

TITLE 16 – CULTURAL AND HISTORIC RESOURCE PROTECTION ACT

16.01 Purpose, Applicability, Definitions

16.01.010 Purpose.

The Quinault Indian Nation finds the purposes of this Title are to:

(a) Preserve and manage cultural resources in ways that contribute to meeting the social, environmental, spiritual, economic and other needs of present and future generations of the Quinault people.

(b) Provide leadership and technical assistance in the preservation, protection, and conservation of cultural resources by developing a culturally appropriate cultural resources management program, by sponsoring educational programs for the general public and training programs for tribal members and employees, and by consulting and cooperating with other governmental agencies.

(c) Administer cultural resources within the jurisdiction or control of the Quinault Nation and on lands within the traditional territory of the Nation in a spirit of stewardship and for the inspiration of present and future generations.

(d) Protect and maintain all data and information generated or produced by research about the Quinault Indian Nation's cultural, historic and archeological resources must be maintained and protected for the benefit of Quinault people.

16.01.020 Applicability.

This Title applies to all persons and all Quinault lands as defined herein, and areas of interest outside of other Indian Tribes' Reservation.

All cultural, historic and archeological resources located within the Quinault Reservation are deemed the property of the Quinault Indian Nation.

16.01.030 Definitions.

“Archeological Resource” means any material remains of past human life or activities that are of archeological interest.

“Committee” means the Cultural Advisory Committee appointed by Resolution of the Quinault Business Committee.

“Cultural Heritage” means objects, places, knowledge and cultural expressions transmitted from generation to generation and regarded as central and pertaining to the identity and wellbeing of the Quinault people and their traditional territory.

“Cultural Resource” means any product of human activity or any object or place given significance by human action or belief. This includes, but is not limited to, pottery, basketry, weapons, projectiles, tools, structures, rock paintings, graves, human skeletal material, organic waste, by-products from manufacture, landscape, rock cairn, burial mound, rock shelters, apparel, shipwreck, or any part of the above items, land site, sacred site, human skeletal and tissue material, and/or animal skeletal and tissue material, any textile material or animal skin or parts, including natural organic and inorganic material. Places that may be a Cultural Resource include buildings and other structures, land forms, and archeological sites. The language spoken by Quinault people, including jargons and dialects, and the Quinault peoples’ oral traditions are Cultural Resources, which are protected and revitalized by the Quinault Language Board pursuant to the Quinault Indian Nation Language Policy and Language Board Charter. Traditional knowledge and traditional practices of the Quinault people are Cultural Resources.

“Designation” means the identification and registration of resources for protection that meet criteria established by the Quinault Business Committee.

“Develop” and “development” any human-caused material change in the use or appearance of any structure or in the land itself. Development includes: subdivision of land; construction of structures, roads, utilities, and other facilities; installation of septic systems; grading; deposit of refuse, debris, or fill materials; and clearing of natural vegetative cover (with the exception of agricultural activities), including within the area of special flood hazard. Routine repair and maintenance activities are exempted.

“Historic Resource” means any prehistoric or historic site, building, or structure eligible for inclusion in the Quinault Registry.

“Law enforcement officer” means any Quinault Indian Nation commissioned law enforcement officer, whether in the Division of Public Safety or Natural Resources.

“Protection” or “protected” means prevention of demolition of, changes to, or other action that may affect resources in a manner that derogates their cultural, historic, or archeological significance.

“Quinault lands” means as established by the Treaty of Olympia, 12 Stat. 971, and the Executive Order dated November 4, 1873 (1 Kapp. 923), all lands added thereto, and all other lands held in trust or restricted fee status by the United States for the Nation or its members,.

“Quinault Registry” and “Registry” means the Quinault Registry of Historic and Culturally Significant Resources as established by Resolution 12-121-91.

“Traditional Cultural Property” means a building, structure, site, object, or district eligible for inclusion in the National Register of Historic Places because of its association with the cultural practices or beliefs, traditions, lifeways, arts, crafts, or social institutions of a living community, rooted in that community’s history, and important in maintaining the continuing traditional cultural identity of the community.

“Traditional Knowledge” is a living body of knowledge that is developed, sustained and passed on from generation to generation within the Quinault community, forming part of its cultural or spiritual identity.

16.02 Establishment of Tribal Historic Preservation Office and Cultural Advisory Committee

16.02.010 Establishment and Authority of Tribal Historic Preservation Office.

(a) A Tribal Historic Preservation Office (THPO) shall be established and shall be the agency responsible for the protection, preservation, and conservation of Cultural, Historic, and Archeological Resources; for Cultural, Historic and Archeological Resources management planning; and for performing the functions of a THPO for the Quinault Nation, including administering the tribal program for cultural and historic preservation on lands within the jurisdiction of the Nation.

(b) The Director of the THPO shall be the Tribal Historic Preservation Officer authorized to inform other tribal, federal, state, and local governments and private organizations and individuals on matters pertaining to Cultural, Historic and Archeological Resources.

(c) The THPO shall assume the following State Historic Preservation Office functions:

(1) Working with agencies and communities to conduct a statewide survey of historic properties and keeping inventories of the properties within the Quinault Nation’s jurisdiction.

(2) Preparing a comprehensive Reservation-wide Cultural Resources Preservation Plan, which shall consist of a report or series of reports on Cultural, Historic and Archeological Resources and the preservation program. These reports shall describe, analyze, and establish the present status and future projections of the preservation program. The Plan shall include an explanation of the philosophy or rationale behind the program components of the plan, the status of each component, an evaluation of the effect of each component, and projected future plans for each component. The Plan shall be reviewed and approved by the Cultural Advisory Committee prior to submission to the Quinault Business Committee for final approval and implementation.

(3) Advising and assisting federal and state agencies and local governments in carrying out their historic preservation responsibilities.

(4) Ensuring that historic properties are taken into consideration at all levels of planning and development.

(5) Providing technical assistance and provide the public with information, education, and training regarding historic properties.

(6) Assisting local governments in becoming certified so they can effectively implement historic preservation laws.

(7) Assuming the Section 106 review authority under the National Historic Preservation Act. 16 U.S.C. 470.

(d) The THPO shall prepare an annual budget for the THPO and the Cultural Committee, which shall be reviewed by the Committee prior to submission to the Quinault Business Committee pursuant to and consistent with the Quinault budgeting processes.

(e) The THPO may develop and administer the Cultural Resources Permit System as established in Section 16.05 of this Title.

(f) The THPO shall establish research review regulations to protect the Nation's traditional knowledge and cultural, archeological and historic resources and to prevent potential abuses thereof, and to promote the benefits of research and related activities to best serve the interests of the Quinault people, including to establish criteria and a process to review and authorize or deny any research collection, database, or publication undertaken about the Quinault Indian Nation, the Quinault Indian Reservation or about archeological, cultural, or historic resources of the Quinault Indian Nation.

(h) The THPO shall prepare and submit to the Secretary of the Interior a plan approved by Resolution of the Quinault Business Committee describing the functions that the Department, as the THPO, proposes to assume with respect to the Quinault lands as provided in the National Historic Preservation Act. 16 U.S.C. 470a(d)(2).

(i) The THPO may develop and make available to, and advise, Quinault Indian Nation agencies information and advice concerning professional methods and techniques for identifying, preserving, stabilizing, improving, restoring and maintaining Cultural, Historic and Archaeological Resources.

(j) The THPO shall prepare and maintain a current listing of archeologists, anthropologists, historians, and other relevant professionals approved by the Cultural Committee to perform services related to Cultural, Historic and Archaeological Resources and preservation efforts and activities within Quinault lands and Quinault areas of interest outside of other Indian Tribes' Reservations.

(k) The THPO may employ professional and support staff as employees and/or independent contractors, within the limits of the THPO's approved budget, to fulfill the purposes of this Title and provide the services the THPO is designated to perform.

16.02.020 Establishment of Quinault Cultural Advisory Committee.

(a) The Quinault Cultural Advisory Committee is hereby established and shall consist of not less than seven members who are enrolled members of the Quinault Indian Nation appointed by the Quinault Business Committee. Included in the membership shall be a Quinault Business Committee liaison, a person under eighteen (18) years of age, representative of both the on- and off-Reservation communities, a fisher, a hunter, an elder, and member(s) having representative religious affiliation. A Quinault Business Committee liaison shall be appointed by the Quinault Business Committee but not be a voting member.

(b) A vacancy on the Committee shall not affect its powers. Four members of the Committee shall constitute a quorum.

(c) Meetings of the Committee shall be held at regular monthly intervals as established by the Committee. Emergency meetings may be held upon twelve (12) hours' public notice, and business may be transacted provided that no less than a majority of the full Committee concurs in the proposed action.

(d) Each member of the Committee shall take the following oath before beginning his/her duties: "I promise to faithfully execute all provisions of the Quinault Cultural Resources Protection Title, Title 16, which protects Cultural and Historic Resources, and any regulations promulgated in furtherance thereof, and to be bound by the jurisdiction of the Quinault Tribal Court and the Constitution and Titles of the Quinault Indian Nation, and to otherwise faithfully perform my duties as outlined by this Title. I vow to faithfully protect and execute the traditional laws and customary and traditional culture of the Quinault People. I understand and agree that I must keep all information learned in the course of my service as a Committee member in confidence or of Cultural, Archeological, Historic, including locations of Cultural, Historic and Archeological Resources, and that I will report all breaches of confidentiality to the Quinault Business Committee."

16.02.030 Powers and Duties of the Quinault Cultural Advisory Committee.

(a) The Committee shall review and approve:

(1) the functions assumed as a THPO pursuant to a plan approved under the National Historic Preservation Act; and

(2) comments relating to federal, state, or other governmental rulemaking processes concerning matters pertaining to its expertise or that of the THPO; and

(3) the Cultural Resources Preservation Plan; and

(4) any regulations drafted by the THPO, provided that the THPO shall convey said adopted regulations to the Quinault Business Committee at its next regularly scheduled meeting. The Quinault Business Committee reserves ultimate authority to modify or rescind such regulations.

(b) The Committee shall consider nominations of Cultural, Historic or Archeological Resources to the Quinault Registry and make recommendations for approval of Registry inclusion to the Quinault Business Committee.

(c) The Committee shall consult and cooperate, whenever feasible, with other Tribal and non-Tribal governments, departments, and agencies, and with private organizations involved in historic and cultural resource protection activities, including the National Trust for Historic Preservation, the International Center for the Study of Preservation and Restoration of Cultural Property, museums, and organizations of professionals. Cooperation shall include providing assistance to other agencies and organizations and coordinating the planning and conducting of historic preservation programs.

16.03 Quinault Registry

16.03.010 Quinault Registry.

(a) The Quinault Business Committee established and maintains the Quinault Registry of Historic and Culturally Significant Resources ("Quinault Registry") by adoption of a Resolution.

(b) The Quinault Business Committee established and may revise criteria for resources to be included on the Quinault Registry to be adopted in regulation approved by Resolution.

(c) The Quinault Business Committee may determine eligibility of cultural, historic, and archeological resources for inclusion on the Quinault Registry based on the criteria, and upon recommendation by the Cultural Advisory Committee.

16.03.020 Nominations to Quinault Registry.

Any enrolled member of the Quinault Indian Nation may nominate to the THPO and/or Cultural Advisory Committee any Cultural, Historic, or Archeological Resources to be included on the Quinault Registry that meet the criteria for inclusion.

16.03.030 Applicability of Other Titles.

Inclusion of a site on the Quinault Registry makes it exempt from the following requirements in Title 48- Land Use and Development: Section 48.05, 48.06.020 Addresses, 48.06.030 Building

Setbacks, 48.06.040 Off-Street Parking, 48.06.090 Land Classified as Unbuildable, and Section 48.08. Any conflict between this Act and Title 48 shall be construed in favor of protection of cultural, historic, and archeological resources.

16.04 Miscellaneous.

16.04.100 Nominations to the National Register of Historic Places.

The THPO shall prepare nomination forms for those cultural properties that appear to be eligible for placement on the National Register of Historic Places and present them to the Cultural Committee for review and recommendation to the Quinault Business Committee for approval.

16.04.020 Repository for Cultural Materials Removed and Recovered from Tribal and Allotted Lands.

The permanent repository for cultural materials discovered on lands within the jurisdiction of the Quinault Indian Nation will be determined by the Quinault Business Committee based on recommendation of the Cultural Advisory Committee. Access to the use of collections for educational and research purposes shall be controlled as advised by the THPO, under policies and procedures developed by the Cultural Advisory Committee. These policies and procedures shall be developed within six (6) months year of the adoption of this Title, and shall be approved by the Quinault Business Committee.

16.04.030 Database of Cultural, Historic and Archeological Resource Information.

The THPO shall maintain a secure database of information about the nature and location of Cultural, Historic, and Archeological Information, access to which shall be limited to THPO staff and contractors, and members of the Cultural Committee. The THPO, with concurrence of the Cultural Committee, may provide data at its discretion to the Washington State Department of Archaeology and Historic Preservation according to the Interlocal Agreement with the Quinault Indian Nation approved by Resolution 16-168-95.

16.04.040 Protection.

- (a) Cultural, historic, and archeological resources and sites that are included on the Quinault Registry shall be preserved and protected to the maximum extent possible.
- (b) Cultural, historic, and archeological sites shall remain undeveloped unless development is approved by Resolution of the Quinault Business Committee and such development is in keeping with the spirit and intent of this Act in that it promotes or enhances the cultural, historic, or archeological significance of the site.
- (c) Cultural, historic, and archeological resources are to be protected on-site, unless the Quinault Business Committee determines that off-site protection is preferable because

adequate protection cannot be provided on-site, the resource is already adequately represented and protected on-site elsewhere, or for other good cause shown.

16.04.050 Prohibited Acts

(a) No person shall excavate, remove, damage or otherwise alter, deface, destroy, or adversely affect any cultural, historic or Archeological resource on land within the jurisdiction of the Nation unless such activity is conducted pursuant to the terms and conditions of a permit issued under this Title.

(b) No person shall sell or offer to sell, purchase, exchange, transfer, transport, receive or possess any cultural, historic, or archeological resource if such resource is excavated or removed from land within the jurisdiction of the Nation unless such activity is conducted pursuant to the terms and conditions of a permit issued under this Title.

16.04.060 Nondisclosure.

Information concerning the nature and location of any Cultural, Historic or Archeological Resource may not be made available to any person other than the THPO or Committee members unless the Committee determines that such disclosure would further the purpose of this Title and would not create an undue risk of harm to such resources or the site at which such resources are located. The THPO and the Committee are authorized to withhold from disclosure information regarding the location of sites or objects listed on the Quinault Registry or the National Register of Historic Places if they determine that the disclosure of specific information would create a risk of destruction or harm to such sites or objects.

16.04.070 Conflicts; Greater Restrictions.

Where this Title imposes greater restrictions than those contained in other Quinault Nation Titles or Resolutions, or Federal Laws and Regulations, this Title shall govern. Other Federal laws and regulations that apply to Quinault Nation lands include: National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470 (1988) (2006); Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469; National Environmental Policy Act (NEPA), 42 U.S.C. 4321 (1988); 36 C.F.R., Part 800: Protection of Historic Properties; American Indian Religious Freedom Act (AIRFA), 42 U.S.C. 1996 (1988); Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001; Archaeological Resources Protection Act of 1979, as amended (ARPA), 16 U.S.C. 470; and Executive Order 13007. This Title shall not affect the application of separate actions occurring under State or Federal Laws.

16.05 Permit System

16.05.010 Reserved

The THPO, in coordination with the Cultural Advisory Committee, may establish by regulation a permit system to approve the excavation, removal, alteration, damage or otherwise adverse effects to cultural, archaeological or historic resources located within the Quinault Reservation. Any cultural, archeological or historic properties that are excavated or removed will remain the property of the Quinault Nation.

16.06 Enforcement

16.06.010 Violations.

It shall be unlawful for any person to perform any act that is prohibited under this Title or regulations adopted under it.

16.06.020 Notice of Infraction.

(a) When there is a violation of this Title or regulations adopted under it, THPO staff or Quinault Nation law enforcement shall serve a Notice of Infraction on the violator, if known, which shall include:

(1) The specific nature, extent, and time of violation;

(2) Name, address, phone number of the violator, if known; and

(3) Explanation that the Issuance of a Notice of Infraction serves as a complaint filed before the Quinault Tribal Court.

(b) The THPO staff or law enforcement officer shall immediately file a copy of such Notice of Infraction with the THPO and Quinault Indian Nation Office of the Attorney General.

(c) The THPO staff or law enforcement office shall immediately file such Notice of Infraction with the Quinault Tribal Court.

16.06.030 Penalties.

(a) Every person issued a Notice of Infraction may be required by the Quinault Tribal Court, to complete community service as determined by said reviewing body or pay: (1) the costs of enforcement and collection of such damages, (2) a civil penalty not to exceed \$5,000.00 and/or (3) court costs and attorney fees and, if applicable (4) restitution.

(b) Each day of failure to comply with a Notice of Infraction constitutes a separate non-compliance for which penalties may be assessed.

(c) A penalty schedule will apply and will be adopted by Quinault Business Committee Resolution.

16.06.040 Seizure/Forfeiture.

Whenever any law enforcement officer has probable cause to believe that any personal property, including equipment vehicles, or boats, are being used in violation of this Title or regulations adopted pursuant to it, and such non-compliance may result in material damage to natural resources, such officer may seize such equipment. Whenever any law enforcement officer has probable cause to believe that any Cultural, Archeological or Historic Resources are being stolen, said products may be seized by such officer.

16.06.050 Seizures of Property – Procedure.

(a) When property is seized pursuant to the provisions of this Title, the officer seizing said items must at the time of seizure issue a receipt for all property seized.

(b) The receipt must contain the date of the seizure, incident number associated with the seizure, a complete description of the item seized including any existing damage to the item, the serial number of the item (if applicable), the number of units of a particular item, the estimated value of the item, and an indication of whether the item is perishable.

(c) The receipt must be signed by the officer seizing the item and, if possible, by the claimant or owner of the item seized.

(d) A copy of the receipt must be given to the owner or claimant as soon as practicably possible or at the time of seizure. The original of the receipt is to be attached to and remain with the incident report.

(e) All seized items shall be photographed by law enforcement officers prior to storage.

(f) All property seized shall immediately be brought to the Quinault Public Safety Office or securely stored, and a complete inventory of the item or items seized shall be made in the presence of the shift supervisor or another law enforcement officer. The inventory shall be signed by the person seizing the property and a witness. The property shall be maintained for disposal by order of the Quinault Tribal Court, in forfeiture or other judicial proceedings.

(g) In the event of a seizure, whether any item was the subject of an emergency forfeiture action or not, the rightful owner, lien holder, or claimant may petition the Quinault Tribal Court in a separate action for the return of any property seized, which may:

(1) Order the immediate return of any or all of the property seized to any person having lawful claim to said property upon a showing that a reasonable person could not have believed that the property seized was used or obtained in violation of this Title;

(2) Order that the property seized shall remain in the custody of the officer who seized the property;

(3) Order that any or all of the property be returned to any person having lawful claim to said items in exchange for bond or cash surety;

(4) Provide any other disposition of seized property as it deems appropriate.

16.06.060 Forfeiture.

(a) The seizing officer or prosecuting attorney shall file a forfeiture motion with the Quinault Tribal Court within 30 days of seizure.

(b) In the event that an item is perishable, the officer or prosecuting attorney shall file an ex-parte forfeiture motion within 72 hours.

(c) Notice of a forfeiture motion shall be given to the claimant of the property seized by certified mail, return receipt requested, and the claimant shall be afforded a reasonable opportunity to be heard.

(d) Except as otherwise provided in this Title, the Quinault Tribal Rules of Civil Procedure shall apply to civil actions to obtain forfeitures of property for violation of this Title.

(e) Any moneys or other proceeds from forfeiture of property under this Title shall be applied, in the following order:

(1) The costs, including court and related expenses, of detecting the non-compliance; seizing, storing and handling any property; selling forfeited property; and other costs reasonably associated with enforcing this Title.

16.07 Sovereign Immunity, Severability

16.07.010 Sovereign Immunity.

This Title shall not be construed as a waiver, limited or otherwise, of the Quinault Nation's sovereign immunity.

16.07.020 Severability.

If any section, subsection, sentence, clause or phrase of this Title is, for any reason, held to be invalid, in general or in any specific application, such decision shall not affect the validity of the remaining parts of this Title or the specific application of this Title.



Quinault Indian Nation

POST OFFICE BOX 189 • TAHOLAH, WASHINGTON 98587 • TELEPHONE (360) 276-8211

QUINAULT BUSINESS COMMITTEE RESOLUTION NO. 18-46-96

WHEREAS, the Quinault Business Committee is the recognized governing body of the Quinault Indian Nation under the authority of the Quinault Indian Nation's Constitution adopted by the Quinault General Council on March 22nd, 1975; and

WHEREAS, the Constitution of the Quinault Indian Nation authorizes the Quinault Business Committee to adopt codes; and

WHEREAS, the Office of Attorney General drafted amendments to Title 16 – Cultural and Historic Resource Protection Act at the direction of the Quinault Business Committee, and the Quinault Business Committee held public hearings in accordance with the Constitution of the Quinault Indian Nation,

NOW THEREFORE, BE IT RESOLVED, that the Quinault Business Committee **approves** the attached Title 16 - Cultural and Historic Resource Protection Act.

Fawn R. Sharp, President
Quinault Indian Nation

CERTIFICATION

As Secretary of the Quinault Business Committee, I hereby certify that the foregoing resolution was duly enacted by the Quinault Business Committee in Taholah, WA, on the 12th day of February 2018, by a vote of 7 for, 0 against, and 1 abstaining.

Latosha Underwood, Secretary
Quinault Business Committee