

OCTOBER 2005 CROW TRIBAL LEGISLATURE

BILL NO. CLB05-17

INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH

A BILL FOR AN ACT ENTITLED:

**“APSAALOOKE TRIBE CULTURAL RESOURCE PROTECTION
AND
TRIBAL HISTORIC PRESERVATION OFFICE ACT”**

WHEREAS, The spirit and direction of the Apsáalooke (Tribe) Nation is founded upon and reflected in its cultural heritage; and

WHEREAS, 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 identification to the Apsáalooke people; and

WHEREAS, cultural resources of the Tribe are being lost, substantially altered or destroyed, with increasing frequency; and

WHEREAS, in the face of ever increasing energy, economic, residential, highway, and sanitation and public health developments, the present Tribal governmental and non-Tribal governmental programs to preserve the Tribe's cultural resources are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of the Tribe; and

WHEREAS, measures are necessary to foster conditions under which our modern society and our prehistoric, historic and cultural resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations; and

WHEREAS, 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 Apsáalooke people and will be maintained and enriched for the Tribe's future generations; and

WHEREAS, under Article V, Section 2(a) of the Constitution and Bylaws of the Crow Tribe of Indians, the Legislative Branch has the power and the duty to promulgate and adopt laws, resolutions, ordinances, codes, regulations and guidelines in accordance with the Constitution and federal laws for the governance of the Crow Tribe; and

WHEREAS, under Article IV, Section 3 of the Constitution, the Executive Branch has the power and responsibility to represent the Crow Tribe in negotiations with Federal, State and local governments and other agencies, corporations, associations, or individuals in matters of welfare affecting the Crow Tribe, to administer and oversee all functions of the Executive Branch, to protect and preserve the property, wildlife and natural resources of the Tribe in accordance with ordinances adopted by the Legislative Branch, and under Section 4 the duty to implement all laws, resolution, codes and policies duly adopted by the Legislative Branch;

NOW, THEREFORE, BE IT ENACTED BY THE CROW TRIBAL LEGISLATURE:

Section 1. Adoption. The "Apsaalooke Tribe Cultural Resource Protection and Tribal Historic Preservation Office Act" attached hereto and incorporated herein by reference is hereby adopted as the law of the Apsaalooke Tribe.


Section 2. Effective Date. Upon approval of this Bill, the Act shall become effective immediately

Section 3. Funding and Recognition. The Crow Tribe supports and affirms the request(s) for the National Park Service to provide funding for the Tribal Historic Preservation Office to carry out its responsibilities under the Act, and further requests that the National Park Service recognize Mr. Dale Old Horn, who is a Tribal traditional cultural authority, as the Tribal Historic Preservation Officer duly appointed by the Chairman of the Executive Branch pursuant to the Act.

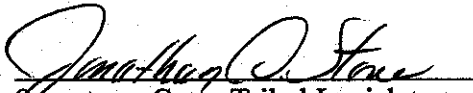
Section 4. Codification Instructions. Upon approval, the Act shall be codified in Title ___ of the Crow Law and Order Code.

CERTIFICATION

I hereby certify that this Bill for an Act entitled "**APSAALOOKE TRIBE CULTURAL RESOURCE PROTECTION AND TRIBAL HISTORIC PRESERVATION OFFICE ACT**" was duly enacted by the Crow Tribal Legislature with a vote of 14 in favor, 0 opposed, and 0 abstained and that a quorum was present on this 25th day of October, 2005.


Speaker of the House
Crow Tribal Legislature

ATTEST:


Secretary, Crow Tribal Legislature

EXECUTIVE ACTION

I hereby

approve

veto

this Bill for an Act entitled "**APSAALOOKE TRIBE CULTURAL RESOURCE PROTECTION AND TRIBAL HISTORIC PRESERVATION OFFICE ACT**" pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 28 day of Oct, 2005.


Carl E. Venne, Chairman
Crow Tribal Executive Branch

Apsaalooke Tribe



Crow Country

CULTURAL RESOURCE PROTECTION ACT 2005

Apsaalooke Tribal Historical
Preservation Office

CLB05 – _____

**Cultural Resource Protection
Act**

**Enacted by the Legislative Branch of the
Apsaalooke Tribe**

October _____, 2005

**CULTURAL RESOURCE PROTECTION ACT
TABLE OF CONTENTS**

| | |
|---|-----------|
| PART I - SHORT TITLE, AUTHORITY..... | 4 |
| Section 1. Short Title..... | 4 |
| Section 2. Authority..... | 4 |
| PART II - FINDINGS AND POLICY..... | 5 |
| Section 1. Findings..... | 5 |
| Section 2. Policy..... | 6 |
| PART III - GENERAL PROVISIONS..... | 6 |
| Section 1. Definitions..... | 6 |
| Section 2. Tribal Historical Preservation Office..... | 9 |
| Section 3. Preservation Board..... | 11 |
| Section 4. Evaluation Process..... | 13 |
| PART IV - PERMITS..... | 14 |
| Section 1. Permit Required..... | 14 |
| Section 2. Permit Fees..... | 14 |
| Section 3. Application for Permit..... | 15 |
| Section 4. Review of Proposed Projects..... | 15 |
| Section 5. Emergencies..... | 17 |
| Section 6. Modification or Revocation of Permit..... | 17 |
| PART V - NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT. ... | 18 |
| Section 1. Implementation..... | 18 |
| Section 2. Inadvertent Discovery of Cultural Items..... | 18 |
| Section 3. Intentional Excavation..... | 19 |
| Section 4. Enforcement..... | 19 |
| PART VI - CONFIDENTIALITY AND DISCLOSURE..... | 20 |
| PART VII - ENFORCEMENT..... | 21 |
| Section 1. Inspection..... | 21 |
| Section 2. Civil Penalties..... | 21 |
| Section 3. Other Remedies..... | 22 |
| PART VIII - REVIEW, SEVERABILITY, EFFECTIVE DATE..... | 22 |
| Section 1. Administrative Appeal of Board Action..... | 22 |
| Section 2. Judicial Review..... | 23 |
| Section 3. Severability..... | 23 |
| Section 4. Effective Date..... | 23 |

October _____, 2005

CLB05-_____

APSAALOOKE TRIBE'S
CULTURAL RESOURCE PROTECTION AND
TRIBAL HISTORIC PRESERVATION OFFICE ACT

PART I

SHORT TITLE, AUTHORITY

Section 1. Short Title.

This Act may be referred to as the Cultural Resource Protection Act or the Tribal Historic Preservation Office Ordinance (or "THPOO").

Section 2. Authority.

This Act is enacted pursuant to the Constitution of the Apsáalooke Tribe of the Crow Indian Reservation, Article V, Section 2(a), acknowledged by the Secretary of the Interior.

This Act also implements the provisions of the following federal laws which acknowledge and affirm certain Tribal authority over cultural resources: (a) Archaeological Resources Protection Act, 16 U.S.C. §§ 470cc(g)(2), 470dd and 470gg(c); (b) National Historic Preservation Act, as amended, 16 U.S.C. § 470, *et seq.*; (c) Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001, *et seq.*; (d) National Indian Forest Resource Management Act 25 U.S.C. § 3108; (e) American Indian Agricultural Resource Management Act, 25 U.S.C. § 3712; and (f) the American Indian Religious Freedom Act, 42 U.S.C. § 1996.

PART II
FINDINGS AND POLICY

Section 1. Findings.

The Legislative Branch finds that:

- (a) The spirit and direction of the Apsáalooke (Tribe) Nation 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 identification to the Apsáalooke 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, and sanitation and public health developments, the present Tribal governmental and non-Tribal governmental programs to preserve the Tribe's cultural resources are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of the Tribe.
- (e) measures are necessary to foster conditions under which our modern society and our prehistoric, historic and cultural resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;
- (f) 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 Apsáalooke people and will be maintained and enriched for the Tribe's future generations;

Section 2. Policy.

It is the policy of the Executive and Legislative Branches of the Apsaalooke Tribe to protect traditional cultural resources by establishment of a preservation program to identify, evaluate, and protect cultural, historic, and archaeological resources and by regulating undertakings upon protected lands when they may result in changes in the character or use of such cultural resources.

PART III

GENERAL PROVISIONS

Section 1. Definitions.

For the purposes of this Act the following definitions will apply:

- (a) "Archaeological resource" means any material remains of past human life or activities, which are of archaeological interest. Such material remains shall include, but not limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece thereof found in a archaeological context. No item shall be treated as an archaeological resource unless such item is at least 50 years old.
- (b) "Preservation Board" means the Cultural Committee of Apsaalooke Tribe.
- (c) "Culture" means the traditions, beliefs, practices, lifeways, arts and social institutions/of the Apsaalooke people.
- (d) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

- (e) "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.
- (f) "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.
- (g) "Cultural resource" means native plant materials, objects, or cultural or religious sites which are nominated or determined eligible for the Apsáalooke Register as having cultural significance. Cultural materials may include, but are not limited to, such things as roots, berries, cedar bark, and Indian medicines.
- (h) "District" means any discrete area comprising buildings, objects, sites or structures or traditional cultural properties that forms a recognizable, unified whole.
- (i) "'Traditional Cultural Property'" means a place that is associated with cultural and religious practices, customs, or beliefs of the Apsáalooke people that
- (1) is rooted in Apsaalooke history or tradition; and
 - (2) is important to maintain continuity of the Apsáalooke traditional beliefs and practices, and is included in, or eligible for inclusion on the Apsáalooke Register, including artifacts, records, and material remains related to such a property or resource.
- (j) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.

- (k) "Person" means any individual, partnership, association, corporation, and any other entity composed of individuals, and federal, Tribal, and state governmental entities or agencies.
- (l) "Preservation Officer" means the Apsáalooke Tribal Historic Preservation Officer.
- (m) "Religious site" means any place or area, including, but not limited to, any geophysical or geographical area or feature:
- (1) where Apsáalooke cultural practitioners are required by their religion or beliefs 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; or
 - (2) which is utilized by Apsáalooke religious practitioners for ceremonies or spiritual practices.
- (n) "Protected lands" means all lands within the exterior boundaries of the Apsaalooke Indian Reservation, and all lands owned by the Apsáalooke Tribe and lands in the original territory of the Apsáalooke.
- (o) "Responsible person" means any person who has decision making authority over a particular undertaking on protected lands.
- (p) "Apsáalooke Register" means the Apsáalooke Nation Register of Cultural properties.
- (q) "Executive Branch" means the Executive Branch of the Apsáalooke Tribe of the Crow Indian Reservation, Montana, as established by Article IV of the Tribal Constitution, and headed by the duly elected Executive Officers of the Apsaalooke Tribe.
- (r) "Undertaking" means a project, activity or program funded in whole or in part under the direct or indirect jurisdiction of 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 2. Tribal Historic Preservation Office.

- (a) There is hereby established a Tribal Historic Preservation Office which will be directed by a Tribal Historic Preservation Officer (THPO) appointed by the Chairman of the Executive Branch to administer the Tribal Historic Preservation Office programs.
- (b) The Tribal Historic Preservation Officer will meet professional qualifications and have substantial experience in the administration of a preservation program and experience in at least one of the following disciplines: traditional cultural practices and properties, archaeology, history, cultural geography, or cultural anthropology.
- (c) It shall be the responsibility of the Tribal Historic Preservation Officer to:
 - (1) Maintain the Apsáalooke 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;
 - (2) As funds and staff are available, and in cooperation with the Apsáalooke Culture Committee, direct and conduct a comprehensive Reservation-wide survey of cultural properties 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;

- (3) Identify and nominate eligible properties to the Apsáalooke Register of Cultural Places and administer applications for the Tribal Register;
- (4) Prepare and implement a comprehensive Reservation-wide cultural preservation planning process which includes the identification, evaluation, registration, and treatment of cultural properties so that effective decisions concerning preservation can be made;
- (5) Advise and assist, as appropriate, Tribal, Federal, and State agencies in carrying out their cultural and historic preservation responsibilities;
- (6) Consult with appropriate Tribal, Federal, and State agencies in accordance with this Act and regulations on:
 - (A) undertakings that may affect cultural or historic properties; and
 - (B) content and sufficiency of any plans developed to protect, manage, avoid or mitigate harm to such properties.
- (7) Maintain a cultural, historical, and archaeological database in a manner that takes into account Tribal customs regarding the disclosures of personal, private, or religious information.
- (8) Cooperate with the Advisory Council on Historic Preservation, the State Historic Preservation Office, 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.
- (9) Provide public information, education and training, and technical assistance relating to the Tribal cultural preservation program

- (10) Report administratively to the elected Executive Officer through who is presently charged with responsibility of coordinating cultural programs.

Section 3. Preservation Board.

- (a) There is hereby established a Cultural Preservation Board, to be composed of the Crow Culture Committee. The Culture Committee shall be the same as appointed by the Chairman of the Executive Branch of the Crow Tribe. All Board members shall have a demonstrated special knowledge of Tribal customs, beliefs, and practices, experience, or 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 by appointment by the Chairman of the Executive Branch of the Crow Tribe in accordance with the Constitution of the Crow Tribe, and may include the head and/or other employees of the Tribal Cultural Department. Any vacancy on the Board shall be filled by the Chairman. The Tribal Historic Preservation Officer shall serve as an ex-officio member of the Preservation Board.
- (b) Except as otherwise provided in this section, the Cultural Preservation Board shall be charged with overseeing this Act including, but not limited to, the following: the issuance or denial of permits, the issuance of orders, the levying of penalties and the making of any and all decisions and determinations necessary in connection therewith. The Apsáalooke Tribal Historic Preservation Office, upon recommendation of the Board, is authorized to issue such rules, regulations and standards as are necessary to carry out the purpose of this Act. Such

regulations shall be promulgated in accordance to the procedures contained in Tribal Administrative Procedures Act, Title 16 of the Crow Law and Order Code, as amended.

(c) The actions and decisions of the Cultural Preservation Board shall constitute final agency action appealable pursuant to Section 1, Part VIII of this Act.

(d) The powers and duties of the Tribal Historic Preservation Office include:

(1) Undertakings located off the Crow Indian Reservation. The Culture Committee members and staff of the THPO are authorized to participate in the review or permitting process of an undertaking or project which might affect any off-reservation cultural resources, including but not limited to religious sites, archaeological resources, human skeletal remains, historic resources, cultural items, and food and medicinal plants, and ethnographic studies involving the Apsaalooke people. The THPO staff shall provide an annual report and summary of such consultation to the Board. The Tribe encourages the establishment of memoranda of agreement with appropriate persons to effectuate the policies in this Act.

(3) Undertakings on the Crow Indian Reservation. The Tribal Historic Preservation Office is authorized and directed to

(A) review for approval or disapproval any proposed undertaking that might affect any cultural resource, including, but not limited to, religious sites, archaeological resources, burial sites, human skeletal remains, traditional cultural properties, historic resources, cultural items, food and medicinal plants located upon protected lands;

(B) review requests for excavation or removal of archaeological

- resources on protected lands;
- (C) review requests for ethnographic work, studies or surveys on Apsáalooke cultures;
 - (D) review permits as authorized by Part IV of this Act;
 - (E) identify and nominate traditional cultural properties to the Apsáalooke Register and otherwise review and recommend applications for listing traditional cultural properties; and
 - (F) provide general advice and guidance to the Executive Branch of the Crow Tribe;
 - (G) to report to Executive Branch Officers, gifts, grants and fees to the Tribal Historic Preservation Office who administers this Act. Such money may be expended to hire staff or consultants for the purpose of carrying out the powers and duties of the Tribal Historic Preservation Office or for performing other appropriate functions;
 - (H) to call upon tribal staff or elders having technical expertise for advise;
 - (I) perform other duties as may be appropriate and necessary to implement this Act.

Section 4. Evaluation Process.

- (a) The head of any Tribal, Federal, or State agency having direct or indirect jurisdiction over a proposed Tribal or Federal, or Federally-assisted undertaking on protected lands shall, prior to approval of the expenditure of any Tribal or Federal funds on the undertakings or prior to the issuance of any license, as the case may be, take into account the effect of any undertaking on any religious site, traditional cultural property, human skeletal remains, district, site, building structure, or object that is included in, or eligible for inclusion on the Apsáalooke Register.

(b) Tribal and Federal agencies shall not approve an undertaking if it will adversely affect cultural, historical or archaeological sites included on, or eligible for the Apsáalooke Register unless it has made the determination that

- (1) that there is no prudent and feasible alternative available to avoid impacting such sites; and
- (2) the action includes all possible planning to minimize harm to the property resulting from such use.

(c) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic, and environmental impacts, or community disruptions resulting from such alternatives reach extraordinary magnitude.

PART IV PERMITS

Section 1. Permit Required.

- (a) No historical or ethnographic work or studies relating to Apsáalooke cultural resources may be conducted on protected lands without a permit issued by the Tribal Historic Preservation Office.
- (b) No excavation or removal of archaeological resources or cultural items on protected lands is allowed without a permit.
- (c) No work may commence on an undertaking which may effect cultural resources on protected lands until the responsible person or agency has been issued a permit.
- (c) All work on an undertaking shall be conducted pursuant to the terms and conditions of the permit.

Section 2. Permit Fees.

An application for a permit shall be accompanied by payment of a non-refundable fee to cover some costs associated with permit issuance and administration. The amount of the fee shall be fixed from time to

time by the Tribal Historic Preservation Office Policy, shall take into account the scope of the proposal, and shall be reasonable.

Section 3. Application for Permit.

(a) Any person who intends to conduct an undertaking which may affect cultural resources on protected lands shall submit a written application to the Tribal Historic Preservation Office.

(b) The application shall be on a form provided by the Tribal Historic Preservation Office. The

Application shall include, but is not limited to, a

- (1) location map, including a legal description;
- (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;
- (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;
- (6) and other such information the Board deems necessary.

Section 4. Review of Proposed Projects.

(a) The Tribal Historic Preservation Officer shall review an application for adequacy and shall determine if the proposal constitutes an undertaking. The Tribal Historic Preservation Office Staff and the Preservation Board may make such on-site investigations as are necessary to perform these duties.

(b) If the Tribal Historic Preservation Officer determines that the proposal is not an undertaking, the Tribal Historic Preservation Officer shall so state in a written notice to the responsible person within 14 days of receipt of the application.

- (c) If the Tribal Historic Preservation Officer determines that the proposal is reasonable for an undertaking, the Tribal Historic Preservation Officer shall transmit the proposal to the Tribal Historic Preservation Office staff member who is responsible for conducting a review.
- (d) The Tribal Historic Preservation Office Staff will conduct a literature and oral history search and a field survey, when necessary, and will notify the Tribal Historic Preservation Officer of its findings.
- (e) Once the Tribal Historic Preservation Officer has been notified by the Tribal Historic Preservation Office Staff of its findings and recommendations based on such investigation, the Tribal Historic Preservation Officer shall bring the application before the Culture Committee for evaluation and review.
- (f) The Tribal Historic Preservation Office shall review all applications. The Tribal Historic Preservation Officer shall either approve, approve with modifications or alternatives, or disapprove an application and shall state its decision in writing to the responsible person.
- (g) Upon approval or upon approval with modification or alternatives, the Tribal Historic Preservation Officer shall forward to the responsible person a permit which shall relate to the plan for the undertaking to the Culture Committee, which may include provisions for avoidance or mitigation of adverse impacts associated with the undertaking.
- (h) This Section 4 process should be completed prior to the approval of the expenditure of any Federal or Tribal funds on the undertaking or prior to the issuance of any Federal or Tribal license or permit. This does not bar any expenditure of funds on or any non-destructive planning activities preparatory to an undertaking before complying with this Section 4. The responsible person

should ensure that the Section 4 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration.

Section 5. Emergencies.

(a) All or part of a person's responsibilities under this Act may be waived if the responsible person determines that emergency action is necessary to prevent imminent harm to preserve human life or property and that such emergency action would be impeded if the responsible person was required to concurrently meet its cultural preservation activities and if the responsible person implements such measures or procedures as are possible in the circumstances to avoid or minimize harm to cultural resources.

(b) Waiver under Section 5(a), Part III shall not exceed the period of time during which the emergency circumstances necessitating the waiver exist.

(c) The responsible person shall notify the Preservation Officer in writing of the emergency undertaking within fourteen days of commencement of such undertaking. The notice shall include:

- (1) the natural disaster or event necessitating emergency action; and
- (2) the date and nature of the emergency action; and
- (3) a description of the measure(s) taken to avoid or minimize harm to cultural resources or reasons why such measures were not taken.

Section 6. Modification or Revocation of Permit.

The Tribal Historic Preservation Officer may, upon a finding of non-compliance or upon a finding of necessity, either modify or revoke a permit after the responsible person has been afforded notice and an opportunity to be heard.

PART V
**NATIVE AMERICAN GRAVES PROTECTION
AND REPATRIATION ACT**

Section 1. Implementation.

- (a) The Native American Graves Protection and Repatriation Act (NAGPRA) provides for the protection of Native American graves and for the return and repatriation of human remains, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony. It is the policy of the Tribe to support the enforcement and implementation of this Act.
- (b) The Apsáalooke Culture Committee / Preservation Board are vested with the authority to implement and administer the provisions of NAGPRA.
- (c) The Apsaalooke Tribal Historic Preservation Office is authorized to consult with federal and state agencies and others, regarding the proper handling and disposition of human remains, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony.
- (d) The Tribal Historic Preservation Officer, upon recommendation of the Apsáalooke Culture Committee, may issue rules regarding the proper treatment and handling of human skeletal remains and cultural items, and procedures for the reinterment of human skeletal remains.

Section 2. Inadvertent Discovery of Cultural Items.

- (a) Any person who knows or has reason to know of the discovery of Native American cultural items, including human skeletal remains on federal lands within the Tribe's aboriginal territory and all lands within the exterior boundaries of the Crow Reservation and within the original territory of the Crow Tribe shall immediately contact the Tribal Historic Preservation Officer.

- (b) If the discovery occurred in connection with an activity, including but not limited to, construction, mining, logging, and agriculture, the person shall cease activity in the area of the discovery, and make all reasonable efforts to protect the items discovered.
- (c) The activity may resume only after consultation with the Tribal Historic Preservation Office and the Crow Culture Committee and after an agreement has been reached between the Tribal Historic Preservation Officer and the Crow Culture Committee and the landowner on whether the cultural items can be preserved in situ or whether they need to be removed. This consultation must be completed within thirty (30) days of notice of the discovery to the Tribal Historic Preservation Officer, unless the landowner agrees to a longer period.
- (d) The disposition and control of human remains and cultural items removed under this section shall be determined in accordance to the priority established in Section 3002(a) of NAGPRA.

Section 3. Intentional Excavation.

- (a) Any person who proposes an undertaking within the exterior boundaries of the Crow Reservation which may result in the excavation of human skeletal remains or cultural items shall apply for a permit pursuant to Part IV of this Act.
- (b) Federal agency officials who are required to give notice and consult with the Apsáalooke Tribe regarding undertakings within the Tribe's aboriginal territory which may result in the excavation of human skeletal remains or cultural items shall provide notice to the Tribal Historic Preservation Officer.

Section 4. Enforcement.

Violations of this part may be enforced in accordance to Part VII of this Act and the Apsáalooke Tribe may also request the U.S. Attorney or the Department of Interior pursue appropriate penalties in accordance

with NAGPRA.

PART VI

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, 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.

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

(c) The Crow Culture Committee and the Tribal Historic Preservation Officer shall withhold from disclosure to the public, information about the location, character, or ownership of a cultural resource if the Crow Culture Committee or the Tribal Historic Preservation Officer determine that disclosure may:

- (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.

PART VII ENFORCEMENT

Section 1. Inspection.

The Tribal Historic Preservation Officer or his duly authorized agent may inspect any undertaking for the purpose of determining compliance with this Act, its implementing regulations, or permit terms and conditions.

Section 2. Civil Penalties.

(a) Except for emergency actions, any person who violates any prohibitions contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Tribal Historic Preservation Office. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Tribal Historic Preservation Office.

(b) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors:

- (1) the damages suffered, both economic and non-economic by Tribal members; and
- (2) costs of restoring or replacing a traditional cultural property, burial site or archaeological resource or its equivalent, if possible; and
- (3) enforcement costs associated with the enforcement of this Act; and
- (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, or human skeletal remains or archaeological site to assess the characteristics of the site.

(c) Such regulations shall provide that in the case of a second or subsequent violation by any person, the amount of such civil penalty will be double the amount which would have been assessed if such violation were the first violation by such person.

(d) Any person aggrieved by an order assessing a civil penalty under subsection (1) may seek review of the Tribal Historic Preservation Office's order pursuant to the Tribal Administrative Procedures Act. Such petition for review may only be filed within 30 days after the date of the assessment order was issued, and failure to file a petition within such time will constitute a waiver of all rights to further administrative or judicial review.

Section 3. Other Remedies.

Violations of this Act may also be enforced in accordance with Tribal law and the remedies available ARPA and NAGPRA and other applicable Federal law, and the Tribe may request the assistance of the United States Attorney or other appropriate enforcement entity to pursue violations under those statutes. Nothing in this Act shall eliminate any other remedies available at law or equity for conduct which is in violation of this Act.

PART VIII REVIEW, SEVERABILITY, EFFECTIVE DATE

Section 1. Administrative Appeal of Board Action,

A person aggrieved by a final action of the Tribal Historic Preservation Office may seek review of such action pursuant to procedures contained in the Tribal Administrative Procedures Act. For purposes of administrative review, a decision of the Tribal Historic Preservation Office shall constitute final agency action, appealable to an administrative hearings officer.

Section 2. Judicial Review.

(a) The Judicial Branch Apsaalooke Tribe shall have jurisdiction to hear and decide all causes arising under this Act and implementing Regulations and to hear appeals from the Tribal Historic Preservation Office's and the Cultural Preservations Board's actions upon exhaustion of administrative remedies as provided in Sections 26 – 29 of the Crow Tribal Administrative Procedures Act, Title 16 of the Crow Law and Order Code.

(b) The scope of the Tribal Court's review shall be as set forth in Section 29 of Title 16. The decision of the Tribal Court shall be final and nonappealable.

Section 3. Severability.

If any provision of this Act or the applicability thereof is held invalid by any court of competent jurisdiction, the remainder of this Act shall not be affected thereby.

Section 4. Effective Date.

This Act shall become effective upon promulgation of implementing regulations by the Tribe.

