

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.

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TABLE OF CONTENTS

Section 1	Short Title	1
Section 2	Interpretation.....	1
Section 3	Definitions.....	1
Section 4	Prohibited Acts.....	3
Section 5	Permit, Exemptions.....	3
Section 6	Application for Permits.....	4
Section 7	Issuance of Permit.....	5
Section 8	Terms and Conditions of Permits	6
Section 9	Suspension, Revocation, and Termination of Permits	6
Section 10	Appeals Relating to Permits.....	7
Section 11	Custody and Ownership of Resources	7
Section 12	Disposition of Human Remains	7

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

ORD. NO. 06-84

Statement of Purpose: An ordinance for the protection and preservation of archaeological resources historically associated 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.

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

Section 1 Short Title

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

Section 2 Interpretation

This ordinance shall be deemed an exercise of the police power of the Papago Tribe for the protection of the public welfare, health, peace and morals of the people of the Papago Reservation and all provisions of this ordinance shall be liberally construed for the accomplishment of this purpose.

Section 3 Definitions

In this ordinance, unless the context otherwise requires:

(A) "Archaeological resource" means any material remains of past human life or activities which are of archaeological interest and the physical site, location or context in which they are found. An archaeological object, site or other material remain is of archaeological interest if through its scientific study and analysis, information or knowledge can be obtained concerning human life or activities. Nonfossilized or fossilized paleontological specimens and treasure-trove or abandoned property as defined in the Escheat Ordinance of the Papago Tribe, or any portion or piece thereof, shall not be considered archaeological resources under this ordinance unless found in an archaeological context.

(B) "Material remains of past human life or activities" means physical evidence of human habitation, occupation, use or activity, including, but not limited to:

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

(2) Surface or subsurface artifact concentrations or scatters and the three dimensional

relationship of artifacts to each other in the ground.

(3) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles,, clothing and ornaments (including, but not limited to, pottery and other ceramics, basketry, cordage, weavings, coins, bullets, bottles and other glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers, pigments);

(4) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(5) Organic waste (including, but not limited to vegetal and animal remains, corprolites);

(6) Human skeletal or mummified remains (including, but not limited to, bone, flesh, teeth, burials, graves, cremations);

(7) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(3) Rockshelters and caves or portions thereof containing any of the above material remains;

(9) The physical site, location or context in which any of the foregoing are situated;

(10) Any portion or piece of any of the foregoing.

(C) "Chairman" means the Chairman of the Papago Council who is hereby designated as the official to receive notification of any archaeological permit applications or of any archaeological or environmental impact or activities required to be given to the Papago Tribe pursuant to Federal Acts or regulations promulgated pursuant thereto.

(D) "Federal Act" means:

(1) The Act of June 3, 1906 ("Antiquities Act of 1906"; 16 U.S.C. 432, 433; 43 CFR Part 3);

(2) The Act of June 27, 1960 ("Reservoir Salvage Act of 1960"; 16 USC 469) as amended by the Act of May 6, 1974 ("Archaeological and Historic Preservation Act of 1974"; 16 U.S.C 469);

(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 1978 (42 U.S.C. 1996);

- 1 (5) The Department of Transportation Act of
2 1970 (49 U.S.C. 1653);
- 3 (6) The National Environmental Policy Act of
4 1969 (42 U.S.C. 4321);
- 5 (7) Any other act enacted by Congress for the
6 protection of archaeological, environmental
7 or historic sites or resources on Indian
8 lands or affecting Indian tribes.
- 9 (D) "Person" means any individual, corporation,
10 partnership, trust, institution, association,
11 or any other entity.

12 Section 4 Prohibited Acts

- 13 (A) No person, other than a member of the Papago
14 Tribe, may conduct any archaeological survey or
15 study on the Papago Reservation, and no person
16 may excavate, remove, damage, or otherwise
17 alter or deface any archaeological resource
18 located on the Papago Reservation, unless such
19 activity is pursuant to a permit issued under
20 Section 7 or is exempted by Section 5 (B).
- 21 (B) No person may sell, transfer, transport or
22 receive any archaeological resource if such
23 resource was excavated or removed from the
24 Papago Reservation in violation of this ordi-
25 nance or of any applicable Federal Act, or of
26 any permit issued pursuant thereto.

27 Section 5 Permit, Exemptions

- 28 (A) Permits are required for persons wishing to
29 conduct excavations and/or removal of archaeo-
30 logical resources from the Papago Reservation,
31 and to carry out activities associated with such
32 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 archaeo-
logical 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 con-
sent 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.

1 (2) No permit shall be required for the collec-
2 tion or recovery by any employees and agents
3 of the Papago Tribe of treasure-trove or
abandoned property as defined in the Escheat
Ordinance of the Papago Tribe.

4 (3) Employees and agents of the Papago Tribe
5 carrying out their official duties associ-
6 ated with the management of archaeological
resources shall be deemed to be operating
under a valid permit.

7 (4) No permit or other consent shall be required
8 for employees and agents of the Federal
9 government carrying out official duties
associated with the management of archaeo-
logical resources.

10 (5) No permit shall be required to carry out
11 any archaeological activity which was au-
12 thorized by a Federal permit issued under
a Federal Act before the enactment of this
ordinance.

13 (C) Activities relating to archaeological resources
14 on the Papago Reservation may be subject to
Federal Acts and permits.

15 (D) A permit issued under this ordinance shall con-
16 stitute consent on behalf of the Tribe to the
17 issuance of permits for the excavation or re-
18 moval of archaeological resources located on the
Papago Reservation required by any applicable
Federal Act.

19 Section 6 Application for Permits

20 (A) Any person may file an application with the
21 Chairman for a permit to excavate and/or remove
22 archaeological resources from the Papago Reser-
23 cation and to carry out activities associated
with such excavation or removal.

24 (B) Each applicant for a permit shall include:

25 (1) The exact character of the work proposed
26 including how and why it is proposed to be
27 conducted, proposed time of performance,
28 location maps, and proposed outlet for
public written dissemination of the results.

29 (2) The name and address of the individual(s)
30 proposed to be responsible for conducting
31 the work, his/her institutional affiliation,
32 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, pro-
posed to be responsible for carrying out the
terms and conditions of the permit.

1 (4) Evidence of the applicant's capability to
2 initiate, conduct and complete the proposed
3 work, including evidence of logistical
4 support and laboratory facilities.

5 (5) Where the application is for the excavation
6 and/or removal of archaeological resources,
7 the name of the university, museum or other
8 scientific or educational institution in
9 which the applicant proposes to store all
10 collections, records, data, photographs, and
11 other documents derived from the proposed
12 work in the event the Papago Tribe does not
13 wish to take custody of or otherwise dispose
14 of the archaeological resources. Applicant
15 shall submit written certification by an
16 authorized official of the institution of
17 its willingness to curate the collections,
18 records, data, photographs and other docu-
19 ments derived from the proposed work.

20 (6) The Chairman may require additional inform-
21 ation to be included in the application for
22 permit and shall so inform the applicant.

23 Section 7 Issuance of Permit

24 The Chairman may, after consultation with the Dist-
25 rict Council of the District(s) in which the pro-
26 posed work is to take place, issue a permit, upon
27 determining that:

28 (A) The applicant is appropriately qualified, as
29 evidenced by training, education and/or exper-
30 ience, and possesses demonstratable competence
31 in theoretical and methodological design, and
32 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, lo-
cation, 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 pre-
serving 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.
- 33 (D) The permittee shall not be released from the
34 requirements of a permit until all provisions
35 of this ordinance have been complied with, and
36 all terms and conditions of the permit have been
37 satisfied, whether or not the permit has ex-
38 pired.
- 39 (E) Initiation of work or other activities by the
40 permittee under the authority of the permit will
41 constitute acceptance of the terms and condi-
42 tions of the permit.
- 43 (F) The permittee shall provide the Chairman with a
44 complete inventory of all archaeological re-
45 sources found and a detailed report of all the
46 activities of the permittee.

47 Section 9. Suspension, Revocation and Termination of Permits

- 48 (A) The Chairman may suspend a permit upon deter-
49 mining that the permittee has failed to meet the
50 terms and conditions of the permit or has vio-
51 lated any provision of this ordinance. The
52 suspension shall remain in effect until such
53 time as permittee corrects the situation, as
54 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
civil penalty against permittee under Section
13.

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

7 Section 10 Appeals Relating to Permits

8 Any person may appeal permit issuance, denial of
9 permit issuance, suspension, revocation, termination,
10 and terms and conditions of permits by written peti-
tion addressed to the Papago Council which shall be
thereof upon the Chairman.

11 Section 11 Custody and Ownership of Resources

12 (A) Archaeological resources excavated or removed
13 from the Papago Reservation remain the property
14 of the Papago Tribe, and permission to remove
the resources shall not imply transfer of
ownership.

15 (B) The Chairman may promulgate regulations establi-
16 shing procedures and guidelines for the exchange
17 of archaeological resources among suitable
18 universities, museums or other scientific or
19 educationals institutions, for the ultimate
disposition of archaeological resources, and
for standards by which archaeological resources
shall be preserved and maintained.

20 Section 12 Disposition of Human Remains

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

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

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

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

1 other relief as is necessary and proper for the
2 enforcement of this ordinance, including, but
3 not limited to, the impoundment of archaeological
4 resources, vehicles and equipment, and
5 injunctive relief against or involved in vio-
6 lations of this ordinance or in violations of
7 conditions of permits issued under this ordin-
8 ance.

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

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

14 The foregoing Ordinance was duly enacted by the Papago Council on
15 the 20th day of August, 1934, at a meeting at which a
16 quorum was present with a vote of 1414.5 for; -0- against;
17 25.5 not voting; and 1 absent, pursuant to the author-
18 ity vested in the Papago Council by Sections 2 (c), (e) and (1)
19 nd Section 3 (b), (c), (e) and (h) of Article V of the Constitu-
20 tion and By-laws of the Papago Tribe of Arizona as amended, rati-
21 fied by the Papago Tribe on December 12, 1936, pursuant to Sec-
22 tion 16 of the Act of June 18, 1934 (48 Stat. 984), and pursuant
23 to the Act of August 15, 1953, Public Law 277 (67 Stat. 536).
24 This Ordinance shall be effective as of the date the Secretary of
25 the Interior or his designee approves this Ordinance and publishes
26 it in the Federal Register.

27 THE PAPAGO COUNCIL

28 Josiah Moore
29 JOSIAH MOORE, Chairman

30 ATTEST:

31 Barbara D. Johnson
32 Secretary

ORDINANCE APPROVED this 24th day of AUGUST, 1934.

John Rose
Acting Superintendent, Papago Agency

