

TITLE 8 - CULTURE

CHAPTER 1 - ARCHAEOLOGICAL RESOURCES PROTECTION

Legislative History: The "Archaeological Resources Protection Ordinance," Ordinance No. 06-84, was enacted by the Papago Council on August 20, 1984 and approved by the Papago Agency Acting Superintendent on August 24, 1984.

ORDINANCE OF THE PAPAGO TRIBAL COUNCIL
(ARCHAEOLOGICAL RESOURCES PROTECTION ORDINANCE)

ORD. NO. 06-84

1 Statement of Purpose: An ordinance for the protection and pre-
2 servation of archaeological resources historically associated
3 with traditional or sacred values and beliefs important to the
O'odham, and of the physical site, location or context in which
archaeological resources are found.

4 BE IT ENACTED by the Council of the Papago Tribe of the Papago
5 Reservation as follows:

6 Section 1 Short Title

7 This ordinance may be cited as the Archaeological
8 Resources Protection Ordinance of the Papago Tribe.

9 Section 2 Interpretation

10 This ordinance shall be deemed an exercise of the
11 police power of the Papago Tribe for the protection
12 of the public welfare, health, peace and morals of
the people of the Papago Reservation and all pro-
visions of this ordinance shall be liberally constr-
ued for the accomplishment of this purpose.

13 Section 3 Definitions

14 In this ordinance, unless the context otherwise
15 requires:

16 (A) "Archaeological resource" means any material
17 remains of past human life or activities which
18 are of archaeological interest and the physical
19 site, location or context in which they are
20 found. An archaeological object, site or other
21 material remain is of archaeological interest if
22 through its scientific study and analysis, in-
23 formation or knowledge can be obtained concern-
ing human life or activities. Nonfossilized or
fossilized paleontological specimens and treas-
ure-trove or abandoned property as defined in
the Escheat Ordinance of the Papago Tribe, or
any portion or piece thereof, shall not be con-
sidered archaeological resources under this
ordinance unless found in an archaeological con-
text.

24 (B) "Material remains of past human life or acti-
25 vities" means physical evidence of human habi-
26 tation, occupation, use or activity, including,
27 but not limited to:

28 (1) Surface or subsurface structures, shelters,
29 facilities or features (including, but not
30 limited to, domestic structures, storage
31 structures, cooking structures, ceremonial
structures, human-made mounds, earthworks,
canals, reservoirs, horticultural/agri-
cultural gardens or fields, rock alignments,
cairns, trails, borrow pits, cooking pits,
refuse pits, middena, graves, hearths, kilns
post molds):

32 (2) Surface or subsurface artifact concentra-
tions or scatters and the three dimensional

1 relationship of artifacts to each other in
2 the ground.

- 3 (3) Whole or fragmentary tools, implements, con-
4 tainers, weapons and weapon projectiles,,
5 clothing and ornaments (including, but not
6 limited to, pottery and other ceramics,
7 basketry, cordage, weavings, coins, bullets,
8 bottles and other glassware, flaked stone,
9 ground stone, pecked stone, worked bone,
10 metal, wood, hide, feathers, pigments);
11 (4) By-products, waste products, or debris res-
12 ulting from manufacture or use of human-
13 made or natural materials;
14 (5) Organic waste (including, but not limited to
15 vegetal and animal remains, corprolites);
16 (6) Human skeletal or mummified remains (in-
17 cluding, but not limited to, bone, flesh,
18 teeth, burials, graves, cremations);
19 (7) Rock carvings, rock paintings, intaglios
20 and other works of artistic or symbolic
21 representation;
22 (3) Rockshelters and caves or portions thereof
23 containing any of the above material
24 remains;
25 (9) The physical site, location or context
26 in which any of the foregoing are situated;
27 (10) Any portion or piece of any of the fore-
28 going.

19 (C) "Chairman" means the Chairman of the Papago
20 Council who is hereby designated as the official
21 to receive notification of any archaeological
22 permit applications or of any archaeological
23 or environmental impact or activities required
24 to be given to the Papago Tribe pursuant to
25 Federal Acts or regulations promulgated pur-
26 suant thereto.

24 (D) "Federal Act" means:

- 25 (1) The Act of June 3, 1906 ("Antiquities Act
26 of 1906"; 16 U.S.C. 432, 433; 43 CFR Part 3);
27 (2) The Act of June 27, 1960 ("Reservoir Salvage
28 Act of 1960"; 16 USC 469) as amended by the
29 Act of May 6, 1974 ("Archaeological and
30 Historic Preservation Act of 1974"; 16 U.S.C
31 469);
32 (3) The Act of October 15, 1966, as amended
("National Historic Preservation Act of
1966"; 16 U.S.C. 470 a-t; 36 CFR Part 800);
(4) American Indian Religious Freedom Act of
1973 (42 U.S.C. 1996);

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- (5) The Department of Transportation Act of 1970 (49 U.S.C. 1653);
 - (6) The National Environmental Policy Act of 1969 (42 U.S.C. 4321);
 - (7) Any other act enacted by Congress for the protection of archaeological, environmental or historic sites or resources on Indian lands or affecting Indian tribes.
- (D) "Person" means any individual, corporation, partnership, trust, institution, association, or any other entity.

Section 4 Prohibited Acts

- (A) No person, other than a member of the Papago Tribe, may conduct any archaeological survey or study on the Papago Reservation, and no person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on the Papago Reservation, unless such activity is pursuant to a permit issued under Section 7 or is exempted by Section 5 (B).
- (B) No person may sell, transfer, transport or receive any archaeological resource if such resource was excavated or removed from the Papago Reservation in violation of this ordinance or of any applicable Federal Act, or of any permit issued pursuant thereto.

Section 5 Permit, Exemptions

- (A) Permits are required for persons wishing to conduct excavations and/or removal of archaeological resources from the Papago Reservation, and to carry out activities associated with such excavation and/or removal, and are issued by the Chairman to qualified persons, subject to appropriate terms and conditions. The Papago Tribe shall have absolute discretion in the issuance of a permit.
- (B) Exceptions:
 - (1) No permit shall be required for archaeological surveys or studies which do not involve the collection or disturbance of archaeological resources; provided, that persons who are not members of the Papago Tribe shall first receive the written consent to conduct such surveys or studies from the District Council in which the lands subject to the proposed surveys or studies are located; and provided further, that, if archaeological resources are discovered, such resources shall be left undisturbed and a permit shall be obtained in accordance with the provisions of Section 7 before resuming such surveys or studies.

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- (2) No permit shall be required for the collection or recovery by any employees and agents of the Papago Tribe of treasure-trove or abandoned property as defined in the Escheat Ordinance of the Papago Tribe.
- (3) Employees and agents of the Papago Tribe carrying out their official duties associated with the management of archaeological resources shall be deemed to be operating under a valid permit.
- (4) No permit or other consent shall be required for employees and agents of the Federal government carrying out official duties associated with the management of archaeological resources.
- (5) No permit shall be required to carry out any archaeological activity which was authorized by a Federal permit issued under a Federal Act before the enactment of this ordinance.

- (C) Activities relating to archaeological resources on the Papago Reservation may be subject to Federal Acts and permits.
- (D) A permit issued under this ordinance shall constitute consent on behalf of the Tribe to the issuance of permits for the excavation or removal of archaeological resources located on the Papago Reservation required by any applicable Federal Act.

Section 6 Application for Permits

- (A) Any person may file an application with the Chairman for a permit to excavate and/or remove archaeological resources from the Papago Reservation and to carry out activities associated with such excavation or removal.
- (B) Each applicant for a permit shall include:
 - (1) The exact character of the work proposed including how and why it is proposed to be conducted, proposed time of performance, location maps, and proposed outlet for public written dissemination of the results.
 - (2) The name and address of the individual(s) proposed to be responsible for conducting the work, his/her institutional affiliation, if any, and evidence of his/her education, training, and experience.
 - (3) The name and address of the individual(s), if different from the individual(s) named in paragraph (B) (2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

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- (4) Evidence of the applicant's capability to initiate, conduct and complete the proposed work, including evidence of logistical support and laboratory facilities.
- (5) Where the application is for the excavation and/or removal of archaeological resources, the name of the university, museum or other scientific or educational institution in which the applicant proposes to store all collections, records, data, photographs, and other documents derived from the proposed work in the event the Papago Tribe does not wish to take custody of or otherwise dispose of the archaeological resources. Applicant shall submit written certification by an authorized official of the institution of its willingness to curate the collections, records, data, photographs and other documents derived from the proposed work.
- (6) The Chairman may require additional information to be included in the application for permit and shall so inform the applicant.

Section 7 Issuance of Permit

The Chairman may, after consultation with the District Council of the District(s) in which the proposed work is to take place, issue a permit, upon determining that:

- (A) The applicant is appropriately qualified, as evidenced by training, education and/or experience, and possesses demonstratable competence in theoretical and methodological design, and in collecting, handling, analyzing, evaluating and reporting archaeological data, relative to the type and scope of work proposed.
- (B) The proposed work will benefit the Tribe by furthering archaeological knowledge in the public interest.
- (C) The proposed work, including time, scope, location, and purpose is not inconsistent with any management plan or policy of the Tribe or District.
- (D) The required consent has been obtained from Indian landowners of allotted land.
- (E) Evidence is submitted that the university, museum or other institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records, and that such university, museum or institution acknowledges the Tribe's ownership of the archaeological resources and associated records.
- (F) The applicant has certified that a Tribal

1 representative shall inspect all archaeo-
2 logical resources prior to removal from the
3 Papago Reservation, and that, not later than
4 the date of the final report is submitted
5 to the Chairman, the following will be
6 delivered to the Papago Tribe or to the
7 appropriate official of the approved univer-
8 sity, museum or other institution named in
9 the permit, namely, all artifacts, samples,
10 collections, records, data, photographs,
11 and other documents resulting from the work
12 conducted under the requested permit.

- 13 (G) The applicant has certified that, to the great-
14 est extent possible, the applicant will employ
15 qualified members of the Papago Tribe to do the
16 work proposed under the requested permit.

17 Section 8. Terms and Conditions of Permits

- 18 (A) All permits issued shall specify the nature of
19 work permitted, including time, duration, lo-
20 cation and purpose, the names of the individu-
21 al(s) responsible for conducting the work and
22 of the university, museum or other institution,
23 if any, in which any collected material or data
24 shall be deposited.
- 25 (B) To the extent possible, excavation work shall
26 be open to the public, including inspection of
27 the work in progress, in cooperation with local
28 schools and educational programs.
- 29 (C) The Chairman may specify terms and conditions as
30 he deems necessary to protect the public inter-
31 est and can limit activities incidental to work
32 authorized under the permit.
- (D) The permittee shall not be released from the
requirements of a permit until all provisions
of this ordinance have been complied with, and
all terms and conditions of the permit have been
satisfied, whether or not the permit has ex-
pired.
- (E) Initiation of work or other activities by the
permittee under the authority of the permit will
constitute acceptance of the terms and condi-
tions of the permit.
- (F) The permittee shall provide the Chairman with a
complete inventory of all archaeological re-
sources found and a detailed report of all the
activities of the permittee.

Section 9. Suspension, Revocation and Termination of Permits

- (A) The Chairman may suspend a permit upon deter-
mining that the permittee has failed to meet the
terms and conditions of the permit or has vio-
lated any provision of this ordinance. The
suspension shall remain in effect until such
time as permittee corrects the situation, as
determined by the Chairman.

1 (B) The Chairman may revoke a permit if the
2 permittee fails to correct the situation which
3 led to the suspension or upon assessment of a
4 civil penalty against permittee under Section
5 13.

6 (C) The Papago Tribe reserves the right to terminate
7 a permit, at any time for program purposes,
8 without liability to the Tribe, its agents or
9 employees.

10 Section 10 Appeals Relating to Permits

11 Any person may appeal permit issuance, denial of
12 permit issuance, suspension, revocation, termination,
13 and terms and conditions of permits by written peti-
14 tion addressed to the Papago Council which shall be
15 heard by the Council within ninety days of service
16 thereof upon the Chairman.

17 Section 11 Custody and Ownership of Resources

18 (A) Archaeological resources excavated or removed
19 from the Papago Reservation remain the property
20 of the Papago Tribe, and permission to remove
21 the resources shall not imply transfer of
22 ownership.

23 (B) The Chairman may promulgate regulations establi-
24 shing procedures and guidelines for the exchange
25 of archaeological resources among suitable
26 universities, museums or other scientific or
27 educational institutions, for the ultimate
28 disposition of archaeological resources, and
29 for standards by which archaeological resources
30 shall be preserved and maintained.

31 Section 12 Disposition of Human Remains

32 (A) The Papago Tribe reserves the right to determine
the method and place of disposition of human
remains in accordance with religious or tradi-
tional practice.

(B) Whenever human remains (including, but not
limited to skeletal or mummified remains, bone,
flesh, teeth, burials, burial urns, graves or
cremations) are discovered in the course of
permitted activity, the permittee shall take the
following steps:

(1) The permittee shall immediately notify the
Chairman and shall not further uncover or
disturb the human remains, but shall do
everything reasonably necessary to safe-
guard the remains in their existing con-
dition.

(2) The Chairman shall notify the District
Council of the District in which the remains
were discovered which may consult with an
appropriate medicine man about the ultimate
disposition of the remains.

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other relief as is necessary and proper for the enforcement of this ordinance, including, but not limited to, the impoundment of archaeological resources, vehicles and equipment, and injunctive relief against or involved in violations of this ordinance or in violations of conditions of permits issued under this ordinance.

(B) All actions for forfeiture or impoundment under this ordinance shall be considered in rem, against the property only, and not against the person.

C E R T I F I C A T I O N

The foregoing Ordinance was duly enacted by the Papago Council on the 20th day of August, 1934, at a meeting at which a quorum was present with a vote of 1414.5 for; -0- against; 25.5 not voting; and 1 absent, pursuant to the authority vested in the Papago Council by Sections 2 (c), (e) and (1) and Section 3 (b), (c), (e) and (h) of Article V of the Constitution and By-laws of the Papago Tribe of Arizona as amended, ratified by the Papago Tribe on December 12, 1936, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), and pursuant to the Act of August 15, 1953, Public Law 277 (67 Stat. 536). This Ordinance shall be effective as of the date the Secretary of the Interior or his designee approves this Ordinance and publishes it in the Federal Register.

THE PAPAGO COUNCIL

Josiah Moore
JOSIAH MOORE, Chairman

ATTEST:

Barbara J. Johnson
Secretary

ORDINANCE APPROVED this 24th day of AUGUST, 1934.

J. H. Johnson
ACTING Superintendent, Papago Agency

