

CHAPTER 4-4 CULTURAL RESOURCES PROTECTION

4-4-1

Title

This Chapter shall be known as the Colville Cultural Resources Protection Chapter.

(Amended 6/6/83, Resolution 1983-411)

4-4-2

Legislative Findings—Federal Laws—Preemption

(a) Under the Federal Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470cc(c), the responsible federal official must notify the Tribes whenever a permit application is being considered which might adversely affect any religious or cultural off-reservation site.

(Amended 6/6/83, Resolution 1983-411)

(b) Under the provisions of the Federal Archaeological Resources Protection Act, 16 U.S.C. § 470cc(g) (2), no federal permit for excavation or removal of any archaeological resource located within the Colville Indian Reservation can be issued without the consent of the Tribes.

(c) There can be no exchange or disposition of archaeological resources from the Colville Reservation without the consent of the Tribes pursuant to the Federal Archaeological Resources Protection Act, 16 U.S.C. § 470dd.

(d) The National Historic Preservation Act, 16 U.S.C. § 470 et seq, declares a national policy to work in partnership with Indian tribal governments to protect cultural resources and provides a mechanism by which tribal governments may carry out the provisions of that Act. 16 U.S.C. § 470-1; 470a(c).

(Added 6/6/83, Resolution 1983-411)

(e) The Colville Business Council finds that an orderly procedure must be established for considering and acting upon such notifications, requests and review functions.

(Amended 6/6/83, Resolution 1983-411)

(f) The National Historic Preservation Act does not confer upon state governments the power to nominate sites within Indian reservations to the National Register.

(g) The Council finds that the power to make such nominations to the National Register must be exercised by the Tribes, and that an effective procedure must be established to carry out this activity.

(h) The Colville Business Council hereby declares its intent to preempt the field of nomination to the National Register of Archaeological and Historic sites located within the Colville Indian Reservation.

4-4-3

Definitions

As used in this Chapter, the following words and phrases shall each have the designated meaning, unless a different meaning is expressly provided for, or from the context a different meaning is clearly indicated.

(a) "Council" means the Colville Business Council.

(b) "Board" means the Colville Cultural Resources Board.

(Amended 6/6/83, Resolution 1983-411)

(c) "Department" means the Colville Archaeology and History Department or the Colville Archaeology and History Program.

(d) "Archaeological resources" means any material remains of past human life or activities which are of archaeological or historic interest. Such material remains shall include, but not be limited to, pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structured pit houses, rock paintings, rock carvings, intaglios, talus slide depressions, cairns, graves, human skeletal remains, or any portion or piece of any of the foregoing items. Such material or remains may also include non-fossilized or fossilized paleontological specimens, or any portion or piece thereof, whether or not found in an

archaeological context. No item shall be treated as an archaeological or historic resource unless such an item is at least fifty (50) years of age.

(e) "Effect" means any condition of the undertaking that causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualify the property to meet the criteria of the Colville Register or the National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling or association of the property that contributes to its significance in accordance with the Colville Register or the National Register criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects may include changes in the pattern of land use, population density or growth rate that may have an affect on properties of historical, architectural, archaeological or cultural significance.

(Added 6/6/83, Resolution 1983-411)

(f) "Historic property" means any prehistoric or historic district, site, building, structure or object significant in tribal history, architecture, archaeology, culture or religion. The term includes all artifacts, records, remains and reburial sites designated by the Council.

(Amended 6/6/83, Resolution 1983-411)

(g) "Colville Register of Historic and Archaeological Properties" or "Colville Register" means the tribal register of districts, sites, buildings, structures and objects significant in tribal history, architecture, archaeology or culture, as determined by the board and maintained by the department.

(h) "National Register" means the National Register of Historic Places.

(i) "Reservation" means the Colville Indian Reservation, including all land within the exterior boundaries thereof.

(j) "Undertaking" means any governmental, governmentally assisted or licensed action, activity, or program or the approval, sanction, assistance, or support of any non-governmental action, activity, or program. Undertakings include new and continuing projects and program activities that are:

- (1) Directly undertaken by governmental agencies;
- (2) Supported in whole or in part through governmental contracts, grants, subsidies, loans, loan guarantees, or other forms of direct and indirect funding assistance;
- (3) Carried out pursuant to a governmental lease, permit, license, certificate, approval, or other form of entitlement or permission; or
- (4) Proposed by a Federal, State or other governmental agency for legislative authorization or appropriation.

Site-specific undertakings affect areas and properties that are capable of being identified at the time of approval by the governmental agency. Non-sit-specific undertakings have effects that can be anticipated on Colville Register or National Register and eligible properties but cannot be identified in terms of specific geographical areas or properties at the time of approval. Non-site-specific undertakings include federal or State approval of federal or State plans pursuant to legislation, development of comprehensive or area-wide plans, agency recommendations for legislation and the establishment or modification of regulations and planning guidelines.

(Added 6/6/83, Resolution 1983-411)

(k) "ARPA" means the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa et seq.

(l) "NHPA" means the National Historic Preservation Act of 1966, 16 U.S.C. § 470 et seq.

4-4-4 Establishment of the Colville Cultural Resources Board

(a) Membership: The board shall be composed of the director of the Archaeology and History Department, the chairperson of the Planning Committee, the director of the Physical Resources Department, chairman of the Land and Forestry Committee, or his designee, the Tribal Archaeologist, and the director of the Planning Department.

(Amended 6/6/83, Resolution 1983-411; Resolution 1988-44)

(b) Officers: The Council shall name one of the board members as chairman of the board. The board shall elect from among its members a vice chairman and a secretary. In the absence of the chairman, the vice chairman shall preside, and in the absence of both the chairman and vice chairman, the secretary shall preside.

(c) Vacancies-Quorum: A vacancy on the board shall not affect its powers. Four members of the board shall constitute a quorum.

(Amended 6/6/83, Resolution 1983-411)

(d) Meetings: Meetings of the board shall be held at regular monthly intervals. Emergency meetings may be held upon twelve hours actual notice, and business may be transacted, provided that not less than a majority of the full board concurs in the proposed action. All department heads and committee members shall be notified of meetings so that all will be involved.

(Amended 6/6/83, Resolution 1983-411; Resolution 1985-360)

(e) Principal Office: The principal office of the board shall be at the Colville Tribal Headquarters, Nespelem, Washington.

(f) Oath of Office: Each member of the board shall take the following oath before beginning his duties:

"I promise to faithfully execute all provisions of the Colville Archaeological and Historic Resources Protection Chapter of the Colville Law and Order Code and any regulations promulgated in furtherance thereof, and to be bound by the Colville Law and Order Code, the jurisdiction of the Tribal Court and the Constitution and By-Laws of the Confederated Tribes of the Colville Reservation and to otherwise faithfully perform my duties as outlined by the law."

4-4-5 Powers and Duties of the Board

(a) The purpose of the board in compliance with the Constitution and By-Laws, is to cultivate Indian arts, crafts, and culture and separately to administer this Chapter. It shall be the responsibility of the board to recommend to the Business Council the adoption of a cultural policy and long range cultural goals. The board shall, when it determines necessary, cause proposals, for funding and administration, to revive and perpetuate Colville Tribal languages, histories, legends, religions, customs, traditions, beliefs and values, including the arts and crafts of each of the constituent bands of the Colville Tribes. Those proposals, where appropriate would include the recording, (audio/visual) storage and retrieval systems. The board shall insure that there exists adequate safe storage for the artifacts, documents and manuscripts, and shall cause protection of religious and archeological sites located within the aboriginal areas of Colville ancestral bands. The board shall, in consort with the Business Council, draft proposed legislation and/or changes to proposed legislation pertaining to the hereinabove described concerns.

(Adopted 1/14/88, Resolution 1988-44)

(b) Undertakings Off-Reservation: The board is empowered to participate in the review or federal permitting process where a federal or state officer has notified the Tribes pursuant to ARPA, 16 U.S.C. § 470cc(c), NHPA, or the American Indian Religious Freedom Act, 42 U.S.C. §1906, that an undertaking is proposed or an application is being considered for a permit to engage in activity which might adversely affect any off-reservation archaeological resources religious or historic property.

(Amended 6/6/83, Resolution 1983-411)

(c) Undertakings On-Reservation: The board is authorized and directed to review any proposed undertaking that might adversely affect any on-reservation archaeological resource or historic property included on or eligible for inclusion on the Colville Register or the National Register. The board is also empowered to consider requests for consent to on-reservation or removal of archaeological resources as an initial application or as referred by federal officials acting pursuant to ARPA, 16 U.S.C. § 470cc(g)(2), the NHPA, or the American Indian Religious Freedom Act.

(Amended 6/6/83, Resolution 1983-411)

(d) Disposition of Archaeological Resources: The board is empowered to consider requests for exchanges or dispositions of archaeological resources made pursuant to ARPA, 16 U.S.C. § 470dd and to determine what conditions, if any, should be attached if consent is given.

(e) Federal Rulemaking: As directed by the Council, the board is empowered to initiate, comment and participate in the federal, state or other governmental rule making process concerning matters pertaining to its expertise, particularly when consulted by a federal agency acting pursuant to ARPA, 16 U.S.C. § 470ii.

(Amended 6/6/83, Resolution 1983-411)

(f) Annual Reports: The board shall prepare a comprehensive annual report for submission to the Council, which shall report on the activities carried out under the provisions of this Chapter, and shall make such recommendations as the board deems appropriate as to changes or improvements needed in the provisions of this Chapter. Such report shall include a summary of actions undertaken by the board in reviewing proposed undertakings, applications for excavation or removal permits and in reviewing nominations for the Colville Register and the National Register.

(Amended 6/6/83, Resolution 1983-411)

(g) Records: The board shall maintain records of its proceedings.

(h) Cooperation with Agencies and Organizations: The board is authorized and directed to consult and cooperate, to the extent feasible, with other Tribal and non-Tribal government departments and agencies, and with private organizations involved in historic and archaeological protection activities, including the National Trust for Historic Preservation, the International Centre for the Study of Preservation and Restoration of Cultural Property, museums and organizations of professionals. Cooperation activities shall include providing assistance to other agencies and organizations, and coordinating the planning and conducting of historic preservation programs.

(i) Comprehensive Plan: The board is authorized and directed to review the comprehensive reservation-wide archaeological and historic preservation plan prepared by the department. The board is further authorized to approve the plan and submit it to the Council or to direct the department to change the plan until it meets with its approval.

(j) Colville Register: The board is authorized and directed to review nominations of properties to the Colville Register submitted by the department, and to approve those that qualify as significant in tribal history, architecture, archaeology or culture.

(k) National Register: The board is authorized and directed to review nomination forms for properties for the National Register prepared by the department, assure adequate public participation in the nomination process, and to recommend to the Council those properties it deems appropriate for nomination for listing on the National Register.

(Amended 6/6/83, Resolution 1983-411)

(l) Omitted:

(Omitted 6/6/83, Resolution 1983-411)

(m) Education: The board is authorized to develop and operate a program of information and education,

for tribal members and/or the general public, concerning cultural resources and protection of properties listed on the Colville Register.

(Amended 6/6/83, Resolution 1983-411)

4-4-6 Powers and Duties of the Department

The Colville History and Archaeology Department shall have the following duties and powers, which in addition to such powers and duties provided by prior resolutions of the Council as are not inconsistent with this Chapter.

(a) Nominations to Colville Register: The department is directed to nominate to the board all sites, buildings, districts and objects within the reservation that appear to qualify for listing on the Colville Register. The department shall first do the following tasks in order to compile the information needed to make the nominations:

(1) Conduct a comprehensive survey of all historic and archaeological properties on the reservation pursuant to section 4-4-13 of this Chapter.

(2) Compile an inventory that includes basic information about the location and history of each such property.

(3) Evaluate each property surveyed with regard to its historic, architectural, archaeological, anthropological, religious and cultural significance.

(4) Based on the evaluation described in section 4-4-6(a)(3), place each surveyed property into one of four categories of significance.

(5) Recommend modification or limitations for each historic property according to its category of significance.

(Amended 6/6/83, Resolution 1983-411)

(b) Nominations to National Register: The department shall prepare nomination forms for those properties that appear to be eligible for placement on the National Register, and present them to the board.

(c) Assistance to the Board: The department shall assist and consult with the Council and the board on issues relating to the conservation of historic and archaeological resources and on other matters within the scope of their duties.

(d) Records-Salvage-Excavation: The department shall initiate measures to ensure, at a minimum, that where a property listed on the Colville Register is to be substantially altered or affected, timely steps be taken to make or have made records, including measured drawings, photographs and maps of the property, and that a copy of such records then be deposited in the tribal archives for future use and reference. The department shall use its best efforts to assure adequate surveying, testing, salvaging, analysis reporting, and curation of cultural materials, where such is feasible.

(Amended 6/6/83, Resolution 1983-411)

(e) Tribally-Owned Properties: The department shall initiate measures and procedures to provide for the maintenance, preservation, rehabilitation or restoration, of tribally-owned and registered sites at professional standards prescribed by the director of the department.

(f) Transfer of Property on the Colville Register: The department shall cooperate with purchasers and transferees of any property listed on the Colville Register in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public interests.

(Amended 6/6/83, Resolution 1983-411)

(g) Promote Preservation Efforts: The department is authorized to take the following actions for the purpose of promoting historic preservation efforts:

- (1) Develop and make available to tribal agencies information concerning professional methods and techniques for identifying, preserving, stabilizing, improving, restoring and maintaining archaeological and historic properties.
- (2) Advise tribal agencies in the evaluation, identification, preservation, stabilization, improvement, restoration and maintenance of historic and archaeological properties.
- (3) Encourage, in cooperation with the board, public interest and participation in archaeological and historic preservation.
- (4) Conduct studies in such areas as the adequacy of federal, state and tribal laws pertaining to archaeological and historic preservation activities.
- (5) Encourage training and education in the field of archaeological and historic preservation.

(Amended 6/6/83, Resolution 1983-411)

(h) Annual Report: The department shall submit annually a comprehensive report of its activities and the results of its studies to the Council and the board, and from time to time submit such additional and special reports as the department deems advisable. These reports may propose such legislative enactments and other actions as, in the judgment of the department, are necessary and appropriate to carry out its recommendations.

4-4-7 Damaging or Adverse Effects—Prohibited Acts

(a) No person shall excavate, remove, damage or otherwise alter, deface or adversely affect any archaeological resource or historic property unless such activity is pursuant to a permit duly issued under this Chapter.

(Amended 6/6/83, Resolution 1983-411)

(b) No person shall sell, purchase, exchange, transfer, transport, receive, possess or offer to sell, purchase or exchange any archaeological or historic resource if such resource is excavated or removed from reservation lands in violation of the prohibition contained in section 4-4-7(a) above.

(Amended 6/6/83, Resolution 1983-411)

4-4-8 Permits

(a) Application-Contents: An application for a permit to excavate, remove alter, damage or otherwise adversely affect archaeological resources or historic properties from reservation lands shall include information concerning the time, scope, location and specific purpose of the proposed work, together with such other information as the board deems necessary. Each application must be accompanied by a definite outline of the proposed work, indicating the name of the individuals or group making the request, the date proposed for beginning the field work, the length of time proposed to be devoted to it and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation or gathering, the museum in which the collections made under the permit are to be permanently preserved, and, where such museum is off-reservation, the length of time proposed by the applicant before such collections are to be returned to the reservation. The application must be accompanied by a sketch plan and a legal description of the particular site or area to be affected, so definite that it can be located on a map with accuracy. Each application shall be signed by the applicant and verified on oath or affirmation, and shall contain the promise of the applicant to abide and be bound by all of the provisions of this Chapter and by all other tribal laws.

(Amended 6/6/83, Resolution 1983-411)

(b) Application-Where Filed: Each application for a permit must be filed with the board and the director of the Department of History and Archaeology.

(c) Criteria: A permit may be issued pursuant to an application submitted in strict accordance with sections 4-4-8(a) and 4-4-8(b) above, if the board determines that:

- (1) The applicant has demonstrated its qualifications to carry out the proposed activity by submitting to the board references and a resume showing prior successful experience in archaeological field work, site surveying, excavation techniques and reporting;
- (2) Adequate mitigation efforts are guaranteed that will avoid any adverse effect on properties included on or eligible for inclusion on the Colville Register or the National Register, or that acceptance of an adverse effect on such properties is clearly in the Tribe's best interest;
- (3) The archaeological resources or historic properties which are excavated or removed will remain the property of the Tribes;
- (4) The activity pursuant to such permit is not inconsistent with any management plan applicable to the lands concerned.
- (5) Omitted.

(Amended 6/6/83, Resolution 1983-411)

(d) Board Action: The board shall allow the department a reasonable opportunity to comment on each application for a permit. The board shall make its decision to issue or deny a permit within six (6) months after the date the application was filed; provided however, that the board may make an unlimited number of three (3) months' extensions of such review period upon providing the applicant with a written explanation of the factors requiring such extension or extensions. Applicants shall be notified of board action by certified mail.

(e) Permit-Terms and Conditions: Any permit may contain such terms and conditions that the board deems necessary to carry out the purposes of this Chapter. Each permit shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Chapter and other laws applicable to the permitted activity. The permit may contain provisions requiring restoration of the site to its former condition. Every permit shall be issued in the name of the applicant therefore, and no permit shall be transferable; nor shall the holder of any permit allow any other person to use the permit. The board may require that a bond be posted as a prerequisite to issuance of a permit.

(f) Duration of Permit: Each permit shall be effective for three (3) years from the date of its issuance, or for such shorter period as may be specified therein. The terms of each permit may be extended on order of the board for proper cause upon a finding that the work has been diligently prosecuted under the permit. Failure to begin work under a permit within six (6) weeks after it is granted, or failure to diligently prosecute such work after it has begun, shall make the permit void without any order or proceeding by the board.

(g) Interim Permits: Persons who received approval from the Council to excavate or adversely affect any archaeological resource or historic property prior to the date of enactment of this Chapter may receive an interim permit to continue work during the period that their application for a permit is pending before the board, under the following procedure:

- (1) Within thirty (30) days after the date of enactment of this Chapter, such person shall file with the board a declaration, stating the time approval was received, the location of the property, the purpose of the work, and the work done. The declaration shall be accompanied by an application for a permit.

- (2) Upon filing of the declaration and the application, the board shall issue an interim permit. The department shall determine whether the alleged authority to affect the property was validly obtained and report to the board. If authority has not been validly obtained, the board shall revoke the interim permit.

(3) Such interim permit shall be in effect until the board approves or denies the application for the permit.

(Amended 6/6/83, Resolution 1983-411)

4-4-9 Duties of Permittee

During the course of the undertaking, each permittee shall report monthly and quarterly to the board. Monthly reports shall contain a brief summary statement of the work performed during the month, and such quarterly reports containing a catalog of collections and photographs made during the quarter. Each permittee shall cooperate fully with any and all inspections conducted by the department or the board. No part of any collection shall leave the reservation unless the express written consent of the board has been given in the form of a Temporary Removal License. Such license shall at all times accompany the artifacts while off the reservation.

(Amended 6/6/83, Resolution 1983-411)

4-4-10 Suspension and Revocation of Permits

(a) Grounds: Any permit issued under this Chapter may be suspended or revoked by the board in accordance with the procedures set forth below, upon determination that the permittee has violated any provision of the permit, this Chapter, or other applicable law; that permit, this Chapter, or other applicable law; that relevant circumstances have changed since the granting of the permit so that the application would no longer meet the criteria of section 4-4-8(c) above; that material misrepresentations were contained in the application; or that the permit was improvidently granted.

(b) Hearing: Upon written notice specifying the alleged grounds for revocation or suspension, filed with the board by the tribal prosecutor or the director of the department, the board shall schedule a hearing to determine the matter, which hearing shall be not less than five (5) days nor more than thirty days after the service of such notice upon the permittee. The permittee shall be entitled to an opportunity to appear at such hearing and controvert the allegations in support of revocation or suspension.

(Amended 6/6/83, Resolution 1983-411)

(c) Emergency Suspensions-Stop Work Orders: Upon finding that a delay in suspending or revoking a permit for the period required by a hearing would be contrary to the tribal interest in preserving archaeological or historic properties, the board may issue a written stop work order, directing the permittee immediately to cease and desist all excavation, removal or other activity pursuant to the permit. It shall be unlawful for any person to disobey a stop work order. In all cases where a stop work order has been issued, the board shall immediately schedule a hearing to determine the matter, which hearing shall not be less than two (2) days nor more than ten (10) days after the date of the stop work order, unless continued by the board upon motion of the permittee.

4-4-11 Colville Register of Archaeological and Historic Properties

(a) Nomination and Acceptance: There is here established a Colville Register of Cultural Properties, which shall be a register of prehistoric or historic districts, sites, buildings, structures and objects significant in tribal history, architecture, archaeology and culture or religion. Nominations to the Colville Register may be made by any person. Acceptance of any nomination shall be made by the board.

(Amended 6/6/83, Resolution 1983-411)

(b) Tribal Undertaking Upon Listed Property: Whenever the Council has direct or indirect jurisdiction over a proposed tribal or tribally assisted undertaking, or has authority to license or permit any undertaking, the Council shall, prior to the approval of the expenditure of any tribal funds on the undertaking or prior to the issuance of any license or permit, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object that is included or eligible for inclusion in the Colville Register. The board and the director shall be afforded a reasonable opportunity to comment with regard to such undertaking.

4-4-12 National Register

(a) Nomination of Reservation Properties: Nomination of any district, site, building, structure or object located within the reservation for inclusion in the National Register shall be made by the Council.

(b) Tribal Undertakings Upon Properties Listed in National Register: Whenever the Council has direct or indirect jurisdiction over a proposed tribal or tribally assisted undertaking or has authority to license any undertaking, the Council shall, prior to the approval of the expenditure of any tribal funds on the undertaking or prior to the issuance of any license or permit, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object within the reservation that is included in or eligible for inclusion in the National Register. The board and the director shall be afforded a reasonable opportunity to comment with regard to such undertaking.

4-4-13 **Survey and Comprehensive Plan**

(a) Comprehensive Survey: A comprehensive reservation-wide survey of archaeological and historic properties shall be conducted by the director of the department and submitted to the board. The long-range objective of the comprehensive survey shall be the identification, protection and preservation of all archaeological resources, districts, sites, buildings, structure and objects within the reservation that are potentially significant in tribal history, architecture, archaeology and culture or religion. The survey shall be conducted in as timely a manner as possible and shall encompass all historic properties and archaeological resources regardless of title, boundaries or ownership. Survey data shall be maintained by the department in an accessible location and shall be kept up to date so that the information is readily available to tribal planners during the decision making process. The survey data need not be published but shall be physically organized and indexed in a manner to provide for easy access. Availability of survey data to the general public may be limited if, in the opinion of the department, such availability might result in damage to archaeological resources or historic properties. An end result of the overall survey process is nomination of property significant to tribal history, architecture, archaeology and culture to the Colville Register or the National Register.

(Amended 6/6/83, Resolution 1983-411)

(b) Comprehensive Plan: A comprehensive reservation-wide archaeological and historic preservation plan shall be prepared by the department and submitted to the board. The plan shall consist of a report or series of reports on the reservation archaeological and historic preservation program. These reports shall describe, analyze and make future projections about the program. The archaeological and historic preservation plan shall include an explanation of the philosophy or rationale behind the program components, a report on the current status of each component, an evaluation of the effect of each component, and a projection of future plans.

4-4-14 **Nondisclosure**

Information concerning the nature and location of any archaeological resource or historic property may not be made available to any person unless the director of the Colville Archaeology and History Department determines that such disclosure would further the purposes of this Chapter and would not create an undue risk of harm to such resources or the site at which such resources are located. The department and the board are authorized to withhold from disclosure information relating to the location of sites or objects listed on the Colville Register or the National Register upon a determination that the disclosure of specific information would create a risk of destruction or harm to such sites or objects.

(Amended 6/6/83, Resolution 1983-411)

4-4-15 **Enforcement**

(a) Offense: It shall be unlawful and prohibited for any person to do any act the performance of which is prohibited under this Chapter or to fail to do any act the performance of which is required under this Chapter.

(b) Criminal: The procedures established for criminal offenses under the Colville Law and Order Code shall be utilized for violations of this Chapter committed by persons subject to tribal criminal jurisdiction. In the event a defendant pleads guilty or is found guilty of committing an offense, the court may impose all or any of the following penalties:

- (1) A fine of not less than \$10.00 or more than \$500.00;
- (2) A jail term of not less than one (1) day nor more than six (6) months;

(3) Forfeiture of any articles seized by reason of illegal activities prohibited by this Chapter, under the procedures established in Chapter 2-3 of the Colville Law and Order Code.

(c) Civil: The Colville Confederated Tribes may bring an action for civil penalty against any person who is alleged to have engaged in any activity which is violative of this Chapter, including any person who is not subject to tribal criminal jurisdiction. The Tribes also may bring an action for forfeiture of any articles possessed in violation of this Chapter. Such civil penalty and forfeiture actions shall be brought under the procedures established in Chapter 2-3 of the Colville Law and Order Code. Any person violating the provisions of this Chapter shall be subject to exclusion from the reservation under the applicable Chapter of the Colville Law and Order Code. Such relief as may be fashioned by the court shall be intended to be remedial in nature and not punitive and should compensate the Tribes for the damage done to the archaeological or historic resources of the reservation and for the actions taken by the Tribes to protect the reservation and its archaeological and historic resources. Such relief shall also be intended to coerce the individuals into obeying this Chapter and regulations promulgated hereto and not to punish such individuals for violation of this Chapter and such regulations. Search, seizure and forfeiture of articles possessed in violation of this Chapter shall be pursuant to the provisions set forth in the subchapter on forfeiture under Chapter 2-3 of the Colville Law and Order Code. The court may also order the forfeiture of any bond, the revocation of any permits, the return of any articles which have been removed from the reservation or the restoration of any archaeological resource or historic property to its former and customary condition. In assessing civil penalties, the court may consider as factors the archaeological or commercial value of the resources involved, or the cost of restoration and repair of the resource and the archaeological or historic site involved.

(Amended 6/6/83, Resolution 1983-411)

4-4-16 Regulation by Board

For the purpose of carrying into effect the provisions of this Chapter or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit and intent of this Chapter as are deemed necessary or advisable. All such regulations shall have the same force and effect as if incorporated in this Chapter.

4-4-17 Review by Colville Business Council

The director, the tribal prosecutor, or any applicant or permittee aggrieved by any decision of the board may petition the Council for a hearing to review such decision. A written notice of appeal must be filed with the Council within twenty (20) days of such adverse decision; provided, however, that such limitation period shall not apply to bar the petition of the tribal prosecutor or the director of the department where such would be contrary to the tribal interest in preservation of archaeological or historic properties.

(Amended 6/6/83, Resolution 1983-411)

4-4-18 Severability

If any provision of this Chapter or its application to any person or circumstance is held to be invalid, the remainder of this Chapter or the application of the provision to other persons or circumstances shall not be affected.

(Chapter 4-4 Adopted 8/18/80, Resolution 1980-578)