

# What are Indigenous Cultural Resource Laws and Regulations?



*Effigy Mounds National Monument,  
Marquette*

## **A Guide to Cultural Resource Laws in Indian Country**

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***\*This booklet is for informational purposes only and is not meant to be a comprehensive guide to cultural resource laws.***

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## **What is a Cultural Resource?**

International law defines “cultural property” to include any property of great importance to the cultural heritage of a people<sup>1</sup>. Indian Nations have long claimed a substantial interest in access to and control of their cultural resources. In addition to land, many of these resources are treated as property under tribal, state and federal law such as human remains, burial mounds, funerary objects, masks or totem poles. Other tribal cultural resources include intangible resources such as tribal names, symbols, stories and medicines.

## **Who owns the cultural resources?**

Cultural resources are of central importance to Indian Nations.<sup>2</sup> Cultural resources, both tangible and intangible, are of critical importance to Native peoples because Native Culture is essential to the survival of Indian Nations as a distinctive cultural and political group. Tribal people’s conception of “ownership” and “property rights” vary with each group’s customs and traditions. In general, tribal cultural property is not individually owned, but held in trust by an authorized Native American caretaker or caretakers for the tribe as a whole. Under traditional tribal law, these caretakers have no rights to sell the property is their possession. It was their duty to protect the property in particular locations and for their particular use in traditional ceremonies. Today tribal courts and traditional authorities have the power, authority and expertise to identify and interpret tribal laws governing the definition, holding, use, and transfer of artifacts and resources within tribal lands.

## **What are the laws that regulate tribal cultural resources and human remains?**

While human remains are usually classified as “property,” many laws grant control of the remains to the surviving family of the deceased<sup>3</sup>. Human remains are classified as quasi-property, and family members have constitutional rights under the fifth amendment’s due process clause which prohibit the deprivation of property without due process of law

Many disputes have occurred over Indian human remains. Human remains found on federal or tribal lands and in the custody of federally funded museums are now regulated by the Native American Grave Protection and Repatriation Act (NAGPRA). Remains found on private land owned by non-Indians may be regulated by state burial statutes. The Archaeological Resources Protection Act of 1979 (ARPA) prohibits the excavation or removal of archaeological resources from federal lands and “Indian lands.” The National Historic Preservation Act (NHPA) is a legislative mandate that provides for a multifaceted historic preservation program, which includes an environmental review and consultation requirement with tribes.

## **What is NAGPRA?**

NAGPRA stands for the Native American Grave Protection and Repatriation Act, which was enacted in 1990.<sup>4</sup> NAGPRA establishes rights of Indian tribes and native Hawaiian organizations and their lineal descendants obtain repatriation of certain human remains, funerary

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<sup>1</sup> Felix S. Chen, handbook of Federal Indian Law, Chapter 20.01, 2005

<sup>2</sup> Supra at Chapter 20.01(2)

<sup>3</sup> Supra at Chapter 20.01(3)

<sup>4</sup> Supra at Chapter 20.02(1)a

objects, sacred objects and object of cultural patrimony from federal agencies and museums that are owned or funded by the federal government. NAGPRA also protects items that are located on or within federal land or tribal land from unauthorized excavation or removal. In addition to repatriation and graves protection, NAGPRA also establishes a criminal prohibition on trafficking in Native American human remains and cultural items.

NAGPRA defines the term “cultural items” into four categories: associated funerary objects; unassociated funerary objects; sacred objects and objects of cultural patrimony.<sup>5</sup> Funerary objects are items that are believed to have been intentionally placed with or near individual human remains as part of a death rite or ceremony.

### **Associated Funerary Objects**

Associated funerary objects are human remains and funerary objects placed with them that are in the possession or control of a federal agency or museum.

### **Unassociated Funerary Objects**

Unassociated funerary objects are items that are not currently placed with human remains but these objects are believed to have been once placed with human remains. Also, those human remains are not currently in the possession or control of the federal agency or museum that currently has the funerary object. NAGPRA further requires a showing by a preponderance of the evidence that “unassociated” funerary objects are related to specific individuals or families, or to the known human remains, or “as having been removed from a specific burial site of an individual culturally affiliated with a particular . . . tribe.” See 25 U.S.C. § 3001 (3)(B).

### **Sacred Objects**

Sacred objects are special ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

### **Items of Cultural Patrimony**

Items of Cultural Patrimony are objects having ongoing historical, traditional or cultural importance central to Native American group or culture itself, such as wampum belts of the Iroquois. The object must have been considered inalienable by the Native American group when it was separated from the group. The object must not be of such a nature that it could be owned and transferred by an individual Native American.

### **What does repatriation mean?**

The term repatriation refers to the returning of human remains. The repatriation provision of NAGPRA applies to federal agencies and museums funded by the federal government. The term museum is broadly defined as “any institution or state or local government agency (including any institution of higher learning) that receives federal funds and

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<sup>5</sup> Supra at Chapter 20.02(1)(b) page 1235

has possession of or control over, Native American cultural items.”<sup>6</sup> The statute applies regardless of when possession and control was established.

The repatriation provisions of NAGPRA impose requirements on federal agencies and museums to prepare written summaries of unassociated funerary objects, sacred objects and objects of cultural patrimony in their holdings or collections, and to compile inventories of Native American human remains and associated funerary objects.<sup>7</sup> In addition to the written summaries, the federal agencies and museums are required to engage in consultation with lineal descendants, tribal governments and Native Hawaiian organization officials, and traditional religious leaders. If the federal agency or museum determines the cultural affiliation with a particular tribe, then on the request of the tribe, the agency or museum has a duty to repatriate the humans or cultural items. If the federal agency or museum does not make a determination of cultural affiliation in the inventory or summary, or the items are not included in an inventory, the agency or museum still has a duty to repatriate the human remains or funerary objects to a tribe which makes a showing that of cultural affiliation by a preponderance of the evidence. Regarding sacred objects and objects of cultural patrimony, the requesting tribe must show that the object was owned or controlled by the tribe or Native Hawaiian organization.

Four exceptions exist to the duty to repatriate human remains under NAGPRA. The four exceptions are 1) for scientific study; 2) the right of possession; 3) competing claims; and 4) takings of property.

### **NAGPRA protection of graves**

NAGPRA not only covers the repatriation of human remains, but also the protection of graves from intentional excavations and inadvertent discoveries on federal and tribal lands.

### **Intentional Excavations discoveries on Federal Lands**

Under NAGPRA, excavation or removal requires prior consultation with the appropriate Indian tribe. The federal agency official must provide written notice to Indian tribes “that are likely to be culturally affiliated with” any human remains or cultural items that may be excavated.<sup>8</sup> In addition to affiliated tribes, the federal agency must provide notice to known lineal descendant of an individual whose remains or cultural items are likely to be excavated or discovered, and the consultation process “must seek to identify traditional religious leaders who should also be consulted.” Under NAGPRA, consultation should conclude with a written plan of action that complies with the requirements for intentional excavations and documents findings or plans on the nine listed issues of NAGPRA. See 43 C.F.R.§10.5(e). Under NAGPRA, it is important to determine the right of custody of any human remains or cultural items before excavation or other removal begins. Also note that APRA requires a permit to be issued.

### **Inadvertent discoveries on Federal Lands**

NAGPRA also covers the inadvertent discoveries of Native American human remains or cultural items on federal lands. NAGPRA requires the activity in the area of discovery shall

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<sup>6</sup> Supra at Chapter 20.02(1)(b) page 1236.

<sup>7</sup> Supra at Chapter 20.02(1)(c) page 1239.

<sup>8</sup> Supra at Chapter 20.02(1)(d)(ii) page 1241.

cease and notice to the head of the federal agency with land management authority.<sup>9</sup> Even if the activity is not authorized, the notice requirement will still apply; even though the cessation of the activity may not. Under NAGPRA, the activity may resume again after 30 days after certification of notice to the head of the federal agency with land management authority. If after consultation with the appropriate tribes, the federal agency determines that the human remains or cultural items must be excavated otherwise removed, the regulations provide that the excavation or removal be treated as an intentional excavation, and subject to the issuance of an ARPA permit.

### **Excavation or removal from tribal lands**

Excavation or removal of human remains or cultural items from tribal lands requires consent of the tribe.<sup>10</sup> If the removal is occurring from private lands within the tribal boundaries, NAGPRA requires that the BIA (Bureau of Indian Affairs) be the permitting agency. Permits are otherwise issued pursuant to ARPRA, which includes exemptions for an Indian tribe and tribal members if the tribe has tribal law regulating the excavation or removal of archaeological resources on Indian Lands.

### **Inadvertent Discoveries on Tribal Lands**

Under NAGPRA, if inadvertent discoveries of human remains or cultural item happen on tribal lands, the person making the discovery is required to give notice to the tribe. The requirement to cease and protect the human remains applies on tribal lands. The requirement of tribal consultation does not apply; the tribal land where the discovery was made vested with the right of ownership or control.

### **Custody**

The NAGPRA sets out a hierarchy for determining rights of ownership or control of human remains or cultural items. NAGPRA uses the term custody instead of ownership or control. With respect to human remains and cultural items, the highest priority right of custody is always given to the lineal descendants of the deceased. If the lineal descendants cannot be determined and items were found on tribal land, custody is vested in the tribe on whose tribal lands the items were discovered. For items found on federal lands, custody is with the tribe with the closest cultural affiliation.

### **Enforcement**

NAGPRA provides that federal district courts have jurisdiction over “any action brought by any person alleging a violation” of the statute and may issue “such orders as may be necessary.” In addition, the Secretary of the Interior has authority to impose civil penalties on any museum that fails to comply with the repatriation provisions of NAGPRA. Violator can also be pursued under ARPA.<sup>11</sup>

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<sup>9</sup> Supra at Chapter 20.02(1)(d)(iii) page 1243.

<sup>10</sup> Supra at Chapter 20.02(1)(d)(iv) page 1244.

<sup>11</sup> Supra at Chapter 20.02(2)(d) page 1249.

### **What is does ARPA stands for?**

ARPA stands for the Archaeological Resources Protection Act of 1979. ARPA prohibits the excavation or removal of archaeological resources from federal lands and “Indian Lands” unless done in accordance with a permit issued.<sup>12</sup> A permit for excavation on “Indian Lands” requires the consent of the tribe with jurisdiction and the Indian landowner. A tribe itself is exempt from the requirement to obtain a permit. A tribal member is exempt from the permit requirement if the tribe has enacted “tribal law regulating the excavation or removal of archaeological resources on Indian lands.” ARPA also prohibits the interstate commerce in archaeological resources taken in violation of ARPA itself or any other state, federal or local law.

### **What is an Archaeological Resource under ARPA?**

ARPA defines an “archaeological resource” as “any material remains of past human life or activities which are of archaeological interest,” if the resource is at least 100 years of age.<sup>13</sup>

### **What is meant by material remains?**

Under ARPA, items that may be considered as material remains are<sup>14</sup>

- 1) surface or subsurface structures, shelters, facilities or features;
- 2) surface or subsurface artifact concentrations or scatters;
- 3) whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing and ornaments;
- 4) by-products, waste products, or debris resulting from manufacture or use of human-made or natural materials
- 5) organic waste;
- 6) human remains;
- 7) rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;
- 8) rock shelters and caves containing material remains;
- 9) shipwrecks;
- 10) any portion of these

### **Consultation under ARPA**

Even though, the federal land manager is required to notify the Indian tribe, under ARPA he is not required to engage in consultation. However, if an application for ARPA permit involves human remains or cultural items covered which are covered by NAGPRA, then consultation under NAGPRA would be required.

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<sup>12</sup> Supra at Chapter 20.02(1)(d)(iii) page 1241.

<sup>13</sup> Supra at Chapter 20.02(2)(b) page 1247.

<sup>14</sup> Supra at Chapter 20.02(2)(c) page 1248.

## **Enforcement**

ARPA authorizes criminal and civil penalties for violations. Unlike NAGPRA, ARPA does not authorize private actions in federal court. Civil enforcement occurs in actions by the federal land manager. If civil penalties are imposed by the federal land manager, the penalties collected go to the tribe.<sup>15</sup>

## **What does NHPA stand for?**

NHPA stands for National Historic Preservation Act. This legislation creates a multifaceted historic preservation program that includes an environmental review and consultation process.<sup>16</sup> Federal, state, local and tribal governments and agencies perform different roles in the national historic preservation program. The National Park Service (NPS) administers the National Register of Historic Places, operates grant programs for the states and tribes and issues rules and guidance documents on many aspects of the program. The Advisory Council on Historic Preservation (ACHP), an independent federal agency, administers the environmental review process established by NHPA § 106. All federal agencies are subject to the review process established by NHPA § 106 Section 110 of the NHPA, which gives each agency a mandate to establish a preservation program. State historic preservation officers (SHPO) perform a major role in the section 106 environmental review process. Since 1992, Indian tribes have been authorized to assume responsibility for performing functions within their “tribal lands” that would otherwise be performed by SHPOs. These tribal officials are referred to as THPOs or Tribal historic preservation officers. The 1992 amendments to NHPA also established that that agencies are required to consult with Indian tribes as a part of the section 106 process whenever a proposed federal or federally assisted undertaking may affect a tribal historic property. The right of tribes to become involved in the Section 106 process applies regardless of the location of the historic site. Many historic properties that are important to tribes fit within a category called “traditional cultural property,” as defined by the NPS. These traditional cultural properties would be eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that a) are rooted in community history and b) are important in maintaining the continuing cultural identity of the community.” See NPS, National Register bulletin 38. Bulletin 38 focuses provides guidance on making use of persons who have knowledge of oral traditions. While Bulletin 38 is not a regulation, failure to follow its guidance has been held to violate the ACHP regulations.

## **Section 106 Review Process**

Section 106 of NHPA requires an environmental review process, which requires any federal agency with “direct or indirect jurisdiction over a proposed federal or federally-assisted undertaking” or any federal agency with the “authority to license an undertaking” must, prior to expenditure of the funds or issuance of license, take “into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for . . . the National Register and afford the Advisory Council on Historic Preservation . . . a reasonable opportunity

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<sup>15</sup> Supra at Chapter 20.02(2)(d) page 1249.

<sup>16</sup> Supra at Chapter 20.02(3)(a) page 1249.

to comment with regard to such undertaking.”<sup>17</sup> In addition, Section 106 sets out a specific role for SHOPs and THPOs and requires consultation with the tribes regarding the historic property of religious and cultural importance. Section 110(f) adds a substantive requirement to minimize harm if the undertaking would effect a national historic landmark. Section 110(l) raises the profile of any agency decision to proceed with an undertaking in absence of an agreement pursuant to the ACHP regulations by requiring the decision be made by the agency head and can not be delegated.

The section 106 process is governed by ACHP regulations, which require a four step process: 1) initiation, 2) identification of the historic property; 3) assessment of adverse effects; and 4) resolution of adverse effects. The section 106 process is important to tribes because many traditional cultural properties have not been evaluated for National Register eligibility until a proposed undertaking presents a threat to them.

### **What is NEPA?**

NEPA is the National Environmental Policy Act. It requires all federal agencies to:

- Assess the environmental impacts of major federal projects or decisions such as issuing permits, spending federal money, or actions that affect federal lands.
- Consider the environmental impacts in making decisions.
- Disclose the environmental impacts to the public.

The President's Council on Environmental Quality (CEQ) oversees NEPA for all federal agencies.

Some examples of projects that require federal agencies to comply with NEPA are highway construction using federal funds; timber sales on Forest Service lands; permits needed to construct or operate dams, land management plans for the Bureau of Land Management (BLM), Forest Service (FS) and National Park Service (NPS); oil and gas development on federal lands; and decommissioning and/or cleanup of Department of Defense (DOD) or Department of Energy (DOE) sites.

Federal agencies prepare three types of environmental reviews under NEPA:

- Categorical Exclusions (CX) for small, routine projects with insignificant environmental impacts,
- Environmental Assessments (EA) for projects with no significant impacts, and
- Environmental Impact Statements (EIS) for projects with significant impacts.

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<sup>17</sup> Supra Chapter 20.02(3)(c) page 1253.

## **NEPA and Section 106 of the National Historic Preservation Act**

### ***General Rules for NEPA-Section 106 Coordination***

The Advisory Council on Historic Preservation's (ACHP's) Section 106 regulations (36 CFR 800) prescribe the following for the consideration of historic properties under NEPA:

- *Early coordination with Indian Tribes* Federal agencies are encouraged to coordinate compliance with Section 106 and the procedures in this part with any steps taken to meet the requirements of ... -(NEPA). Agencies should consider their Section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an action is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an ... (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA. (36 CFR 800.8(a)(1))
- *Inclusion of historic preservation issues.* Agency Officials should ensure that preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and an EIS and Record of Decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects. (36 CFR 800.8(a)(3))
- *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the Agency Official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to Sec. 800.3(a). If so, the Agency Official shall proceed with Section 106 review in accordance with the procedures in this subpart (36 CFR 800.8(b)).

According to the NEPA regulations, in considering whether an action may "significantly affect the quality of the human environment," an agency must consider, among other things:

- Unique characteristics of the geographic area such as proximity to historic or cultural resources (40 CFR 1508.27(b)(3))

and

- The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places (40 CFR 1508.27(b)(8)).

The NEPA regulations also require that:

- To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and

related surveys and studies required by the National Historic Preservation act? (40 CFR 1502.25(a))

### ***General Recommendations for Coordination***

Based on the above requirements, Section 106 review -- that is, the scoping, identification, assessment, and consultation called for in 36 CFR 800.8 -- should be carried out in coordination with NEPA review as follows:

Conduct Section 106 review when screening a project that may be categorically excluded from NEPA review to see whether "extraordinary circumstances" exist requiring further review (40 CFR 1508.4). Whether such extraordinary circumstances are found to exist based on historic property impacts will depend on the severity of the impacts and what the agency's NEPA procedures say, but even if no further review is required under NEPA, Section 106 review must be completed.

During preparation of any EA, conduct Section 106 review in order both to comply with Section 106 itself and in order to determine whether historic resources will be adversely affected, and if so, whether measures can be implemented to reduce adverse effects to a less than significant level. The results of the review should be reported in the FONSI if one is issued, with an explanation of how Section 106 review has resulted in avoiding significant adverse effect.

- Section 106 review should be conducted during preparation of any EIS. Scoping, identification, and assessment of effects should be done during the analysis leading to the draft EIS, and the results should be presented in the DEIS. Consultation to resolve adverse effects should be coordinated with public comment on the DEIS, with the results reported in the FEIS. Any Memorandum of Agreement (MOA) developed under Section 106, or the final comments of the ACHP, should be addressed in the ROD. Unless there is some compelling reason to do otherwise, the Section 106 MOA should be fully executed before the ROD is issued, and the ROD should provide for implementation of the MOA's terms

### ***Caution***

Note that Section 106 does not deal with impacts on all types of cultural resources, or all cultural aspects of the environment; it deals with impacts on properties included in or eligible for the National Register of Historic Places. Other authorities, such as the American Indian Religious Freedom Act and Executive Order 12898, may require consideration of other cultural resource types, and NEPA itself provides for considering all aspects of the cultural environment -- for example, the cultural use of natural resources. So complying with Section 106 does not guarantee that all impacts on all cultural resource types have been addressed in NEPA analysis.

### ***"Substituting" NEPA Compliance for Section 106 Compliance***

- It is possible for an agency to "substitute" its NEPA review for the specific steps set forth in the Section 106 regulations, providing specific standards are met. Substitution is not allowed where a project is categorically excluded from NEPA review, and practically

speaking it will probably be useful only where relatively large, complicated projects involving many alternatives are under review. If you want to consider substitution, be sure to review the standards carefully.<sup>18</sup>

### **What is Section 4(f)?**

Section 4(f) refers to the Department of Transportation Act of 1966. Section 4(f) of this law states that agencies within the Department of Transportation should make special efforts to preserve publicly owned historic sites. The Secretary of the Interior can approve transportation projects that impact National Register eligible historic sites only if there is no prudent and feasible alternative to using that land and all efforts are made to minimize harm to historic sites.

In the event that a proposed project would potentially affect a historic resource which has been either determined eligible for, or is formally listed on the National Register of Historic Places, Section 4(f) of the DOT Act requires the evaluation of alternatives which would avoid effects to the resource. If there is an available alternative which is both prudent and feasible, which solves the transportation problem and avoids effects to the resource, Section 4(f) requires the selection of that alternative. If no avoidance alternatives are available, the project must incorporate all possible means to minimize the effects of the resource.

Section 4(f) applies to archaeological sites only if preservation in places is warranted and sites are eligible for the National Register for reasons other than their potential to yield information on the prehistoric and historic pasts. For example, Section 4(f) would apply to prehistoric archaeological sites, such as a medicine wheel and mounds, and historic archaeological sites, such as historic battlefields.

### **What is AIRFA?**

AIRFA stands for the American Indian Religious Freedom Act of 1978. AIRFA acknowledges the right of Native Americans to have access to their sacred places. If a place of religious importance to American Indians may be affected by an undertaking, AIRFA promotes consultation with Indian religious practitioners, which may be coordinated with Section 106 consultation. Amendments to Section 101 of NHPA in 1992 strengthened the interface between AIRFA and NHPA by clarifying that:

- Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.
- In carrying out its responsibilities under Section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A). [*16 U.S.C. 470a (a)(6)(A) and (B)*].<sup>19</sup>

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<sup>18</sup> <http://www.npi.org>

<sup>19</sup> Advisory Council on Historic Preservation: [www.achp.gov](http://www.achp.gov)

**Executive Order No. 13007:**  
***Indian Sacred Sites***

**May 24, 1996**

*Executive Order 13007* requires that agencies try not to damage "Indian sacred sites" on Federal land, and avoid blocking access to such sites by traditional religious practitioners.

**Executive Order 12898**

***Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations***

**February 11, 1994**

This Executive Order requires that agencies try to avoid disproportionate and adverse environmental impacts on low income and minority populations; impacts may be cultural -- for example, impacts on a culturally important religious, subsistence, or social practice.

**Does Wisconsin have any cultural resource laws?**

Yes. Chapter 157 of the Wisconsin Statutes, also known as the Wisconsin Burial Statute, deals directly with the disposition of human remains. Burial site preservation is directly covered in Wisconsin Statutes Chapter 157.70, which requires the Director to catalog burial sites likely to be of archaeological interest or areas likely to contain burial sites. This statute also establishes a Burial Site Preservation Board, which is responsible for determining which Indian tribes have an interest in any cataloged burial site or class of cataloged burial sites. This board also approves the transfer of burial sites. This Chapter incorporates many of the laws discussed above. Section 157.70(4) sets out a procedure for uncataloged burial sites. This section also set out that the director as the decision maker if a proposed activity will disturb a burial site. Section 157.70(7) authorizes the Attorney General's office to aid in the investigation, inspection, hearing or trial disturbances to burial sites. Other sections set out liability for damages for the disturbance of burial sites. Section 10 sets out criminal penalties for any person who fails to report the disturbance of cataloged and uncataloged burial sites. Fines under this section range from \$500 to \$10,000 depending on the type of burial site disturbed.

**Wisconsin Executive Order #39**

***Relating to an Affirmation of the Government-to-Government Relationship Between the State of Wisconsin and Indian Tribal Governments Located Within the State of Wisconsin***

Wisconsin Executive Order #39, proclaimed on February 27, 2004, directs each cabinet agency to recognize the unique legal relationship between the state of Wisconsin and its eleven federally recognized tribes. Further, this Executive Order mandates that these Agencies consult with Wisconsin Indian tribes on a "government-to-government" basis, before undertaking an action that "directly affects" an Indian Tribe.<sup>20</sup>

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<sup>20</sup>Wisconsin Office of the Governor, Executive Order #39:  
[http://www.wisgov.state.wi.us/journal\\_media\\_detail.asp?locid=19&prid=413](http://www.wisgov.state.wi.us/journal_media_detail.asp?locid=19&prid=413)

## **Questions for future discussion**

What would happen or what should happen if let's say if during the road construction of the 41-corridor, a WISDOT contractor uncovers an ancient Indian burial mound? What should that contractor or WisDOT employee do? How let's say that WisDOT employee takes a necklace found within the Indian burial mound. Can that employee be charged with a crime?

## **More Information contact:**

### **Great Lakes Indian Law Center (GLILC)**

University of Wisconsin Law School

975 Bascom Mall

Madison, WI 53706

(608) 263-5019

<http://law.wisc.edu/glilc/>

## **Other Useful Resources:**

National Association of Tribal Historic Preservation Officers

P.O. Box 19189

Washington, D.C. 20036

[www.NATHPO.org](http://www.NATHPO.org)

Advisory Council for Historic Preservation

1100 Pennsylvania Ave. NW., Ste 803

Old Post Office Building

Washington, D.C. 20004

[www.achp.gov](http://www.achp.gov)