



DEPARTMENT OF ENVIRONMENTAL QUALITY

Staff Guidance Regarding Cultural Resources Protection Laws

State and Federal laws exist that address the protection and management of cultural resources. Cultural resources may include historic buildings, historic archaeological sites, prehistoric and ethnohistoric Native American archaeological sites, and elements or areas of the natural landscape that have traditional cultural significance.

DEQ recognizes that implementation of some of its programs may directly or indirectly involve land disturbance activities on private as well as public lands. Any land disturbance presents the possibility of uncovering archaeological items, or may otherwise impact a cultural resource. It is the Department's intent to inform environmental permit applicants of State and Federal cultural protection laws, and to ensure that DEQ staff are aware of such laws when DEQ has direct responsibility over ground-disturbance related activities. There are three categories of agency actions where either notification or information will be provided on State and Federal cultural resource protection laws:

1. **Environmental Permits:** DEQ issues air quality, water quality, solid waste and waste management permits to sources that, within certain parameters, discharge pollutants into the State's air, waters or land resources. Permits are issued to pollutant sources that may involve the construction of new facilities or modification of existing facilities.

The type of land use associated with a permitted pollutant source may be subject to local government land use laws. Before an environmental permit is issued, DEQ determines that the applicant complies with all applicable city or county land use regulations. DEQ fulfills this responsibility by relying on a local government review and approval of land use compliance. As part of the application process, the applicant submits the DEQ Land Use Compatibility Statement (LUCS) form to the appropriate local government for review and approval.

DEQ plans to use the LUCS form to inform or remind permit applicants of State and Federal cultural resource protection laws. The following information will be included on the applicant's portion of the LUCS form:

Cultural Resources Protection: Applicants involved in ground-disturbing activities should be aware of the following State and Federal laws:

ORS 358.920 - Prohibits the excavation, injury, destruction or alteration of an archeological site or object, or removal of an archaeological objects from public and private lands without an archaeological permit, issued by the State Historic Preservation Office.

16 USC 470, Section 106, National Historic Preservation Act of 1966: Requires a federal agency, prior to any undertaking to take into account the effect of the undertaking that is included on or eligible for inclusion in the National Register.

2. **Cleanup Activities:** Cleanup of contaminated waters and soils occurs through remedial actions that eliminate the threat of hazardous substances. There are several types of cleanup scenarios that are used to clean up contaminated sites. A responsible party, with or without DEQ oversight, may voluntarily clean up a site. DEQ can directly oversee the cleanup of Orphan sites, for which the responsible party is unknown, unable or unwilling to pay for cleanup. DEQ is also involved in enforcement sites. DEQ responds to emergency spills of hazardous substances by providing technical assistance, resource coordination, and provides standards for cleanup. EPA lists significant cleanup sites on the National Priority Listing (Superfund sites). Either DEQ or EPA can take the lead on Superfund sites. Cleanup activities may be funded by private, State or Federal sources, and may include private or local, state and federal public responsible parties. DEQ will ensure that there is an awareness of State and Federal cultural resources protection laws in the cleanup process, and may use the following means, among others:
 - Cleanup Program participants undertaking a voluntary or independent cleanup will receive written notification of their potential responsibilities under State and Federal cultural resource protection laws. This may include modifications to language in written agreements signed by the program participant and/or a fact sheet describing their responsibilities.
 - Where DEQ assumes the lead on Orphan site cleanups, the agency will be directly responsible for compliance with the applicable State cultural resources laws.
 - Cleanups that involve a federal responsible party, federal funds or federal lands will be subject to NHPA's Section 106 process as well as applicable State laws. In these situations, DEQ will consult with the federal responsible party and provide information on State laws and assure the agency is aware of potentially affected Tribal governments.
 - Cleanups may involve federal responsible parties, federal funds or federal lands where DEQ may assume the lead on the cleanup activities. In these situations, the responsibilities under Section 106 will be retained by the federal responsible party, unless otherwise desired by DEQ.
3. **Agency Construction/Lease Activities:** DEQ's offices and facilities throughout the State are leased as opposed to owned by the agency. However, agency offices and facilities may be built to suit by a property owner and then leased to the agency. It will be DEQ's practice to include State and Federal cultural resource protection law citations in all facility contracts and agreements.

STATE AND FEDERAL CULTURAL RESOURCES PROTECTION LAWS:

ORS 97.740 - Prohibits the disturbance, removal, injury, or destruction of native Indian artifacts, human remains or funerary objects. Notice of proposed excavation by professional archaeologist must be provided to the State Historic Preservation Officer and State police, and with prior written consent of the appropriate Indian tribe in the vicinity of the intended action. The Commission on Indian Services must be consulted and will designate the appropriate tribe.

ORS 358.235 - Provides for the Director of State Parks to issue archaeological permits to professional archaeologists.

ORS 358.920 - Makes it a Class B misdemeanor to excavate, injure, destroy or alter any archaeological site or remove an archaeological object from state public or private lands, unless done under an archaeological permit issued under ORS 358.235.

National Historic Preservation Act (NHPA) of 1966, 16 U.S.C. 470, 36 CFR Part 800 - Establishes a program for the preservation of historic properties, requires federal agencies to consider historic properties in their planning process, and authorizes the Secretary of the Interior to maintain a National Register of Historic Places. Historic property includes buildings, structures, objects, sites, districts, and archeological resources.

Section 106 of NHPA - Requires federal agencies to take into account the effects of their undertakings on historic properties on the National Register or that meet the criteria for the Register, and afford the Council on Historic Preservation an opportunity for comment. An undertaking is any activity that could result in change in the character or use of known or potential historic properties.

National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. 4321 - Establishes federal policy to preserve important historic, cultural and natural aspects of the Nation's heritage. Requires the preparation of environmental impact statements prior to making decisions about projects, which may significantly affect the quality of the human environment.

Native American Graves Protection and Repatriation Act of 1990 (NAGRPA) 25 U.S.C. 3001, 43 CFR Part 10 - Provides for the protection of Native American graves. Assigns ownership and control of Native American cultural items, human remains to Native Americans. Establishes requirements for the treatment of human remains and sacred or cultural objects found on Federal land. Also provides for the protection, inventory, and repatriation of items, human remains, and associated funerary objects.

American Indian Religious Freedom Act of 1978 42 U.S.C. 1966 - Sets forth a policy of protecting and preserving the rights of Native Americans to Freedom of Religion. Allows access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites.

Archeological Resources Protection Act of 1979 16 U.S.C. 470 - Sets broad policy on the protection of archaeological resources on federal lands; regulates the taking of archaeological resources, and establishes requirements for the excavation or removal of archaeological resources from public or Indian lands with special permits. Violations include civil and criminal penalties.

(signed)
Stephanie Hallock, Director

January 14, 2002
Date