AN ACT RELATING TO

SNOQUALMIE CULTURAL RESOURCES PROTECTION

BE IT ENACTED BY THE SNOQUALMIE TRIBAL COUNCIL

SECTION 1.0 – TITLE AND CODIFICATION

This Chapter may be referred to as the Cultural Resources Protection Act, as amended, or "CRPA," and shall be codified as Title 11, Chapter 1 of the Snoqualmie Tribal Code.

SECTION 2.0 – STATUTORY AUTHORIZATION

This Chapter is enacted pursuant to the Article VIII, Sections (o) and (v) of the Snoqualmie Tribal Constitution. This Chapter also implements the provisions of the following federal statutes:

(a) The Archaeological Resources Protection Act, 16 U.S.C. §§ 470cc(g)(2), 470 dd;

(b) The National Historic Preservation Act, 16 U.S.C. § 470;

(c) The Native American Graves Protection and Repatriation Act, 25 U.S.C. § 301, et seq.;


(e) The American Indian Religious Freedom Act, 42 U.S.C. § 1996; and


SECTION 3.0 – PURPOSE AND FINDINGS OF FACT

It is the policy of the Snoqualmie Tribal Council to protect traditional cultural resources of the Tribe by establishing a preservation program to identify, evaluate, and protect cultural, historic, and archaeological resources associated with the Snoqualmie Indian Tribe and by regulating undertakings on Snoqualmie Tribal Lands when they may result in changes in the character or use of such cultural resources. The Tribal Council finds that:

(a) The spirit and direction of the Snoqualmie Tribe is founded upon and reflected in its cultural heritage;
(b) The cultural foundation of the Tribe should be preserved as a living part of our community life and development in order to give a sense of orientation to the Snoqualmie people;

(c) Cultural resources of the Tribe are being lost, substantially altered, or destroyed with increasing frequency;

(d) In the face of ever increasing energy, economic, residential, highway, sanitation, and public health developments, the present Tribal and non-Tribal governmental cultural resource preservation programs are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of the Tribe; and

(e) Measures are necessary to foster conditions under which our modern society and our prehistoric, historic and cultural resources can co-exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations; the self-governing capabilities, political integrity, health and welfare, and economic security of the Tribe will be enhanced and protected by the Tribal governmental control, regulation and preservation of irreplaceable cultural resources which are essential to the continued well being of the Snoqualmie Tribe and will be maintained and enriched for the Tribe’s future generations.

SECTION 4.0 - DEFINITIONS

For the purpose of this Chapter the following definitions will apply:

ANCESTRAL REMAINS means any part of the human body in any state of decomposition taken from a burial site. Ancestral remains shall have the same meaning as the term “human skeletal remains” as that term may be used in state or federal law.

ARCHAEOLOGICAL RESOURCES means any material remains of past human life or activities that are of archaeological interest to the Snoqualmie Tribe. Such material remains shall include, but not be limited to: pottery, basketry, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece thereof found in an archaeological context. No item shall be treated as an Archaeological Resource unless such item is at least 50 years old.

BURIAL MATERIAL means any item found at the burial site or with the ancestral remains and those items directly associated with the burial, burial site or ancestral remains.

BURIAL SITE means, except for marked cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.
**Cultural Items** means human remains, associated funerary objects, unassociated funerary objects, sacred objects and cultural patrimony as defined by the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 301.

**Cultural Resource** means native plant material, objects, or cultural or religious objects or sites that are nominated or determined eligible for the Snoqualmie Register or National Register as having cultural significance. Cultural resources may include, but are not limited to, such things as roots, berries, barks, arrowheads, modified rocks and Indian medicines. Cultural resources also include the traditional fishing, hunting and gathering grounds of the Snoqualmie Indian Tribe, whether or not such grounds are located on or off Snoqualmie Tribal lands.

**Culture** means the traditions, beliefs, practices, life ways, arts, and social institutions of the Snoqualmie people.

**Director** means the Snoqualmie Tribe’s Director of Archaeology and Historic Preservation.

**District** means any discrete area comprising buildings, sites, structures or traditional cultural properties that form a recognizable, unified whole.

**Effect** means any condition of the undertaking that causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the criteria of the Snoqualmie Register or the National Register criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects may include changes in the pattern of land use, population density, or growth rate that may have an affect on properties of historical, architectural, archaeological, or cultural significance.

**Ground-Disturbing Activity** means any alteration, destruction, or change to the designated area, including but not limited to digging, drilling, planting, excavation, logging, vehicle traffic, laying of utility lines/underground conduits, fencing, installation of poles or gates, foundations, or construction.

**National Register** means the official list of the Nation’s historic places deemed worthy of preservation, created by the National Historic Preservation Act, 16 U.S.C. § 470, for the purpose of the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

**Person** means any individual, partnership, association, corporation, and any other entity composed of individuals, and federal, Tribal, or state governmental entities or agencies.

**Preservation Board** means the Cultural Preservation Board of the Snoqualmie Tribe.
**Religious Site** means any place or area, including but not limited to, any geophysical or geographical area or feature: (1) where Snoqualmie practitioners are required by their religions to gather, harvest, or maintain natural substances or natural products for use in religious ceremonies or for spiritual purposes, including all places or areas where such natural substances or products are located; (2) which is utilized by Snoqualmie religious practitioners for ceremonies or spiritual practices; or (3) which is believed to have religious or spiritual significance to the Snoqualmie Indian Tribe.

**Responsible Person** means any person who has decision-making authority over a particular undertaking on Snoqualmie Tribal Lands.

**Snoqualmie Register** means the Snoqualmie Register of Cultural Properties.

**Snoqualmie Tribal Lands or Tribal Lands** include lands over which the Snoqualmie Tribe exercises jurisdiction, including but not limited to, the initial reservation, trust lands (Tribal and individual), lands subject to treaty-reserved rights, and lands within the federal definition of “Indian Country” set forth in 18 U.S.C. § 1151.

**Traditional Cultural Property** means a place that is associated with cultural or religious practices, customs, or beliefs of the Snoqualmie Tribe that (1) is rooted in Snoqualmie history or traditions; and (2) is important to maintain the continuity of Snoqualmie traditional beliefs and practices, and is included in, or eligible for inclusion on the Snoqualmie or National Register, including artifacts, records, and material remains related to such a property or resource.

**Tribal Council** means the duly elected governing body of the Snoqualmie Indian Tribe.

**Undertaking** means a project, activity or program funded in whole or in part by a federal agency or Tribal department, including (1) those carried out by or on behalf of the agency or department; (2) those carried out with federal or Tribal assistance; (3) those requiring a federal or Tribal permit, license, or approval; and (4) those subject to Tribal, state or local regulation administered pursuant to a delegation or approval of a federal agency.

**Section 5.0 - Department of Archaeology and Historic Preservation**

**5.1 Establishment**

There is hereby established a Tribal Department of Archaeology and Historic Preservation that will be directed by a Director of Archaeology and Historic Preservation appointed by the Tribal Council to administer the Tribe’s cultural preservation program and the provisions of this Chapter.
5.2 **DUTIES OF THE DIRECTOR OF ARCHAEOLOGY AND HISTORIC PRESERVATION**

The Director shall meet professional qualifications established by the Tribal Council and shall have substantial experience in the administration of a preservation program and experience in at least one of the following disciplines: traditional cultural properties, archaeology, history, cultural geography, or cultural anthropology. It shall be the responsibility of the Director to:

(a) Create and maintain the Snoqualmie Register of Cultural Places composed of religious sites, traditional cultural properties, burial sites, archaeological sites, districts, buildings, and structures significant to the history, life ways, and customs of the Tribe.

(b) As funds and staff are available, and in cooperation with the Snoqualmie Preservation Board and Tribal traditionalists, direct and conduct a comprehensive survey of cultural properties on and off Snoqualmie Tribal lands and create and maintain an inventory of such properties documented in such a manner that the data collected can be utilized in Tribal priorities and planning decisions.

(c) Recommend to the Board eligible properties to add to the Snoqualmie Register of Cultural Places and the National Register and administer applications for the Tribal and National Registers in consultation with the Historic Preservation Board.

(d) Prepare and implement a comprehensive cultural preservation planning process which includes the identification, evaluation, registration, and treatment of cultural properties so that effective decisions concerning preservation can be made.

(e) Advise and assist, as appropriate, Tribal, federal and state agencies in carrying out their cultural and historic preservation responsibilities.

(f) Consult with appropriate Tribal, federal, and state agencies in accordance with this Chapter and on (1) agreements and undertakings that may affect cultural or historic properties; and (2) any plans developed to protect, manage, avoid or mitigate harm to cultural or historic properties of import to the Tribe.

(g) Create and maintain a cultural, historical, and archaeological database in a manner that takes into account Tribal traditions and customs regarding the disclosure of personal, private, or religious information, and share information within the database to other governmental entities in accordance with written agreements and Snoqualmie Tribal law and custom.

(h) Cooperate with the Advisory Council on Historic Preservation, the Washington Department of Archaeology and Historic Preservation, and other Tribal, federal
and state agencies to ensure that cultural and historic properties are taken into consideration at all levels of planning and development.

(i) Provide public information, education and training, and technical assistance relating to the Tribal cultural preservation program.

(j) Serve as the contact person for individuals who inadvertently discover Native American cultural items, including ancestral remains, on all lands within the Tribe’s aboriginal territory and on Snoqualmie Tribal Lands. If the discovery occurs in connection with an activity or undertaking regulated under this Chapter, the Director will also be responsible for acting to cease activity in the area of discovery, to the best of his or her ability and in accordance with all applicable laws, and protecting the discovered item(s).

(k) Consult with federal agency officials regarding undertakings within the Tribe’s aboriginal territory that may result in the excavation of ancestral remains or cultural items.

(l) Develop an annual budget for the operations of the Department of Archaeology and Historic Preservation, in consultation with, and subject to the approval of, the Tribal Operations Officer.

(m) Negotiate agreements with private and governmental entities for paid Tribal Monitors to monitor ground disturbing activities that have the potential to impact Snoqualmie cultural resources or items. Such agreements shall be subject to the final approval of the Director, in consultation with the Preservation Board.

(n) Review any proposed undertaking both on and off Snoqualmie Tribal lands that may affect any cultural resource, including but not limited to: religious sites, archaeological resources, burial sites, ancestral remains, traditional cultural properties, historic resources, cultural items, food, and medicinal plants located upon protected lands.

SECTION 6.0 - CULTURAL PRESERVATION BOARD

(a) There is hereby established a Cultural Preservation Board, to be composed of five (5) members. The Director of Archaeology and Historic Preservation shall nominate three (3) representatives. The Tribal Council shall choose the remaining two (2) Board members from a list of nominees provided by the Director of Archaeology and Historic Preservation. All Board members shall have demonstrated special knowledge in traditional cultural properties, historic, prehistoric, and cultural resources or related disciplines to provide for an adequate and qualified Board. Members of the Board shall each hold office for a term of three (3) years except in the initial year when two (2) members shall be appointed for three (3) years, two (2) members appointed for two (2) years and one member appointed for one (1) year. Any vacancy on the Board shall be filled by an
individual appointed by the Director of Archaeology and Historic Preservation for the unexpired portion of the term. The Director of Archaeology and Historic Preservation shall serve as an advisory member of the Preservation Board, but shall not have a right to vote. The Preservation Board shall develop and adopt policies and procedures governing its operation.

(b) The Board is authorized to issue such rules, regulations and standards as are necessary to carry out the purposes of this Chapter.

(c) The powers and duties of the Board include:

(1) The Board shall meet on a monthly basis. At each meeting, the Director of Archaeology and Historic Preservation shall provide a report and summary of the activities of the Department.

(2) Review requests for permits for the excavation or removal of archaeological resources on Snoqualmie Tribal lands.

(3) Review requests for ethnographic work, studies, or surveys on Snoqualmie culture.

(4) Issue permits as authorized in Section 8.0 of this Chapter.

(5) List traditional cultural properties on the Snoqualmie and National Registers.

(6) Provide general advice and guidance to the Director of Archaeology and Historic Preservation.

(7) Accept on behalf of the tribe, gifts, grants and fees awarded to administer this Chapter. Such money may be expended to hire staff or consultants for the purpose of carrying out the powers and duties of the Board or for performing other appropriate functions in accordance with the Tribally-approved budget for the Department.

(8) Call upon Tribal staff or elders having technical expertise concerning cultural resources for advice.

(9) To perform other duties as may be appropriate and necessary to implement provisions of this Chapter.

SECTION 7.0 - UNDERTAKING EVALUATION PROCESS

(a) The head of any Tribal, federal or state agency having direct or indirect jurisdiction over a proposed undertaking on Snoqualmie Tribal lands shall, prior to approval of the expenditure of any funds on the undertaking, or prior to the
issuance of any license or permit for the undertaking, take into account the effects of any undertaking on any religious site, traditional cultural property, ancestral remains, district, site, building structure, or object that is included in, or eligible for inclusion on the Snoqualmie or National Register.

(b) Tribal and Federal agencies shall not approve an undertaking on Snoqualmie Tribal lands if it will have an adverse effect on cultural, historical or archaeological sites included in, or eligible for inclusion on the Snoqualmie or National Registers, unless approved by the Snoqualmie Cultural Preservation Board pursuant to the provisions of this Chapter.

SECTION 8.0 - CULTURAL RESOURCES PERMITS

8.1 PERMIT REQUIRED

(a) No historical or ethnographic work or studies relating to Snoqualmie cultural resources may be conducted on Snoqualmie Tribal lands without a permit.

(b) No excavation or removal of archaeological resources or cultural items on Snoqualmie Tribal lands is allowed without a permit.

(c) No work may commence on an undertaking that may affect cultural resources on Snoqualmie Tribal lands until the responsible person has been issued a permit.

(d) All work on an undertaking shall be conducted pursuant to the terms and conditions of the permit.

8.2 PERMIT FEES

An application for a permit to conduct an undertaking on Snoqualmie Tribal lands shall be accompanied by a payment of a non-refundable fee to cover costs associated with permit issuance and administration. The amount of the fee shall be fixed from time to time by the Cultural Preservation Board, shall take into account the scope of the proposed undertaking, and shall be reasonable.

8.3 APPLICATION FOR PERMIT

(a) Any person who intends to conduct an undertaking that may affect cultural resources on Snoqualmie Tribal lands shall submit a written application to the Cultural Resources Department. The Department may create a form to be used for this purpose.

(b) The application shall include the following:
(1) A location map, including a legal description of the proposed undertaking;

(2) A specific description of the proposed undertaking;

(3) The purpose and need for the proposed undertaking;

(4) Practical alternative methods of implementing the undertaking, if available;

(5) The project dates and length of time necessary to complete the proposed undertaking;

(6) The name, address, and telephone number of the responsible person; and

(7) Other such information the Board deems necessary.

8.4 REVIEW OF PROPOSED UNDERTAKINGS

(a) The Director of Archaeology and Historic Preservation shall review permit applications for adequacy and shall determine if the proposal constitutes an undertaking subject to regulation under this Chapter. The Director and the Preservation Board may make on-site investigations if necessary to fulfill their duties under this Chapter. No permit is required for undertakings that will have no effect on cultural items.

(b) If the Director determines that the proposal is not an undertaking that may have an effect on cultural items, the Director shall so state in a written notice to the responsible person within fourteen (14) days of receipt of the application.

(c) If the Director determines that the proposal is an undertaking, the Director or his/her designee shall conduct a review of the proposal within thirty (30) days of receiving the application. The review shall include the following: A literature and oral history search, a search of the cultural resources database, and a field survey, when necessary to ascertain whether the undertaking may have an effect on cultural resources. The applicant shall be responsible for all reasonable costs incurred by the Department in its initial review of the proposal.

(d) After the review, the Director shall make findings and recommendations to the Preservation Board regarding the proposal's impact on cultural resources.

(e) The Preservation Board shall review all applications and the Director's findings and recommendations and shall either approve, approve with modifications or alternatives, or deny an application and shall state its decision in writing to the responsible person within thirty (30) days after receipt of the Director's findings and recommendations.
(f) Upon the Board's approval or approval with modification or alternatives, the Director shall forward to the responsible person a written permit which shall relate to the plan for the undertaking approved by the Preservation Board, and which may include provisions for avoidance or mitigation of adverse impacts associated with the undertaking. The permit will not be issued until the responsible person reimburses the Department for all reasonable costs associated with the Department's review of the proposal.

(g) The permit process should be completed prior to the approval or expenditure of any funds for the undertaking or prior to the issuance of any federal or Tribal license or permit for the undertaking. This does not bar any expenditure of funds toward any non-destructive planning activities preparatory to an undertaking before complying with this Section. The responsible person should ensure that the permit process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration.

(h) The issuance of a permit under this section shall be a final decision subject to appeal by the Snoqualmie Tribal Court.

8.5 EMERGENCY WAIVER

(a) All or part of a person's responsibilities under this Chapter may be waived if the Preservation Board determines that an emergency undertaking is necessary to prevent imminent harm to preserve human life or property. The Preservation Board must require the responsible person to implement such measures or procedures as are possible in the circumstances to avoid or minimize harm to cultural resources.

(b) Waiver under this Section shall not exceed the period of time during which the emergency circumstances necessitating the waiver exist.

(c) The responsible person shall notify the Director in writing of the need for an emergency waiver within fourteen (14) days of commencement of such undertaking. The notice shall include (1) the natural disaster or event necessitating the emergency undertaking, and (2) a description of the measure(s) taken to avoid or minimize harm to cultural resources or reasons why such measures were not taken.

(d) The Director will then present the request to the Preservation Board for their decision.

(e) The Board's decision as to whether a waiver is appropriate is a final decision subject to appeal to the Snoqualmie Tribal Court.
8.6 Modification or Revocation of Permit

(a) Any permit issued under this Chapter may be modified or revoked by the Preservation Board in accordance with the procedures set forth below, upon a determination by the Director and the Board that:

(1) The permittee has violated any provision of the permit, this Chapter, or other applicable law;

(2) Relevant circumstances have changed since the granting of the permit so that the application would no longer meet the criteria of Section 8.4;

(3) Material misrepresentations were included in the application; or

(4) The permit was improvidently granted.

(b) Upon written notice specifying the alleged grounds for modification or revocation, filed with the Board by the Cultural Director or his/her designee, the Board shall schedule a hearing to determine the matter, which shall not be less than five (5) days nor more than thirty (30) days after the service of such notice upon the permittee by certified mail, return receipt requested. The permittee shall be entitled to an opportunity to appear at such hearing and controvert the allegations in support of revocation or suspension.

(c) The Board shall issue a written decision modifying, revoking or maintaining a permit within thirty (30) days after the hearing.

(d) The Board’s decision to modify, revoke or maintain a permit shall be a final decision subject to appeal by the Snoqualmie Tribal Court.

Section 9.0 - Confidentiality and Disclosure

(a) A determination regarding the nature and cultural significance of cultural resources may involve the use of sensitive and confidential information regarding Tribal customs, beliefs, religious/spiritual practices, and traditions. Such information is of a highly specialized and personal nature and sometimes held by only a few individuals in the Tribe. According to Tribal beliefs and customs, such information is not readily shared and is considered proprietary and confidential. Public disclosure of this type of information could cause severe harm and loss to Tribal culture and cultural resources, or to the person who receives the information.

(b) In developing the required database and record system required under this Chapter, and in identifying and documenting traditional cultural properties, the Director and Preservation Board will use methods which require only
minimal disclosure of sensitive cultural and religious information necessary to meet the purpose and needs of this Chapter. Release of sensitive data will be restricted and access to this data will be made on a case-by-case basis.

(c) The Director shall not: (1) cause a significant invasion of privacy, (2) risk harm to the cultural resource, or (3) impede the use of a religious site by practitioners by releasing Snoqualmie cultural information.

SECTION 10.0 - ENFORCEMENT

10.1 INSPECTION

The Director or his/her designee may inspect any undertaking for the purpose of determining compliance with this Chapter, its implementing regulations, or permit terms and conditions.

10.2 CIVIL PENALTIES

(a) Except for emergency undertakings done in accordance with a waiver pursuant to section 8.5 of this Chapter, any person who violates any applicable provision or permit issued under this Chapter may be assessed a civil penalty by the Preservation Board. No penalty may be assessed under this section unless such person is given notice and an opportunity for a hearing before the Preservation Board with respect for such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Preservation Board.

(b) The amount of such penalty shall be determined by the Board pursuant to this Chapter, taking into account, in addition to other factors:

1. The damages incurred, both economic and non-economic;

2. The cost of restoring or replacing a traditional cultural property, burial site or archaeological resource or its equivalent, if possible to valuate;

3. Enforcement costs;

4. Costs associated with the disposition of human skeletal remains or cultural items; and

5. Costs associated with documentation, surveying, and evaluation of the religious site, burial site, traditional cultural property, human skeletal remains, or archaeological site to assess the characteristics of the site.

(c) Any civil penalty issued by the Preservation Board shall constitute a final decision subject to appeal to the Snoqualmie Tribal Court.
10.3 **OTHER REMEDIES**

The Preservation Board may also seek to enforce violations of this Chapter in accordance with the remedies available under ARPA and NAGPRA. The Tribal Council may request the assistance of the United States Attorney or other appropriate enforcement entity to pursue violations under those statutes.

**SECTION 11.0 - JUDICIAL REVIEW**

The Snoqualmie Tribal Court shall have jurisdiction to hear and decide all appeals of the Preservation Board’s final actions taken under this Chapter. The Board’s decision will be upheld unless the Court finds it to be arbitrary and capricious.

**SECTION 12.0 - NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing herein shall constitute a waiver of the Tribe’s sovereign immunity, unless an explicit waiver is otherwise set forth.

**SECTION 13.0 - SEVERABILITY**

The provisions of this Chapter are severable and if any part or provision shall be held void by any court of competent jurisdiction, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Chapter.

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**ENACTED BY THE SNOQUALMIE TRIBAL COUNCIL ON THE 22ND DAY OF APRIL, 2004 IN SESSION DULY MET. TRIBAL COUNCIL ACT 02-04.**

**AMENDED BY THE SNOQUALMIE TRIBAL COUNCIL ON THE 14TH DAY OF AUGUST, 2008 IN SESSION DULY MET, WITH 8 FOR, 0 AGAINST, AND 0 ABSTAINING. RESOLUTION NO. 96-08.**

**AMENDED BY THE SNOQUALMIE TRIBAL COUNCIL ON THE 15TH DAY OF JUNE, 2012 IN SESSION DULY MET WITH 5 FOR, 0 AGAINST, AND 0 ABSTAINING. RESOLUTION NO. 69-2012.**

**CODIFIED BY THE SECRETARY OF TRIBAL AFFAIRS ON THE 28TH DAY OF JUNE 2012.**

[Signature]
SECRETARY OF TRIBAL AFFAIRS