAMAGES**

(a) Any person violating the provisions of this Ordinance shall be liable to the Tribe for civil damages to be assessed by the Tribal Court after a hearing without a jury. Civil damages include but are not limited to:

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

### **§ 9.029      FORFEITURE**

All protected objects obtained or possessed in violation of the provisions of this Ordinance shall be deemed contraband and forfeited to the Tribe pursuant to provisions for forfeiture in the Law and Order Code.

### **§ 9.030      TRIBAL COURT JURISDICTION**

The Siletz Tribal Court shall have original criminal and civil jurisdiction to hear all cases arising under this Ordinance. All civil cases other than administrative challenges, including appeals, shall be governed by STC § 3.001, Siletz Tribal Rules of Procedure - Civil.

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Administrative challenges shall be pursuant to the Tribal Administrative Procedure Ordinance. All civil trials under this Ordinance shall be to the court without a jury. All criminal trials shall be pursuant to STC § 12.800, Civil Offenses Ordinance.

## **§ 9.031      SEVERABILITY**

If any provision of this Ordinance is held invalid, unlawful, void, or for any reason unenforceable by a court of competent jurisdiction, the remainder, or its application to any person or circumstance, is severable and shall remain in effect.