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HOUSE COMMITTEE REPORT

3/28

(9)
Date Referred: January 22, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/26/90

JUDICIARY

*added
3/28*

Finance

The RESOURCES Committee considered:

HB 436

HOUSE BILL NO. 436

PROTECTION OF NATIVE HUMAN REMAINS

"An Act relating to historic, prehistoric, and archeological resources."

RECOMMENDATIONS:

- be replaced with CS HB 436 (RES) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- addition: referral to the Finance Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact DNR
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

<u>Cliff Davidson</u> DAVIDSON	<u>M. Davis</u> M. DAVIS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Bill Navarre</u> NAVARRE	<u>Bob Sharp</u> SHARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Bill Handson</u> HANDSON		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Carl Avenard</u> AVENARD		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Cliff Davidson
CO- Chairman's Signature

FISCAL NOTE

cc

REQUEST:

Revision Date: 22-Mar-90 Agency Affected: Natural Resources
 Title: An Act relating to historic, prehistoric
and archeological resources. BRU: Parks & Outdoor Recreation
 Sponsor: Daividson Components: Historic Resource Mgmt
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	70.0	35.5	37.0	37.0	37.0	37.0
TRAVEL	50.0	40.0	40.0	40.0	40.0	40.0
CONTRACTUAL	35.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	2.0	1.5	1.5	1.5	1.5	1.5
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	157.0	82.0	83.5	83.5	83.5	83.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	157.0	82.0	83.5	83.5	83.5	83.5
FEDERAL FUNDS						
OTHER						
TOTAL	157.0	82.0	83.5	83.5	83.5	83.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 22-Mar-90

Approved by Commissioner: Tom Hauke for Lennie Gorsuch Date: 22-Mar-90
 Agency: Department of Natural Resources

Distribution (by preparer) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

MEMORANDUM

CSHB 436(Res) No. 1
HOUSE 3/28/90

TO: Gary Kosteko
Budget Analyst

TELEPHONE NO: 762-2630

FROM: Bob Shaw
Office of Hist. & Archaeo.

SUBJECT: HB436 Fiscal Note
Analysis for 3-16-90 Draft

Sec. 41.35.410(b) This section requires DNR to determine nature of remains and that process of determination is likely to involve travel to the field location of remains to collect information about the physical nature of the occurrence. "Further investigation" is also likely to involve travel to interview informants and research in archives and museums. Costs were estimated at 6 months archaeologist salary(\$34.5) and \$25.0 travel expenses.

Sec. 41.35.420 Dispute Resolution Committee. Expenses of this committee were estimated at \$15.0 in travel and per diem. This assumes committee members will not be reimbursed for time spent on committee duties.

Sec. 9: Disposition of Items Already Held: Costs to the Department will come from collection of information to compile a report and abstract it for distribution to tribes. Those activities will likely include travel to the field, processing of radiocarbon samples to obtain age determinations on remains, and processing of data collected. Those activities are estimated to require about 6 months archaeologist salary. Additionally, storage of remains or contractual costs for curation of remains in a museum are added expenses. Since the public will not notify DNR of burial remains in their possession unless they are notified of the existence of this requirement, we will also need to advertise the requirement statewide in newspapers, etc. Advertisement costs are estimated at 5.0. Travel and per diem costs are estimated at \$10.0, salary estimated at \$34.5, and contractual/rental costs estimated at \$30.0.

FY 1992 and FY1993 cost figures represent extensions of the above amounts. The costs for remains already held should drop out after the first year

6 February 1990

To: Members of the Committee on Natural Resources
Alaska State House of Representatives
Juneau, AK

From: David R. Yesner, Ph.D. *D.R.Y.*
Alaska Representative to the Committee on Public Archaeology,
Society for American Archaeology

Re: Repatriation Bill

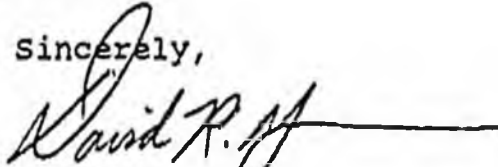
Hon. Members of the Committee on Natural Resources:

On Thursday, February 8th., the Alaska state legislature will take up a proposed bill on repatriation of human skeletal remains and funerary objects to native "tribes and cultural groups" within Alaska. The bill will apply to burials on state land and on private property that may be declared as a "state monument." It requires that all institutions must, within 30 days of passage of the act, prepare a detailed list of all human skeletal materials in their possession, and within 120 days must indicate the appropriate "tribe or cultural group" to which the remains refer, so that the appropriate group may dispose of the remains in the way they see fit. There is no definition of a "tribe or cultural group," so that it is not apparent whether simply declaring material to refer to "Eskimos" or to the Alegmiut, Malemiut, Nunamiut, Tareumiut, etc. is required. No attempt is made to provide funding for such study. Furthermore, permits must be required from the relevant native "tribe or cultural group" before any excavations may be conducted on state land, or on private land declared as a state monument, if there is even any possibility that human skeletal materials might be encountered. This presents an almost total veto power over the conduct of professional archaeology in the state, and will greatly complicate the permitting process for conducting archaeology within the state in response to federal and state requirements for cultural resource assessment and mitigation in connection with federal and state projects. It will also place great burdens on the Office of History and Archaeology, DNR, and various institutions in analyzing and assessing extant materials. In large part, the problem depends on the period of time over which it can be judged that human remains can be attributed to a particular group; there is no language in the bill to address this question. No provision is made for any length of study of materials before disposal by native groups. Nowhere in the bill is there any acknowledgment of the importance of the scientific data from human skeletal remains in helping to understand the origins and affiliation of Alaska Native groups; their ancient lifestyles, populations, health, and nutrition; or their descent through time, which has been in some cases used to justify native land claims. Finally, no provision is even made for the disposition of the materials themselves by native groups; theoretically, they may even be sold!

As the COPA representative of the state of Alaska, I would like to call your attention to the official position of the Society for American Archaeology on reburial and repatriation, a copy of which is enclosed. Briefly, the official position of the SAA is that the reburial and repatriation of human remains and associated burial goods should take place on a case-by-case basis, with the mutual agreement of native groups and professional archaeologists, rather than through the use of blanket legislation. I have also informed the Office of Governmental Relations of the SAA for their interest. At present, I request that any hearings on this bill be delayed until all interested parties have an opportunity to present their viewpoints on revisions of any contemplated legislation.

Thanks very much for your interest.

Sincerely,

A handwritten signature in cursive script, appearing to read "David R. Yesner", with a horizontal line extending to the right.

David R. Yesner
Dept. of Anthropology
University of Alaska
3211 Providence Drive
Anchorage, AK 99508

Bulletin

November 1989

Vol. 7, No. 6

OF THE SOCIETY FOR AMERICAN ARCHAEOLOGY

Reburial and Repatriation

Jeremy Sabloff, SAA president, has formed a Task Force on Reburial and Repatriation to review legislative initiatives and to advance the Society's position with the Congress and the media. Since its creation, the Task Force has worked closely with the SAA's Office of Government Relations, particularly on the historic preservation legislation, with reburial provisions, proposed by Senator Fowler and on the reburial and repatriation sections of the bill introduced by Representative Campbell. The Task Force is chaired by Keith Kintigh (Arizona St.) and includes Richard Ford (Michigan), Lynne Goldstein (Wisconsin-Milwaukee), William Lovis (Michigan St.), Vincas Steponaitis (North Carolina), and Phillip Walker (California-Santa Barbara).

The Society's position on reburial was adopted by the Executive Committee in May 1986, after a long period of study and careful consideration. This position maintains that both scientific and traditional interests in human remains are legitimate. It states that the disposition of human remains should be determined on a case-by-case basis, considering the beliefs and strength of the relationship of possible claimants to the remains and the scientific value of the remains. However, in cases where the remains are of a known individual, disposition should be determined by the closest descendants, regardless of scientific value. The statement encourages communication between scholars engaged in the study of human remains and the communities that have an affiliation with the remains.

Given the public debate concerning reburial, and because there appears to be some uncertainty within the profession about the Society's position, the SAA Statement Concerning the Treatment of Human Remains is reproduced below from the June 1986 Bulletin. Any questions or comments concerning this position should be directed to Keith Kintigh, Department of Anthropology, Arizona State University, Tempe, AZ 85287-2402.

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SAA Statement Concerning the Treatment of Human Remains

Archaeologists are committed to understanding and communicating the richness of the cultural heritage of humanity, and they acknowledge and respect the diversity of beliefs about, and interests in, the past and its material remains.

It is the ethical responsibility of archaeologists "to advocate and to aid in the conservation of archaeological data," as specified in the Bylaws of the Society for American Archaeology. Mortuary evidence is an integral part of the archaeological record of the past culture and behavior in that it informs directly upon social structure and organization and, less directly, upon aspects of religion and ideology. Human remains, as an integral part of the mortuary record, provide unique information about demography, diet, disease, and genetic relationships among human groups. Research in archaeology, bioarchaeology, biological anthropology, and medicine depends upon responsible scholars having collections of human remains available both for replicative research and research that addresses new questions or employs new analytical techniques.

There is great diversity in cultural and religious values concerning the treatment of human remains. Individuals and cultural groups have legitimate concerns derived from cultural and religious beliefs about the treatment and disposition of remains of their ancestors or members that may conflict with legitimate scientific interests in those remains. The concerns of different cultures, as presented by their designated representatives and leaders, must be recognized and respected.

The Society for American Archaeology recognizes both scientific and traditional interests in human remains. Human skeletal materials must at all times be treated with dignity and respect. Commercial exploitation of ancient human remains is abhorrent. Whatever their ultimate disposition, all human remains should receive appropriate scientific study, should be responsibly and carefully conserved, and should be accessible only for legitimate scientific or educational purposes.

The Society for American Archaeology opposes universal or indiscriminate reburial of human remains, either from ongoing

excavations or from extant collections. Conflicting claims concerning the proper treatment and disposition of particular human remains must be resolved on a case-by-case basis through consideration of the scientific importance of the material, the cultural and religious values of the interested individuals or groups, and the strength of their relationship to the remains in question.

The scientific importance of particular human remains should be determined by their potential to aid in present and future research, and thus depends on professional judgments concerning the degree of their physical and contextual integrity. The weight accorded any claim made by an individual or group concerning particular human remains should depend upon the strength of their demonstrated biological or cultural affinity with the remains in question. If remains can be identified as those of a known individual from whom specific biological descendants can be traced, the disposition of those remains, including possible reburial, should be determined by the closest living relatives.

The Society for American Archaeology encourages close and effective communication between scholars engaged in the study of human remains and the communities that may have biological or cultural affinities to those remains. Because vandalism and looting threaten the record of the human past, including human remains, the protection of this record necessitates cooperation between archaeologists and others who share that goal.

Because controversies involving the treatment of human remains cannot properly be resolved nation-wide in a uniform way, the Society opposes any federal legislation that seeks to impose a uniform standard for

In This Issue:

Foundation For American
Archaeology
SAA Successes In Congress
Dues Crucial To SAA Future
Las Vegas Meeting
Indiana Anti-Looting Law
Teaching Archaeology

determining the disposition of all human remains.

Recognizing the diversity of potential legal interests in the material record of the human past, archaeologists have a professional responsibility to seek to ensure that laws governing that record are consistent with the objectives, principles, and formal statements of the Society for American Archaeology.

Executive Committee
The Society for American Archaeology
New Orleans, Louisiana
May 1986

(Reprinted from Bulletin 4[3]:7-8, June 1986).

Foundation for American Archaeology

The fact that you are reading the SAA Bulletin tells us something about you. To begin with, you are vitally interested in archaeology and probably earn your living in the discipline in one capacity or another. Moreover, you very much want to keep up with the latest news about your Society.

You should be pleased, then, to learn that the Agnese N. Lindley Foundation in Tucson, AZ has offered the SAA a \$2,000 challenge grant for funds needed for legal fees to establish a Foundation for American Archaeology, search for a managing director and print brochures.

If you attended the National meetings held in Atlanta, you know that the SAA authorized the establishment of a Foundation for American Archaeology along the outlines presented in the March 1987 issue of the Bulletin.

The goal of the Foundation is to provide education to individuals, all levels of government that affect archaeology, and corporations concerned with archaeology. The Foundation will respond in various ways to the numerous opportunities that occur for education about issues of pothunting and concerns about reburial and the repatriation of artifacts.

There presently is no formal structure to address the many demands and opportunities to educate the public about the true nature of the discipline of archaeology. The public gets their information about archaeology from popular movies, and from sensational news accounts. The success of films and articles about archaeology indicates there is tremendous public interest in the subject which forms a natural constituency for support of archaeological research. The Foundation would tap this interest for education about the true nature of archaeology. The establishment of this

Foundation is essential, for the discipline has never faced such grave challenges nor such a receptive audience.

In order to put these ambitious plans in motion, George Gumerman was asked to chair a task force composed of Dena Dincauze, Brian Fagan, Mark Leone, William Marquardt, Stuart Strucver, and Daniel Thiel.

We are pleased to report that their efforts are bearing fruit and the challenge grant is a giant step in the right direction. What is now needed is for the SAA membership to match the \$2,000 offered by the Agnese N. Lindley Foundation. Obviously \$4,000 is only a beginning, but it is a start.

This is a modest sum. A five or ten dollar donation or more from everyone who reads this will quickly match the requisite amount. Since you have already demonstrated your interest in archaeology by the simple exercise of reading this, you will surely want to help make the Foundation a reality by contributing toward the \$2,000 challenge. You are, after all, not only contributing to your profession but, in all probability, toward your own livelihood.

Checks of any amount should be made out to: The Foundation for American Archaeology, and sent to: Society for American Archaeology, 808 17th St, NW, Suite 200, Washington, D.C. 20006.

SAA Succeeds In Congress

by
Loretta Neumann and Kathleen Reinburg
SAA Office of Government Relations

Money and reburial have headed the list of issues Congress has been tackling over the last several months. The latter is discussed in detail by Keith Kintigh in this issue of the Bulletin (see page 1, "Reburial and Repatriation"). The following summarizes some of the issues for which the SAA has been lobbying.

SAA achieved several major successes in the fiscal 1990 appropriations for Interior and Related Agencies. In a year with tight fiscal constraints placed on legislators, the outcome for cultural resource protection programs in the federal agencies was surprisingly good. SAA sought and obtained \$18.2 million for the Forest Service cultural resource management programs. This is an increase of over \$2 million compared to last year. The Historic Preservation Fund was increased to \$32.75 million. Last year it received \$30.5 million. Special add-on funds were provided for several programs. The National Park

Service was given \$500,000 to pursue and looting efforts in the National Park Service and \$100,000 to begin preservation technology transfer. The Bureau of Land Management was provided \$200,000 for cultural resource law enforcement in the four corners area.

In addition, the Senate included language in the National Science Foundation appropriations report which encourages NSF to provide funds for archaeology research within the biological, behavioral and social science directorate. This is the first time that archaeology has been mentioned in the appropriations report and we hope to gain support for increases in funding of archaeology at NSF.

Senator Fowler (D-GA) introduced S. 1579, National Historic Preservation Policy Act on August 4. It would amend the National Historic Preservation Act, Historic Sites Act, Archaeological Resources Protection Act, and the Abandoned Shipwreck Act to strengthen the protection of historic heritage and resources, provide for treatment of human remains, develop training and education programs, strengthen state and tribal preservation programs, develop certification for archaeologists, and implement an artifact registration system. In addition, Senator Fowler introduced S. 1578, to create an independent historic preservation agency and national center for preservation technology. SAA worked on a number of provisions in these two bills to improve them with respect to archaeology.

The SAA testified in support of expanding the Chaco Protection System (S. 798) and establishing the Petroglyph National Monument in New Mexico (S. 286); designating the Amistad National Recreation Area in Texas (H.R. 967), reauthorizing the Bureau of Land Management programs (H.R. 828), and establishing the National Museum of the American Indian (H.R. 2668 and S. 978).

For information on these and other bills, call the Congressional Bill Status office, (202) 225-1772. To obtain copies of House bills call (202) 225-3456 or write to House Document Room, H-226 Capitol, Washington, DC 20515. For Senate bills, write to Senate Document Room, SH-804 Hart, Washington D.C. 20510.

Dues Increase Crucial to Future

The Society for American Archaeology is financially sound. Now that we have finished the long range study of the Society and have a new set of Bylaws strongly endorsed by the membership, we are in a position to build for the next decade and more. Much of the dues increase announced in the last Bulletin will go to help build

THE HRDLICKA LEGACY AND KONIAG SPIRITS

by

Gordon L. Pullar
Past President, 1983-1989
Kodiak Area Native Association

Presented at the

CIRCUM-PACIFIC PREHISTORY CONFERENCE
August 2-6, 1989
Seattle, Washington

THE HRDLICKA LEGACY AND KONIAG SPIRITS
BY
GORDON L. PULLAR

During the 1930's Ales Hrdlicka, the curator of the Division of Physical Anthropology of the U.S. Museum of Natural History at the Smithsonian Institution, removed some 812 skeletal remains of the Native people from Kodiak Island, Alaska. The majority of the skeletons were taken from the village of Larsen Bay and are currently unceremoniously stored in the Smithsonian's Museum of Natural History where they make up a portion of the 18,500 Native American skeletons the Smithsonian holds (Lowen, 1988, Preston, 1989, Spotted Elk, 1989). Intensified efforts are now underway by the Native people of Kodiak Island to have the remains of their ancestors returned to the island for reburial. The effort, led by the village of Larsen Bay and the island-wide Kodiak Area Native Association, has thus far been rebuffed by the Smithsonian that claims, just as it has in other requests, that the skeletons are needed for scientific study (Brookes, 1988).

Recent scientific evidence suggests that Native people have inhabited Kodiak Island, Alaska, for nearly 6,000 years (Jordan, 1987:4). The first contact with western Europeans came just over two hundred years ago with the sighting of Kodiak Island from a Russian ship in 1761 and the first Russian settlement there in 1783 (Hrdlicka, 1944). At the time of this first contact with the Russians, there were 65 villages on the island (Tikhmeniev,

1861, from Hrdlicka, 1944) occupied by the Koniagmiut or Koniags, the island's aboriginal people. Today, there are six Koniag villages in the Kodiak Island group. They are Akhiok, Karluk, Larsen Bay, Old Harbor, Ouzinkie and Port Lions. Additionally, the town of Kodiak contains a Native community (Davis, 1984: 199). The estimated population of Koniags on Kodiak Island today is 2,500.

The Koniag village of Larsen Bay is located on the small bay of the same name which branches off the much larger Uyak Bay on the west coast of Kodiak Island. The current population of the village is 217 (Kodiak Area Native Association, 1988 Annual Report). A large salmon cannery was built in Larsen Bay in 1888 (Roppel, 1986) and continues in operation today. The village is governed by a tribal government with an elected council. A second class municipal government was also formed under the laws of the State of Alaska. A village corporation, Nu-Nacht-Pit, Inc., was established under the Alaska Native Claims Settlement Act of 1971, but ceased to exist in 1980 when it merged with the regional corporation, Koniag, Inc.

In 1926, Ales Hrdlicka, under the auspices of the Smithsonian Institution, undertook an anthropological survey of Alaska (Hrdlicka, 1944:1). His efforts ended with the 1938 summer season. Beginning in 1931 and ending in 1937, he excavated in the village of Larsen Bay (Hrdlicka, 1944:1 & 140). His stated

purpose of these excavations "was to secure the skeletal materials which the site evidently contained." (Hrdlicka, 1944:140). The purpose of the entire Alaska survey was, in Hrdlicka's words, "to learn whatever might still be possible about the living remnants of the native populations, and to gather skeletal remains that would supplement the study of the living . . ." (Hrdlicka, 1944:1). It is quite apparent that he viewed Native people as being on the road to extinction. He would, undoubtedly be very surprised that Larsen Bay is still a thriving Native community.

While Hrdlicka's name has long been prominent in the field of physical anthropology, it appears that his formal education in anthropology was limited to four months in Paris in 1896 (Stewart, 1940:8). Hrdlicka, born in Bohemia in 1869, immigrated to New York with his father in 1882 (Stewart, 1940:4). He graduated from Eclectic Medical College in New York in 1892 and from the New York Homeopathic Medical College in 1894 (Stewart, 1940:6-7). His first actual fieldwork in anthropology came in 1899 when he was given charge of the physical and medical anthropological research on the Hyde Expedition to the American Southwest and Mexico for the American Museum (Stewart, 1940:11). In 1903, he was appointed to be in charge of the new Division of Physical Anthropology at the Smithsonian (Stewart, 1940:12, Hinsley, 1981:281).

It was while he was under the employ of the American Museum of Natural History in New York that the first stark signs appeared of what would become a lifelong relationship between Hrdlicka and the dead of Native peoples. The arctic explorer Robert Peary brought back six Eskimos to New York from Greenland and left them at the American Museum (Harper, 1986:34, Preston, 1989). Four of the six soon became ill and died and Hrdlicka, in collaboration with the famed anthropologist, Franz Boas, found the opportunity to study the same Native people both in life and in death (Preston, 1989, Harper, 1986). Hrdlicka had the four Eskimos, that he had measured and photographed in life, boiled so that their flesh could be removed from their skeletons (Preston, 1989). One of the deceased, Qisuk, was the father of Minik, who, at age eight, was one of the survivors. A fake funeral and burial was staged for the benefit of Minik and it was some years later that he made the shocking discovery of his father's skeleton on display at the museum (Harper, 1986:97). A final indignity for Qisuk was that Hrdlicka saved his brain and in 1901 published an article on it, complete with photographs, titled : "An Eskimo Brain" (Harper, 1986:97). This article was just the first of several with ghoulish titles such as "New Examples of American Indian skulls with low forehead" (1908), "Catalogue of Human Crania in the U.S. National Museum", (1925), and forty years later, "Diseases of and artifacts on skulls and bones from Kodiak

Island" (1941a) and "Artifacts on human and seal skulls from Kodiak Island" (1941b).

While Hrdlicka's work of digging up Native burials may often be referred to as archaeology, it appears that even he set himself aside from that discipline saying, "And it is hoped also that our archaeological friends will no longer stand aloof, as so often in the past, but will collaborate with us to rescue not alone the evidence of man's activities, but the precious skeletal remains encountered in their excavations of ancient historic sites." (1919). Even though archaeology was a young and developing discipline at the time of Hrdlicka's digging on Kodiak Island, his techniques of excavation were inadequate even by the standards of the time (Jordan, 1987:8).

Hrdlicka seemed to feel that lack of organized objection from the Natives implied permission to remove the remains of their dead. He also claimed that he was taking only very old remains which he reasoned the Natives would not care about anyway. He said the collecting of the skeletons was ". . . carried on with the full knowledge of the natives and often in their view with their assistance. They were told that I wanted only the old "heathen" remains in which no living person had any interest; that the bones were needed for studies and for comparisons of the development, the type, and the diseases of the old with those of the present people; and that they would be treated with all

possible consideration" (1931:125).

Once again, Hrdlicka's concepts of "old" or prehistoric certainly differed from those of professional archaeology. While archaeologists speak in terms of hundreds or thousands of years, Hrdlicka's "old" was much more recent. In one incident that took place in a Yukon River Village, that he described in two different publications, he removed the skeleton of a man buried in a grave under a Russian Orthodox cross marker. He estimated the man to have been dead for thirty years (1930:139, 1943:235). In one of the descriptions of the incident, he said, "But just as the parts were all gathered, I saw below (the grave was on a slope) an old woman who appeared to be provoked at something and was talking to herself rather loudly. On sending the Indian who accompanied me down to see what the trouble was, I learned that the old woman claimed the bones to be those of her long departed husband . . ." (1930:139). Hrdlicka then put the skeleton back and "covered as well as possible" (1943:235) which he said was "to the complete satisfaction of the old dame . . ." (1930:139). Hrdlicka obviously did not always have the permission he claimed to have.

And indeed, Hrdlicka himself published accounts of secretly stealing and concealing skeletons from interior Alaska villages. (1930b:55). He also speaks of some remains he excavated and upon opening the coffins found them to be "too fresh yet" (1930:76)

and of other cases where he did take remains that still had "soft parts". (1930b:58).

So what was Ales Hrdlicka? . . . scientist? grave robber? . . . racist? There is evidence in his writings to suggest that he had a concern for preserving the purity of the white race. In 1919, he wrote, "The paramount scientific object of Physical Anthropology is the gradual completion, in collaboration with the anatomist, the physiologist, and the chemist, of the study of the normal white man living under ordinary conditions," (1919:22). He stated further, "Associated with racial studies, but of more direct and serious concern to many nations, particularly the American, are investigations into the physical, physiological, and intellectual effects of racial mixtures on progeny. Mixture of colored races with the white are largely controllable by law and general enlightenment, and if found detrimental could be reduced to a minimum. In the United States we are confronted on the one side with the grave problem of mixture of white and negro, and on the other with that of white and Indian" (1919:24).

Further, but more subtle, evidence of Hrdlicka's attitude is found in his book, The Anthropology of Kodiak Island (1944), where he capitalizes the word "White" in white man but does not capitalize the word "Native". (P. 127, 136, 153). Also in his writings on his Alaska experiences, he praises white people,

crediting them by name, for assistance given, but does not mention many Natives by name. There is rare mention of the Native residents of the village of Larsen Bay even though he spent six summers digging there.

Hrdlicka names the site of the Larsen Bay excavations Jones Point in honor of Laura Jones, the wife of the local cannery superintendent who helped in the excavations (1932:99). In a rare mention of the local Native residents, he expressed concern for leaving some equipment behind over the winter as it would be at the "mercy of nearby mixbreeds" (1944:318). Other writings such as an article for Good Health Magazine titled, "A danger to the American people from assimilation of the colored population" (March 9, 1928) seem to confirm his belief in white superiority.

The Smithsonian has agreed to return the remains of Native American individuals to tribes if they could be identified by name or if they were taken illicitly (Adams, 1987, Lowen, 1988, Robbins, 1988). As the customs of prehistoric Koniag differed from those of western societies, there are no gravestones or burial records identifying by name those who died so long ago. Just the same, the Koniag people of today know that these are the remains of their ancestors and do not need specific names attached to them to know they must be treated with respect. To the pre-contact Koniag, death did not represent an end of interpersonal relationships as the dead were kept close by in the sealed

off siderooms of their semi-subteranean houses, called barabaras (Clark, 1984, from Merck, 1980:108).

The Smithsonian maintains that Hrdlicka had permission to remove the skeletons from Larsen Bay and that local Natives actually assisted him in the excavations (letters from A. Kaepler, Smithsonian, to Larsen Bay Tribal Council, Sept. 25, 1987 and Feb. 16, 1988). The people of Larsen Bay vigorously dispute this (letters from Larsen Bay Tribal Council President, Frank Carlson, to A. Kaepler, October 27, 1987, and April 15, 1988). Dora Aga, the matriarch of Larsen Bay, remembers Hrdlicka well. In response to the Smithsonian's claim that local Natives assisted Hrdlicka, she exclaimed, "No way! He wouldn't let nobody get near that place!" (personal interview July 18, 1989). The Smithsonian also claims that no one objected to his work at Larsen Bay (Kaepler letter, Feb. 16, 1988). This claim also infuriates Dora Aga, who said several people, including herself, objected. "I called him every name in the book," she said, "Him and I were no friends at all" (personal interview July 18, 1989).

When considering whether or not permission was given to Hrdlicka to remove skeletons from Larsen Bay, it must be asked who in the village had authority to give such permission. According to Dora Aga, there was no one with such authority. Who could have the authority to give away the remains of his or her ancestors? It must also be realized that the intimidation factor

of a group of white men from Washington, D.C. coming into a remote 1930's Alaska Native village must have been tremendous. "We were green in them days," said Dora Aga, "we didn't know anything about laws" (personal interview July 18, 1989).

Due to the stance the Smithsonian has taken on the issue of repatriation of human remains to Native groups, there may be just two options available to the Natives of Larsen Bay and Kodiak Island. One is to hope for a legislative cure. Thus far such legislation has been unsuccessful. There is, however, legislation pending in Congress that would provide some remedy. These bills are H.R. 1646, the "Native American Grave and Burial Protection Act"; H.R. 1381, the "Native American Burial Preservation Act of 1989" and H.R. 1124, the "Indian Remains Reburial Act".

Another possibility is legal action, challenging the Smithsonian's legal right to hold the remains. Steps are currently being taken by Larsen Bay Tribal Council to pursue this legal avenue with the assistance of the Native American Rights Fund, a national Native American legal advocacy organization.

The struggle of Kodiak Island's Native people to have the remains of their ancestors returned for reburial is of even greater significance than the need to respect the dead. The Native population of Alaska is undergoing an epidemic of self-destruction, including alcohol and drug abuse, family violence and suicide (AFN, 1989) and Kodiak Island is no exception. One

of a group of white men from Washington, D.C. coming into a remote 1930's Alaska Native village must have been tremendous. "We were green in them days," said Dora Aga, "we didn't know anything about laws" (personal interview July 18, 1989).

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of the fundamental causes for this epidemic is the disintegration of traditional cultures and the resulting loss of self-esteem (G. Fullar, testimony, U.S. Senate Select Committee on Indian Affairs, March 3, 1989). If young Native individuals are led to believe that it is acceptable and proper for the government of the United States to "own" the bodies of their grandfathers, grandmothers and other ancestors, then how can they possibly believe that they are equal to all others in this country?

Frank Carlson, the president of the Larsen Bay Tribal Council, in his plea to the Smithsonian for the return of the ancestral remains, wrote, "These studies have been going on for over fifty years and we believe it is time to return the skeletal remains to Larsen Bay. We believe you would not invade non-Native grave sites in this manner. Are they not worth study? (letter to A. Kaepler, Smithsonian, April 15, 1988).

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UNIVERSITY OF ALASKA FAIRBANKSDepartment of Anthropology

Fairbanks, Alaska 99775

February 7, 1990

Representative Cliff Davidson
Alaska House of Representatives
Room 108 Capital
P.O. Box V
Juneau, Alaska 99811

Dear Representative Davidson,

I am writing you with reference to House Bill 436. This proposed Bill offers a fine opportunity to engage the citizens of this state in a dialogue about the protection, preservation, and understanding of the historical and archaeological resources of the state. As one who has committed 20 years of my own professional career to Native culture heritage issues, I welcome the opportunity this bill presents.

Nevertheless, the bill, as it is currently worded, seems to raise serious management issues and does not seem to be entirely in the best interest of the Native community, nor in the best interest of many institutions and individuals who are struggling to preserve, protect and understand the culture heritage of this state.

Without going into any details, I would like to relate briefly to you my experience on Kodiak which extends back nearly a decade and has resulted in a fine partnership with KANA, as well as with many Native people residing in Kodiak's villages. I began serious archaeological investigation of the Native history in 1983. From its inception this research project was conceived as a working partnership with Native residents of the island. To the best of my knowledge, this relationship has been very successful and been of benefit to all parties concerned.

With respect to human skeletal material, an agreement was reached early in the project's history with both KANA and people in the relevant villages. Although the goal of our research was never targeted toward the recovery of human skeletal material, we did stumble across human remains in the course of excavating village sites. The solution reached was simple. We were allowed to excavate human remains with care and respect; we were allowed to study the remains in a non-destructive fashion; and we reburied the remains according to the wishes of the local residents. I believe that this case history demonstrates that satisfactory middle ground can be easily reached for the benefit of all concerned parties.

I suggest that this bill needs some rewording. I believe that this can best be done by delaying the legislative hearings so that all concerned parties can provide thoughtful input. In addition, I suggest that a "blue ribbon" commission be established to provide the legislature with the wisest possible counsel.

Sincerely,

Richard H. Jordan
Chair and Professor of Anthropology

The Chugach

The Official Publication of Chugach Alaska Cor

Vol. 16 No. 5



Chugach Man; symbolic of effect oil spill is having on the people

He had no cavities, not unusual for a person between 35 and 40 years old living in the area over 200 years ago. He stood five feet three inches. He had no contact with the Russians, British, Spanish or Americans who later came looking for riches - sea otter and seal pelts, salmon, herring and later gold. When he died, the people of his village honored him by placing his remains in a cave high above

the waters of Knight Island. He was a Chugach man and he rested in peace, undisturbed by the turbulences of the last two hundred years - until the oil spill.

As the oil from the *Exxon Valdez* spread throughout Prince William Sound, so did thousands of cleanup workers. The workers did more than attempt to clean the beaches. They went upland, often onto Chugach and village corporation lands. Historical sites long protected by the fact that their locations were unrecorded by federal or state agencies were now being "discovered."

By the middle of June scores of VECO, Norcon and Exxon workers were tres-

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Chugach Man

(continued from page 1)

passing on ancient burial sites, including the one on Knight Island.

The workers did much more than trespass. As a result of their invasion, this sacred burial cave and village was desecrated by workers trampling over this fragile pre-historic environment.



Ilene Totemoff attends the reburial service.

"We believe Exxon was negligent for not surveying, monitoring and protecting this paramount historical site. The remains of this man were torn away from its resting place - bagged and tagged for observation in Anchorage," said CAC Chairman Edgar Blatchford.

The Chugach man was not the only one buried in the cave. But he was the only one carted away.

Reports of findings of skeletal remains circulated among workers and at the request of Exxon's lead archaeologist, Alaska state troopers responded. They arrived on the scene on June 24 and removed the remains to the crime lab in



A small craft takes shareholders to the burial site.

Anchorage. Ten days later, by accident, the Chugach oil spill response team learned of the "rediscovery."

No-one in Chugach or the village corporations of Tatitlek and Chenega were notified. They should have been. Exxon was aware of CAC's policy on human remains, which states that: "Upon discovery of any human remains CAC is to be notified immediately and the remains are not to be disturbed unless directed by CAC".

Chugach responded in anger. Chugach could not - would not wait any longer for the slow wheels of a blundering bureaucracy to give its blessing to return the remains and to grant permission for a re-burial back at the place of its origin.

Chugach demanded that the remains be turned over immediately to the corporation, and thus they were.

Two months after oil spill workers violated his resting place, the Chugach man was finally returned to the burial site.

On August 14 a delegation from around the region, including Henry Makarka, Richard Stevens, Charles Selanoff, Sr., Peter Selanoff, Mike Eleshansky, Ilene Totemoff, Chris Borodkin, Edgar Blatchford, Gilbert Ollestad, Derenty Tabios, John Johnson, The Very Reverend Archpriest Nicholas Harris, Father Mark Luke, Lora Johnson and Jim Talerrico, accompanied the remains and quietly honored the Chugach man by burying him with the church's blessing. No outsiders were invited - not the media, not Exxon. However, since the burial was on national forest lands, a Forest Service observer was present.

Under federal law, historical sites are protected. But by the time the oil company learned the law, the Chugach man was disturbed - for the first time in two cen-

turies. May he now, once again, rest in peace for ages and ages.



Charles Selanoff, Sr. on Knight Island.

Father Harris gave this eulogy prior to reintering the Chugach Man.

"Before we re-inter this man back into the earth and bless this coffin and place we must realize that God brought us to this place in the natural beauty of this island. In praying for him, we are asking God to bless all of those who have departed this life.

The people of this area were blessed by God to live the Orthodox life. Thus it is appropriate today to celebrate this service. When news came to us that this persons relics were disturbed we had to do something about it, CAC and its staff saw to it that an appropriate burial would be made.

This man we are to bury is a representative of all the people of this area, people who lived here for thousands of years. It was God's will that they live a most beautiful life then and it is His will that they live a most beautiful life now.

This wonderful place has been disturbed by that great oil spill that has affected all of our lives. We hope and pray that as time goes on that everything that has been disturbed will be restored and that this person who has been reinterred here will be a symbol of this. Although his grave has been disturbed now, he will now be placed back with DIGNITY, with HONOR and with RESPECT.

By honoring him, we honor everything which God has created. We must have respect for every living person, every living creature and every blade of grass that we walk on, because God reveals Himself in nature and in man, He is the God of the universe." ☩

Oil Company Cancels Exhibit of Native Artifacts

by: Marilee Enge, Daily News reporter
Anchorage Daily News
Friday, August 18, 1989

An exhibit of aboriginal Native artifacts plucked from the oiled beaches of Prince William Sound and Kodiak Island was canceled by Exxon Corp. when Native leaders complained they were excluded from preparations for the show.

The quarrel came as Natives in the Sound were preparing to rebury ancestral remains removed by oil spill workers and points up conflicts between the massive cleanup of the nation's largest oil spill and the people who live on the oiled shores.

The exhibit of work by state and Exxon archaeologists during the cleanup of the March 24 oil spill was scheduled to go on display Monday at the Exxon headquarters in Valdez. It was canceled when Chugach Native Association leaders protested.

"Our concern is that we don't want those sites disturbed," said Edgar Blatchford, chairman of the organization.

"The only protection that Prince William Sound offered the ancestors of the Chugach people was that nobody knew about them. Now we have thousands of people out there. We have scientists, archaeologists, construction engineers and the media. We've opened a very private family vault and exposed everything to the world."

The display of about 30 stone tools and other objects from Kodiak and the Sound was organized quickly late last week. Exxon's chief archaeologist, Charles Mobley, said he began planning an educational exhibit on the company's cultural resources program last Thurs-

day. On Friday, someone suggested that the display be held Monday when a group of Exxon executives would be visiting.

"We tried to put it together in a short period of time," Mobley said. "It obviously wasn't enough time for the Native community to get behind it."

Officials with the Native association and village leaders from the Prince William Sound area learned about the display on Saturday. Village leaders from Eyak, Tatitlek and Chenega Bay were "very incensed" that Exxon had proceeded without consulting them, according to Blatchford.

"We've really had problems with vandalism for the past 10 years," said John Johnson, cultural resources manager for the Native association. "People are constantly dragging these artifacts out and putting them on their mantels."

"We try to keep specific sites confidential. We're into public information but not a big blitz. They just sprung this on us."

Mobley said he had no intention of publicizing specific sites and exposing them to looting or vandalism. The Natives did not understand that his program has been scrupulous in keeping such information secret, he said.

Besides displaying 30 or so objects gathered so far from the Sound and Kodiak, the exhibit would have explained how archaeologists gather information and how they try to prevent beach crews from damaging sites.

Mobley is quick to point out that collecting artifacts is only incidental to the other work by archaeologists and done as a last resort to protect the items from damage.

But when the Natives heard about Exxon's exhibit, they were already smarting from an earlier incident in which bones from an ancient burial site on Knight Island were removed.

Cleanup workers came upon the

bones June 22 and reported that they'd found fairly recent human remains in a cave far above the high tide mark, according to Mobley. An Alaska State Trooper stationed in Cordova went to the scene and collected the bones.

Exxon's contractors have been instructed to leave archaeological finds in place and inform Mobley's office of any discoveries. But a similar incident happened two weeks later on Kodiak where ancient skeletal remains were also removed.

The Knight Island bones were flown to the state crime laboratory in Anchorage where a physical archaeologist quickly determined that they were aboriginal, said lab director George Taft. The Chugach Native Association later took possession of the remains. On Tuesday, the villages

of the Sound held a religious reburial ceremony.

"Nobody likes their family graves unearthed and that is how we see it," said Blatchford.

"I think it was obvious the bones had been there for a few hundred years and there was no need to remove them. If

there was no body, only a few bones... it wouldn't have hurt to leave them for a few more days."

The archaeological exhibit has been postponed indefinitely. Blatchford said Chugach leaders might approve it later but he would not support a showing without full consent of the village elders.

"We didn't particularly care if it was a public showing open to one person or to everyone in Valdez," he said. "Among the elders of the Chugach region, there is a strong connection with the historic sites."

This is a family secret. It's valuable. It's important to us as a people to leave it for ourselves and for our future generations."

Editor's note: This article refers to Chugach Native Association. It should be Chugach Alaska Corporation.

"We've really had problems with vandalism... dragging these artifacts out and putting them on their mantels."



4th All Chugach Summit...

Facing a common enemy

It was reminiscent of land claims days. The Chugach People pulled together to face a common enemy - the desecraters of the Chugach region.

"We are family. This is our corporation. These are our people. That's why we have unity," Agnes Nichols told a hushed audience at a September meeting of the All-Chugach Summit Conference.

All of the village for-profit corporations were there. So were the village governments, The North Pacific Rim and Chugach Alaska.

The Chugach region was brought together by the Exxon Valdez oil spill, the biggest ever on the North American continent.

Nichols, the village chief of Eyak, was eloquent in her remarks. Though ailing, she moved gracefully on her two canes as she urged the delegates to work together

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- Seward Saumill

All-Chugach Summit

(continued from page 1)

and move forward together.

"I came because I felt I needed to be here. There's not many old timers left. We know everybody. We are family."

This All-Chugach Summit was the fourth conference since the March 24 grounding of the tanker on Bligh Reef. The summits were called by Edgar Blatchford, CAC chairman, in an effort to unite the region as the villages faced a multitude of state and federal agencies and the international media.

"We have to talk with each other and listen to the concerns and interests of our shareholders. Though we may have disagreements, that doesn't mean we can't have open communications. There are so many out there who want to divide us for their own selfish interests," the CAC chairman said.

At the fourth conference the delegates heard reports from the governor's office, the state oil spill coordinators office, and the state departments of Community and Regional Affairs, Fish and Game and Commerce and Economic Development. There were also speakers from the state historical preservation office and a consultant working on the Alyeska oil spill contingency plan.

It was a meeting to share information and reassure each other that the interests and concerns were mutually shared by the delegates.

"The Exxon/VECO efforts divided us. This is an opportune time to bring all of us together." Derenty Tablos, executive director of The North Pacific Rim said.

All of the communities of the region have been directly impacted by the oil spill. The subsistence lifestyle has been negatively affected as scores of villagers were unable to harvest herring roe, salmon, seal and other foods from the sea.

Hundreds of people were flying into the villages, putting pressure on community services from child care to hous-

ing, from police protection to sewage treatment.

"It's not over yet," said Blatchford. "There will be increased attention on Prince William Sound and the areas bordering Kenai Fjords National Park - Native corporations lands. Environmentalists will want to regulate or prevent Native business opportunities in fish, recreational development and timber harvesting. Every step of the way we will be watched. There's no turning back. The world has discovered the Chugach region."

On the first day of the spill CAC representatives were flying over the grounded tanker. Within days the regional corporation had opened an office in Valdez to work with Alyeska, Exxon, oil spill contractors, the state Department of Environmental Conservation, the U.S. Coast Guard, the federal Department of Transportation and numerous other agencies.

CAC was not geared up to handle an oil spill but as the oil spread from Bligh Reef, CAC moved to protect its interests.

Though primarily a fish, timber and development corporation, CAC had to immediately become an oil monitoring company forced to interface with hundreds of agency people.

Pressure from the village corporations and shareholders also necessitated Chugach Alaska taking a leadership role in protection of cultural resources and advocacy of shareholder-hire in the cleanup work. CAC also had to attempt to mitigate damages, so contract opportunities were seized such as camp catering and waste disposal.

All of this required open communications.

Exxon and VECO changed their plans almost daily, sometimes leaving Chugach in mid-stream such as the situation that developed over the proposed Chenega camp. VECO said put a camp in Chenega, then changed their minds.

In early May a call for a region-wide meeting went out. The first All-Chugach Summit was held in an attempt to keep everyone from being totally inundated with oil spill activities.


Chugach Alaska spent hundreds of thousands of dollars trying to protect Native interests. It wasn't until three months into the oil spill did Exxon approved the first reimbursements. The delay put severe financial strains on the corporation.

"We had a moral obligation to try to help as much as

we could.

But the only way we could succeed was if there was open communication. People just couldn't demand from Chugach, then go away without contributing anything to solving the problems. We had to work together. That's why these All-Chugach Summits were, and are, very important. If the affected parties don't participate, then you can't blame us for Native interests not succeeding," said Blatchford.

"We must never forget that the common enemy is not us. We're all shareholders. We should all want our corporation to succeed. Why would anyone want to cut off our nose to spite our face," Blatchford asked.

The September two-day conference ended on a high note with Dr. Nancy Yawes Davis, a noted anthropologist long familiar with the region, extolling the strengths of the Chugach People. She said there was "great strength" in the people who had overcome so many intrusions so many times before. "There's a wonderful resilience in the Chugach People." 

**"We are family.
This is our
corporation.
These are our
people. That's
why we have
unity,"**

**Agnes Nichols,
Eyak Village Chief
Sept. 11, 1989
All-Chugach Summit**

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

April 17, 1990

David R. Yesner, Ph.D.
Department of Anthropology
University of Alaska
3211 Providence Dr.
Anchorage, AK 99508

Dear Dr. Yesner:

Thank you very much for your thoughtful letter of April 9, regarding HB 436, and for the attached North Carolina statutes.

The bill has not been scheduled for an additional hearing at this time. However, I will make sure that your letter and the attachments are included in the committee members' bill packets.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter Goll".

Peter Goll

9 April 1990

To: Hon. Representative Peter Goll
Chair, House Judiciary Committee

From: David R. Yesner, Ph.D.
Chair, Committee of the Alaska Anthropological Association on
HB 436
Alaska Representative, Committee on Public Archaeology of the
Society for American Archaeology

Re: HB 436 (technical comments on the version of 4/4/90)

Thank you very much for the opportunity to elucidate more fully my comments made during verbal testimony before the House Judiciary Committee on HB 436. Let me reiterate the major thrust of these comments in written form:

(A) General issues

My interest in commenting on this legislation is to help achieve a compromise piece of legislation that is acceptable to all parties concerned, including both Native Alaskans and the scientific community. The scientific study of human remains has played a major role not only in achieving an understanding of the ways of life of earlier human communities, but has contributed substantively to establishing the validity of Native land claims, both here in Alaska and elsewhere, and was important in the process of determining traditional boundaries for regional Native corporations contained in ANCSA. The current (revised) version of HB 436, however, has lost the compromise wording that was forged in earlier versions of the bill. In fact, in its total inattention to any scientific issues, the proposed bill is probably the most extreme of any piece of state legislation on the issue anywhere in the US. Two issues are paramount to members of the scientific community: (1) that some attempt be made to allow specifically for a given length of time for scientific study of human remains, particularly as a part of research projects (e.g., university excavation projects granted permits by OHA/DNR); and (2) that some timeline be developed to specify how far back in time the provisions of the bill will apply. Each of these issues - and others - will be discussed in more detail below.

(B) Specific comments on provisions of HB 436

(1) Sec. 41.35.090 (p. 4, lines 17-21). These changes appear to be largely acceptable. However, there appears to be no provision as to what the private landowner is required to do after the remains are noted and reported. It should also be noted that the US Supreme Court has recently considered eminent domain cases regarding burials, and has determined that the costs of recovery

cannot be unfairly placed on a single landowner, but must to some degree be shared with other citizens through compensation. How will this be accommodated? Also, to be non-discriminatory, compensation may have to be offered for the effects of the recovery of all human remains (not just Native) undertaken by the state.

(2) Sec. 41.35.230 Definitions (p. 5). There are three problems here. One is in the definition of "Native" (lines 24-27). Specifically, an "ancestor" is not defined. The major question in defining a Native ancestor is, how far back in time can such a judgment reasonably be made? Before the last 1,000 years or so, we have no reasonable means of absolute determination of cultural affiliation. This is certainly true for very old sites - e.g., of ages in excess of 8,000 years, where we can only say that the people were probably Asian-derived, but can't be linked to any modern Native Alaskan group. In fact, such early migrants to Alaska may not have left any descendants at all. Within historic times, we can be reasonably certain of cultural affiliation, but the further back in time one goes, the more impossible such a determination becomes. Therefore, I would suggest that at maximum, the provisions of this bill only apply to human remains dating to within the last 1,000 years. This, I believe, would represent a compromise that most professionals and most Natives could live with.

Second, there are still some problems in defining "tribe" (p. 6, lines 3-6) as involving a Native village or regional corporation. What would happen, for example, in a situation in which human remains were found at a location near the boundary of two regional corporations, where the nearest village corporation was within a different regional corporation from the one in which the remains were found? Conflicts would fairly obviously be generated on such a basis.

Third, the definition of "human remains" (p. 5, lines 20-23) as including "any part of a dead body" such as isolated bone fragments will lead to a great deal of problems. Would it be necessary to report every isolated human toe bone found in an archaeological site? In many situations, for example, where later occupants have dug into the remains of previous occupants, human bones may be almost randomly distributed within a site. It would appear best to restrict the definitions to "burials" involving "articulated human remains" (i.e., those still joined together as in life).

(3) Sec. 41.35.410 Human Remains and Funerary Objects. The above comments become particularly important when one considers subsection (c) (p. 6, lines 25-29; p. 7, lines 1-9) concerning identification and reporting of human remains. Does separate notice have to be given by certified mail, for example, for each bone fragment encountered? May human skeletal remains encountered as a part of a research project be reported at the conclusion of the project? These issues need to be addressed.

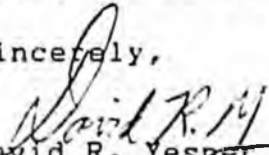
Subsection (d), lines 10-13): According to this subsection, DNR "shall provide for access to the remains...so that the descendant of the tribe may dispose of them." How is this actually to be accomplished? Specifically, what if research excavations are being undertaken by an academic institution from outside the state of Alaska? Does this mean that the materials cannot then be retrieved for cataloging and study by the institution granted a permit by DNR? Or does it mean that access will be provided to Alaska Native groups to an institution in any location, including outside Alaska? This again very much needs to be worked out.

Subsection (d), lines 15-21, and Subsection (e), lines 22-25: Subsection (e) needs to contain specific provision for a particular length of time for study of human remains, particularly by research projects undertaken by institutions under permit from DNR. No such provision is made in the current wording of this section. I would suggest language indicating that "A period of no less than one year from the time of excavation of the remains shall be allotted for scientific study of those remains, before any delivery of those remains to other individuals or institutions is required." The 120 days maximum allotted in subsection (d) before delivery of the remains to a Native group takes place is insufficient time for any serious scientific study. According to subsection (e), "A person may request a tribe or descendant to grant an opportunity to study human remains," but such scientific study needs to have the protection of law within a specific time frame such as suggested above.

(4) Sec. 41.35.420 Dispute Resolution Committee. Two important issues are involved here: (a) The envisioned committee should be empowered to decide on all questions of initial attribution of remains, not only when disputes occur over conflicting claims of Native groups. Thus, I would suggest a return to the original language of the bill, in which the committee was contemplated as having a much larger role. (b) A physical anthropologist is present on the committee, but not an archaeologist. In actuality, assignment of cultural group affiliation largely depends on artifactual and stratigraphic associations, which can only be determined through archaeological study. Thus, I would suggest the presence of an archaeologist, as well as a physical anthropologist, on the committee.

Thank you for the opportunity to present the above comments.

Sincerely,


David R. Yespet
Dept. of Anthropology
University of Alaska
3211 Providence Drive
Anchorage, AK 99508

*** Attached please find a copy of the North Carolina statute ***

§§ 70-21 to 70-25: Reserved for future codification purposes.

ARTICLE 3.

Unmarked Human Burial and Human Skeletal Remains Protection Act.

§ 70-26. Short title.

This Article shall be known as "The Unmarked Human Burial and Human Skeletal Remains Protection Act." (1981, c. 853, s. 2.)

Editor's Note. — Session Laws 1981, c. 853, s. 6, makes the act effective Oct. 1, 1981.

§ 70-27. Findings and purpose.

(a) The General Assembly finds that:

- (1) Unmarked human burials and human skeletal remains are subject to vandalism and inadvertent destruction at an ever-increasing rate;
- (2) Existing State laws do not provide adequate protection to prevent damage to and destruction of these remains;
- (3) There is a great deal of scientific information to be gained from the proper excavation, study and analysis of human skeletal remains recovered from such burials; and
- (4) There has been no procedure for descendants or other interested individuals to make known their concerns regarding disposition of these remains.

(b) The purpose of this Article is (i) to provide adequate protection from vandalism for unmarked human burials and human skeletal remains, (ii) to provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the medical examiner pursuant to G.S. 130-198 that are encountered during archaeological excavation, construction, or other ground disturbing activities, found anywhere within the State except on federal land, and (iii) to provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials if the analysis would result in valuable scientific information. (1981, c. 853, s. 2.)

§ 70-28. Definitions.

As used in this Article:

- (1) "Chief Archaeologist" means the Chief Archaeologist, Archaeology Branch, Archaeology and Historic Preservation Section, Division of Archives and History, Department of Cultural Resources.
- (2) "Executive Director" means the Executive Director of the North Carolina Commission of Indian Affairs.
- (3) "Human skeletal remains" or "remains" means any part of the body of a deceased human being in any stage of decomposition.
- (4) "Professional archaeologist" means a person having (i) a postgraduate degree in archaeology, anthropology, history, or another related field with a specialization in archaeology, (ii) a minimum of one year's experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains, and (iii) designed and executed an archaeological study and presented the written results and interpretations of such study.

- (5) "Skeletal analyst" means any person having (i) a postgraduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology or other relevant aspects of physical anthropology or medicine, (ii) a minimum of one year's experience in conducting laboratory reconstruction and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological affinity, and (iii) designed and executed a skeletal analysis, and presented the written results and interpretations of such analysis.
- (6) "Unmarked human burial" means any interment of human skeletal remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased. (1981, c. 953, s. 2.)

§ 70-29. Discovery of remains and notification of authorities.

(a) Any person knowing or having reasonable grounds to believe that unmarked human burials or human skeletal remains are being disturbed, destroyed, defaced, mutilated, removed, or exposed, shall notify immediately the medical examiner of the county in which the remains are encountered.

(b) If the unmarked human burials or human skeletal remains are encountered as a result of construction or agricultural activities, disturbance of the remains shall cease immediately and shall not resume without authorization from either the county medical examiner or the Chief Archaeologist, under the provisions of G.S. 70-30(c) or 70-30(d).

(c) (1) If the unmarked human burials or human skeletal remains are encountered by a professional archaeologist, as a result of survey or test excavations, the remains may be excavated and other activities may resume after notification, by telephone or registered letter, is provided to the Chief Archaeologist. The treatment, analysis and disposition of the remains shall come under the provisions of G.S. 70-34 and 70-35.

(2) If a professional archaeologist directing long-term (research designed to continue for one or more field seasons of four or more weeks' duration) systematic archaeological research sponsored by any accredited college or university in North Carolina, as a part of his research, recovers Native American skeletal remains, he may be exempted from the provisions of G.S. 70-30, 70-31, 70-32, 70-33, 70-34 and 70-35(c) of this Article so long as he:

- a. Notifies the Executive Director within five working days of the initial discovery of Native American skeletal remains;
- b. Reports to the Executive Director, at agreed upon intervals, the status of the project;
- c. Curates the skeletal remains prior to ultimate disposition, and
- d. Conducts no destructive skeletal analysis without the express permission of the Executive Director.

Upon completion of the project fieldwork, the professional archaeologist, in consultation with the skeletal analyst and the Executive Director, shall determine the schedule for the completion of the skeletal analysis. In the event of a disagreement, the time for completion of the skeletal analysis shall not exceed four years. The Executive Director have authority concerning the ultimate disposition of the Native American skeletal remains after analysis is completed in accordance with G.S. 70-35(a) and 70-36(b) and (c).

(d) The Chief Archaeologist shall notify the Chief, Medical Examiner Section, Division of Health Services, Department of Human Resources, of any reported human skeletal remains discovered by a professional archaeologist. (1981, c. 853, s. 2.)

§ 70-30. Jurisdiction over remains.

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the medical examiner of the county in which the remains were encountered shall determine as soon as possible whether the remains are subject to the provisions of G.S. 130-198.

(b) If the county medical examiner determines that the remains are subject to the provisions of G.S. 130-198, he will immediately proceed with his investigation.

(c) If the county medical examiner determines that the remains are not subject to the provisions of G.S. 130-198, he shall so notify the Chief Medical Examiner. The Chief Medical Examiner shall notify the Chief Archaeologist of the discovery of the human skeletal remains and the findings of the county medical examiner. The Chief Archaeologist shall immediately take charge of the remains.

(d) Subsequent to taking charge of the human skeletal remains, the Chief Archaeologist shall have 48 hours to make arrangements with the landowner for the protection or removal of the unmarked human burial or human skeletal remains. The Chief Archaeologist shall have no authority over the remains at the end of the 48-hour period and may not prohibit the resumption of the construction or agricultural activities without the permission of the landowner. (1981, c. 853, s. 2.)

§ 70-31. Archaeological investigation of human skeletal remains.

(a) If an agreement is reached with the landowner for the excavation of the human skeletal remains, the Chief Archaeologist shall either designate a member of his staff or authorize another professional archaeologist to excavate or supervise the excavation.

(b) The professional archaeologist excavating human skeletal remains shall report to the Chief Archaeologist, either in writing or by telephone, his opinion on the cultural and biological characteristics of the remains. This report shall be transmitted as soon as possible after the commencement of excavation, but no later than two full business days after the removal of a burial.

(c) The Chief Archaeologist in consultation with the professional archaeologist excavating the remains, shall determine where the remains shall be held subsequent to excavation, pending other arrangements according to G.S. 70-32 or 70-33.

(d) The Department of Cultural Resources may obtain administrative inspection warrants pursuant to the provisions of Chapter 15, Article 4A of the General Statutes to enforce the provisions of this Article, provided that prior to the requesting of the administrative warrant, the Department shall contact the affected landowners and request their consent for access to their land for the purpose of gathering such information. If consent is not granted, the Department shall give reasonable notice of the time, place and before whom the administrative warrant will be requested so that the owner or owners may have an opportunity to be heard. (1981, c. 853, s. 2.)

§ 70-32. Consultation with the Native American Community.

(a) If the professional archaeologist determines that the human skeletal remains are Native American, the Chief Archaeologist shall immediately notify the Executive Director of the North Carolina Commission of Indian Affairs. The Executive Director shall notify and consult with the Eastern Band of Cherokee or other appropriate tribal group or community.

(b) Within four weeks of the notification, the Executive Director shall communicate in writing to the Chief Archaeologist, the concerns of the Commission of Indian Affairs and an appropriate tribal group or community with regard to the treatment and ultimate disposition of the Native American skeletal remains.

(c) Within 90 days of receipt of the concerns of the Commission of Indian Affairs, the Chief Archaeologist and the Executive Director, with the approval of the principal tribal official of an appropriate tribe, shall prepare a written agreement concerning the treatment and ultimate disposition of the Native American skeletal remains. The written agreement shall include the following:

- (1) Designation of a qualified skeletal analyst to work on the skeletal remains;
- (2) The type of analysis and the specific period of time to be provided for analysis of the skeletal remains;
- (3) The timetable for written progress reports and the final report concerning the skeletal analysis to be provided to the Chief Archaeologist and the Executive Director by the skeletal analyst; and
- (4) A plan for the ultimate disposition of the Native American remains subsequent to the completion of adequate skeletal analysis.

If no agreement is reached within 90 days, the Archaeological Advisory Committee shall determine the terms of the agreement. (1981, c. 853, s. 2.)

§ 70-33. Consultation with other individuals.

(a) If the professional archaeologist determines that the human skeletal remains are other than Native American, the Chief Archaeologist shall publish notice that excavation of the remains has occurred, at least once per week for four successive weeks in a newspaper of general circulation in the county where the burials or skeletal remains were situated, in an effort to determine the identity or next of kin or both of the deceased.

(b) If the next of kin are located, within 90 days the Chief Archaeologist in consultation with the next of kin shall prepare a written agreement concerning the treatment and ultimate disposition of the skeletal remains. The written agreement shall include:

- (1) Designation of a qualified skeletal analyst to work on the skeletal remains;
- (2) The type of analysis and the specific period of time to be provided for analysis of the skeletal remains;
- (3) The timetable for written progress reports and the final report concerning the skeletal analysis to be provided to the Chief Archaeologist and the next of kin by the skeletal analyst; and
- (4) A plan for the ultimate disposition of the skeletal remains subsequent to the completion of adequate skeletal analysis.

If no agreement is reached, the remains shall be handled according to the wishes of the next of kin. (1981, c. 853, s. 2.)

§ 70-34. Skeletal analysis.

(a) Skeletal analysis conducted under the provisions of this Article shall only be accomplished by persons having those qualifications expressed in G.S. 70-28(7).

(b) Prior to the execution of the written agreements outlined in G.S. 70-32(c) and 70-33(b), the Chief Archaeologist shall consult with both the professional archaeologist and the skeletal analyst investigating the remains.

(c) The professional archaeologist and the skeletal analyst shall submit a proposal to the Chief Archaeologist within the 90-day period set forth in G.S. 70-32(c) and 70-33(b), including:

- (1) Methodology and techniques to be utilized;
- (2) Research objectives;
- (3) Proposed time schedule for completion of the analysis; and
- (4) Proposed time intervals for written progress reports and the final report to be submitted.

(d) If the terms of the written agreement are not substantially met, the Executive Director or the next of kin, after consultation with the Chief Archaeologist, may take possession of the skeletal remains. In such case, the Chief Archaeologist may ensure that appropriate skeletal analysis is conducted by another qualified skeletal analyst prior to ultimate disposition of the skeletal remains. (1981, c. 853, s. 2.)

§ 70-35. Disposition of human skeletal remains.

(a) If the skeletal remains are Native American, the Executive Director, after consultation with an appropriate tribal group or community, shall determine the ultimate disposition of the remains after the analysis.

(b) If the skeletal remains are other than Native American and the next of kin have been identified, the next of kin shall have authority concerning the ultimate disposition of the remains after the analysis.

(c) If the Chief Archaeologist has received no information or communication concerning the identity or next of kin of the deceased, the skeletal remains shall be transferred to the Chief Archaeologist and permanently curated according to standard museum procedures after adequate skeletal analysis. (1981, c. 853, s. 2.)

§ 70-36. Financial responsibility.

(a) The provisions of this Article shall not require that the owner of the land on which the unmarked human burials or human skeletal remains are found, bear the cost of excavation, removal, analysis or disposition.

(b) If a determination is made by the Executive Director, in consultation with an appropriate tribal group or community, that Native American skeletal remains shall be reinterred following the completion of skeletal analysis, an appropriate tribal group or community may provide a suitable burial location. If it elects not to do so, it shall be the responsibility of the North Carolina Commission of Indian Affairs to provide a suitable burial location.

(c) The expense of transportation of Native American remains to the reburial location shall be borne by the party conducting the excavation and removal of the skeletal remains. The reburial ceremony may be provided by an appropriate tribal group or community. If it elects not to do so, the reburial ceremony shall be the responsibility of the Commission of Indian Affairs. (1981, c. 853, s. 2.)

§ 70-37. Prohibited acts.

(a) No person, unless acting under the provisions of G.S. 130-198 through G.S. 130-201, shall:

- (1) Knowingly acquire any human skeletal remains removed from unmarked burials in North Carolina after October 1, 1981, except in accordance with the provisions of this Article;
- (2) Knowingly exhibit or sell any human skeletal remains acquired from unmarked burials in North Carolina; or
- (3) Knowingly retain human skeletal remains acquired from unmarked burials in North Carolina after October 1, 1981, for scientific analysis beyond a period of time provided for such analysis pursuant to the provisions of G.S. 70-32, 70-33 and 70-34, with the exception of those skeletal remains curated under the provisions of G.S. 70-35.

(b) Other provisions of criminal law concerning vandalism of unmarked human burials or human skeletal remains may be found in G.S. 14-149. (1981, c. 873, s. 2.)

§ 70-38. Rule-making making authority.

The North Carolina Historical Commission may promulgate rules and regulations to implement the provisions of this Article. (1981, c. 853, s. 2.)

§ 70-39. Exceptions.

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to the provisions of G.S. 70-37(a).

(b) Human skeletal remains determined to be within the jurisdiction of the medical examiner according to the provisions of G.S. 130-198 are not subject to the prohibitions contained in this Article. (1981, c. 853, s. 2.)

§ 70-40. Penalties.

(a) Violation of the provisions of G.S. 70-29 is a misdemeanor.

(b) Violation of the provisions of G.S. 70-37(a) is a Class II felony. (1981, c. 853, s. 2.)

Applied in *State v. Schultz*, 291 N.C. 381,
240 S.E.2d 451 (1978).

Cited in *Mills v. Carolina Cem. Park Corp.*,
242 N.C. 20, 85 S.E.2d 893 (1955).

§ 14-149. Desecrating, plowing over or covering up graves.

(a) It is a Class I felony, without authorization of law or the consent of the surviving spouse or next of kin of the deceased, to knowingly and willfully:

- (1) Open, disturb, destroy, remove, vandalize or desecrate any casket, human remains or any portion thereof or the repository of any such remains, by any means including plowing under, tearing up, covering over or otherwise obliterating or removing any grave;
- (2) Take away, vandalize or destroy any stone, brick, iron or other material or fence enclosing a cemetery, causing damage of more than one thousand dollars (\$1,000); or
- (3) Take away, vandalize, destroy or deface any tombstone, headstone, monument, grave marker, grave ornamentation, grave artifacts, shrubbery, flowers, plants or other articles within any cemetery erected or placed to designate the place where any dead body is interred or to preserve and perpetuate the memory and the name of any person, causing damage of more than one thousand dollars (\$1,000).

(b) The provisions of this section shall not apply to a professional archaeologist as defined in G.S. 70-28(4) acting pursuant to the provisions of Article 3 of Chapter 70 of the General Statutes. (1889, c. 130; Rev., s. 3681; 1919, c. 218; C. S., s. 4321; 1981, c. 752, s. 2; c. 853, s. 5.)

Cross References. -- For statute providing the maximum punishment for felonies, see § 14-1.1.

Effect of Amendments. -- The first 1981 amendment, effective Oct. 1, 1981, rewrote this section.

The second 1981 amendment, effective Oct. 1, 1981, designated the provisions of this section as rewritten by the first 1981 amendment as subsection (a) and added subsection (b).

CASE NOTES

Editor's Note. -- The cases cited in the following section were decided under former § 14-150 which, prior to its repeal and prior to the 1981 amendment to this section, governed the felony of disturbing graves.

Intent. -- The intent to open a grave and remove the dead body is sufficient criminal intent, and proof of the intent to disturb the grave is conclusive. *State v. McLean*, 121 N.C. 589, 28 S.E. 140 (1897).

Persons Liable. -- The mayor or other town

officers counseling their subordinates to remove bodies are liable under this section although they were honestly mistaken as to the scope of their official power. *State v. McLean*, 121 N.C. 589, 28 S.E. 140 (1897).

When Lot Is Not Paid For. -- The fact that the lot has not been paid for will not excuse the disturbance of a body only for the purpose of moving it to a pauper section. *State v. McLean*, 121 N.C. 589, 28 S.E. 140 (1897).

§§ 14-150, 14-150.1: Repealed by Session Laws 1981, c. 752, s. 3, effective October 1, 1981.

Cross References. -- As to defacing or desecrating, plowing over or covering up graves, see § 14-149. As to

SECTIONAL ANALYSIS
by Staff to Representative Davidson

3/22/90
version

SECTION 1: Adds a new section to the Coroner's Inquest, (AS 12.65) that deals with the discovery of human remains. There is currently no directive to the public as to what procedure to follow when human remains are discovered. This section mandates that the remains are not disturbed and their presence reported. If the remains are found to be unrelated to a prosecutable offense, the Department of Natural Resources is notified. A person who fails to follow this procedure is guilty of a Class A misdemeanor.

The bill makes it illegal to sell, buy or barter human remains. Also, human remains may not be displayed unless it is in connection with a funeral or burial or as required for medical or law enforcement activities. A violator of this section is guilty of a Class A misdemeanor.

SECTION 2-10: Amends or adds to the Alaska Historical Preservation Act, AS 41.35.

SECTION 2- 5: Brings the Alaska Historical Preservation Act in compliance with the new additions in Sections 9 and 10.

SECTION 6: Brings the DNR's historical resource permitting process in compliance with the new language dealing with human remains and funerary objects.

SECTION 7: Requires notice to be given to DNR by those who have an historical site or state monument on their property before any construction, alteration or improvement is undertaken. The section is amended to include contacting the identifiable tribe of origin when human remains are involved.

SECTION 8: Definitions.

SECTION 9: NEW SECTION. Adds to the Alaska Historical Preservation Act the procedure to follow when human remains and funerary objects are discovered.

AS 41.35.400 is a policy statement that no person can have title to human remains, only the right to disposition. The

right to disposition lies with the state unless the decedents living relatives or tribe are reasonably identifiable.

AS 41.35.410 outlines the procedure to follow upon the discovery of human remains that are not related to law enforcement activities. If the human remains are not disinterred, the department shall leave them in place where they are interred. If the remains have been disinterred, the department shall contact the decedent's living descendants with the closest kinship or the tribe of origin. When the kinship is not known, the closest tribe in the proximity of the discovery shall be notified.

After contact and upon request, the remains or funerary objects shall be returned by DNR so the descendants or tribe may dispose of them. If there is no response within 120 days, DNR shall treat the human remains as they treat other unclaimed human remains or historic resources, as applicable.

A tribe may enter into a contract with a person for study of the human remains before disposal.

AS 41.35.420 creates a dispute committee appointed by the Governor to resolve disputes concerning the tribe of origin.

SECTION 10: NEW SECTION. This section defines the procedure to follow for those remains currently being held. It mandates those in possession of human remains to contact DNR within 120 days. The department shall then prepare an abstract containing indexed information related to the reports received. After compilation, the department shall send the abstract to the governing body of each tribe in the state. The tribes may file a claim with the department to request return of remains listed on the abstract.

The dispute resolution committee shall address any duplicated claim. If there is not a claim filed within 120 days after receipt of the abstract, the department shall take possession or enter into an agreement with persons or institutions for protective custody of the remains.

HOUSE BILL 436
SECTIONAL ANALYSIS

SECTION 1: Adds new language, by request of the Department of Public Safety, to the chapter governing coroner's inquests, (AS 12.65). The new section deals with the discovery of human remains. There is currently no procedure in place for the public to follow when human remains are discovered.

AS 12.65.150 This section mandates that when a person encounters human remains, the remains are not disturbed and their presence reported. It does not apply to persons working under permits authorized by the Department of Natural Resources through the Alaska Historical Preservation Act. If the remains are found to be unrelated to a prosecutable offense and of Native decent, the Department of Natural Resources is notified. A person who fails to follow this procedure is guilty of a Class A misdemeanor.

RECOMMENDED CHANGE IN THE COMMITTEE SUBSTITUTE:

The reference to "Native" human remains is removed and historical or prehistoric human remains are referenced to be consistent with AS 41.35, the Alaska Historical Preservation Act. All human remains are then covered in this bill.

Sec. 12.65.160 This section makes it illegal to sell, buy or barter human remains. Also, human remains may not be displayed unless it is in connection with a funeral or burial or as required for

medical, educational or law enforcement activities. A violation of this section is a class A misdemeanor.

RECOMMENDED CHANGE IN THE COMMITTEE SUBSTITUTE:

Amend the section to allow for customary or personal practice display to honor a deceased relative and delete reference to "educational" display. It also makes it unlawful to charge anything of value to view displayed human remains.

SECTION 2-10: Amends or adds to the Alaska Historical Preservation Act, AS 41.35. Copies of this Act are in members' packets.

SECTION 2. 5: Brings the Alaska Historical Preservation Act into compliance with the new additions in Sections 9 and 10 which refer to the treatment of human remains and directly associated funerary objects.

RECOMMENDED CHANGE IN THE COMMITTEE SUBSTITUTE:

None.

SECTION 6: Brings the permitting process in the Alaska Historic Preservation Act into compliance with the new language dealing with human remains and funerary objects.

RECOMMENDED CHANGE IN THE COMMITTEE SUBSTITUTE:

None.

SECTION 7: Requires notice to be given to DNR and tribal groups by those who have an historical site or state monument on their

property before any construction, alteration or improvement is undertaken.

RECOMMENDATIONS IN THE COMMITTEE SUBSTITUTE:

Add language to include all human remains, not just Native remains, for which a living descendant is known.

NEW SECTION ADDED IN COMMITTEE SUBSTITUTE:

SECTION 8: Makes it unlawful to sell funerary objects for which there is direct circumstantial evidence, expert opinion, or documentation that the items were directly associated with human remains.

SECTION 8 (RSC) - SECTION 9 (JUD): Definitio .

RECOMMENDATIONS IN THE COMMITTEE SUBSTITUTE:

(2) "funerary objects" is further defined to specify the funerary objects mentioned in the bill be directly associated with the human remains referenced in the bill.

SECTION 9 (RSC) - SECTION 10 (JUD):

Adds to the Alaska Historical Preservation Act the procedure to follow when human remains and funerary objects are discovered:

AS 41.35.400 is a policy statement that no person can have title to human remains, only the right to disposition. The right to disposition lies with the state unless the decedents living relatives or tribe are reasonably identifiable.

AS 41.35.410 outlines the procedure to follow upon the discovery of human remains that are not related to law enforcement activities. If the human remains are not disinterred, the

remains have been disinterred, the department shall, by certified mail, contact the decedent's relative with closest kinship or the tribe of origin. When the tribe of origin is not known, the closest tribe in the proximity of the discovery shall be notified.

After contact and upon request, the remains or funerary objects shall be returned by DNR to the descendants or tribe for disposal. If there is no response within 120 days, DNR shall treat the human remains as they treat other unclaimed historical human remains or historic, prehistoric, and archeological resources, as applicable. Also, a tribe may enter into a contract with a person for study of the human remains before disposal.

RECOMMENDED CHANGE IN COMMITTEE SUBSTITUTE:

(b) directs the department to decide whether the objects are actually funerary objects.

(c) the reference to leaving the remains interred if they are not disinterred is removed so as to not delay public construction when remains are found in isolated situations.

AS 41.35.420 creates a dispute committee appointed by the Governor to resolve disputes concerning the tribe of origin.

SECTION 10 (RSC) - SECTION 11 (JUD): NEW SECTION.

This section defines the procedure to follow for those remains currently being held. It mandates those in possession of human remains to contact DNR within 120 days after the effective date of this Act. The department shall then prepare an abstract containing

indexed information related to the reports received. After compilation, the department shall send the abstract to the governing body of each tribe in the state. The tribes may file a claim with the department to request return of remains listed on the abstract.

The dispute resolution committee shall address any duplicated claim. If there is not a claim filed within 120 days after receipt of the abstract, the department shall take possession or enter into an agreement with persons or institutions for protective custody of the remains.

RECOMMENDED CHANGE IN COMMITTEE SUBSTITUTE:

(a) The "120 days after the effective date of this Act" was removed and "The department shall publish notice of this requirement on three separate occasions in newspapers of general circulation in the state. The report required under this subsection is due 120 days after the day the department's third notice is published." is added.

(c) Language is added to ensure contact is made to the "descendant with the closest kinship ties", in addition to tribal groups.

DATE: 4-4-90

TIME SENT: 11:30am

DELIVER TO: Stephanie Love FAX TELEPHONE NO.: 465-2418

LOCATION: Rep. Cliff Davidson's Office

OFFICE TELEPHONE NUMBER: 465-2487

TOTAL NUMBER OF PAGES (INCLUDES COVER SHEET): 4

- 1) Advisory Council human remains policy
- 2) OHA draft Burial Policy

FROM: Judith E. Bittner
State Historic Preservation Officer

FAX TELEPHONE NUMBER: (907) 762-2535

LOCATION: Office of History and Archaeology
Division of Parks and Outdoor Recreation
Department of Natural Resources
Anchorage, Alaska

FOR PROBLEMS PLEASE CALL: 762-2622

NOTE:

Stephanie -

As requested I am enclosing you human remains policies. The Advisory Council Policy applies to most of the projects we review because most state projects have some ~~of~~ federal funding.

We are currently working on a Burial Policy for our office. The draft OHA Burial Policy is under review and I expect it to be refined.

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Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

POLICY STATEMENT REGARDING TREATMENT OF HUMAN REMAINS AND GRAVE GOODS

Adopted by the Advisory Council on Historic Preservation

September 27, 1988

Gallup, New Mexico

When human remains or grave goods are likely to be exhumed in connection with an undertaking subject to review under Section 106 of the National Historic Preservation Act, the consulting parties under the Council's regulations should agree upon arrangements for their disposition that, to the extent allowed by law, adhere to the following principles:

- o Human remains and grave goods should not be disinterred unless required in advance of some kind of disturbance, such as construction;
- o Disinterment when necessary should be done carefully, respectfully, and completely, in accordance with proper archeological methods;
- o In general, human remains and grave goods should be reburied, in consultation with the descendants of the dead.
- o Prior to reburial, scientific studies should be performed as necessary to address justified research topics;
- o Scientific studies and reburial should occur according to a definite, agreed-upon schedule; and
- o Where scientific study is offensive to the descendants of the dead, and the need for such study does not outweigh the need to respect the concerns of such descendants, reburial should occur without prior study. Conversely, where the scientific research value of human remains or grave goods outweighs any objections that descendants may have to their study, they should not be reburied, but should be retained in perpetuity for study.

BURIAL POLICY
OFFICE OF HISTORY AND ARCHAEOLOGY

All interred and disinterred human remains on state land, regardless of age or ethnic origin should be treated with respect and dignity. To that end, the Office of History and Archaeology, Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, has formulated the following policy for treatment of human remains.

Modern human remains are rightly the responsibility of the Department of Public Safety and the Coroner's Office and should be referred to those offices for disposition. The Division of Parks and Outdoor Recreation and by extension the Office of History and Archaeology is charged with responsibility for treatment of prehistoric and historic resources which include human remains of those periods. The Office of History and Archaeology (OHA) holds that the state should act in the capacity of stewardship for those human remains. To that end OHA has formulated a number of positions and assumptions which will govern OHA dealings.

- 1) Prehistoric and historic human remains which can be demonstrated to related through a preponderance of evidence to a living individual or group should be returned to that group for treatment.
- 2) Scientific study of human remains is important and can be accomplished while treating human remains with dignity and respect. Human remains can, with validity, be subject to well designed studies which include investigations of nutrition, disease, genetics, cultural movements, ethnogenesis, longevity, cultural values, and environment of past groups.
- 3) Treatment of human remains should not result in undue restriction of legitimate archaeological studies which are not aimed specifically at study of human remains.
- 4) Groups which have traditionally and historically used a research area should be consulted prior to archaeological fieldwork to help formulate procedures for treatment of human remains, both expected and unexpected.
- 5) When human remains are unexpectedly encountered during archaeological excavations and which can be reasonably related to living groups or individuals, the remains should be left as undisturbed as possible until appropriate cultural groups are consulted for help in identification of living descendants. That approach can be modified when circumstances require. Human remains encountered during a major archaeological excavation in an area where burials can not reasonably be expected may be removed and dealt with according to procedures formulated prior to field work

in consultation with appropriate cultural groups.

6) Artifacts that can be reasonably demonstrated to have been intentionally placed with buried human remains either at the time of burial or interment or at some subsequent time, as a part of the death ceremonies of a culture should be considered funerary objects or grave goods. They should be curated or reburied with associated human remains and not treated separately or differently.

7) Reasonable expectation of individual and group memory concerning specific burials or burial areas would not exceed 500 years. Human remains older than 500 years would not be reasonably assignable to any living group or individual.

Sec. 41.23.510. Definition. In AS 41.23.400 — 41.23.510, "recreation river corridor" means the uplands within a recreation river established under AS 41.23.500. (§ 2 ch 122 SLA 1988)

Revisor's notes. — Enacted as AS 41.23.310. Renumbered in 1988. As enacted, this section included a definition of "commissioner." Because of the enactment of an identical definition of that term for AS 41 by sec. 37, ch. 85, SLA 1988, the definition enacted in this section was deleted in 1988. See AS 41.99.900.

Chapter 25. Tourist Development.

[Repealed, § 3 ch 207 SLA 1975.]

Chapter 30. Area Redevelopment.

[Repealed, § 43 ch 85 SLA 1988.]

Chapter 35. Historic Preservation.

Article

- 1. Alaska Historic Preservation Act (§§ 41.35.010 — 41.35.240)
- 2. Alaska Historical Commission (§§ 41.35.300 — 41.35.380)

Article 1. Alaska Historic Preservation Act.

Section

- 10. Declaration of policy
- 20. Title to historic, prehistoric and archeological resources; local display
- 30. Designation of monuments and historic sites
- 40. Administration and financial support of monuments and historic sites
- 50. Regulations
- 60. Power to acquire historic, prehistoric or archeological properties
- 70. Preservation of historic, prehistoric and archeological resources threatened by public construction
- 80. Permits
- 90. Notice required of private persons
- 100. Excavation and removal of historic,

Section

- prehistoric or archeological remains on private land
- 110. Historic sites advisory committee
- 120. Composition of committee
- 130. Appointment of members
- 140. Term of membership
- 150. Compensation
- 160. Officers
- 170. Meetings and quorum
- 180. Duties of committee
- 190. Powers of chairman
- 200. Unlawful acts
- 210. Criminal penalties
- 215. Civil penalties
- 220. Enforcement authority
- 230. Definitions
- 240. Short title

Sec. 41.35.010. Declaration of policy. It is the policy of the state to preserve and protect the historic, prehistoric and archeological resources of Alaska from loss, desecration and destruction so that the scientific, historic and cultural heritage embodied in these resources may pass undiminished to future generations. To this end, the legislature finds and declares that the historic, prehistoric and archeological resources of the state are properly the subject of concerted and coordinated efforts exercised on behalf of the general welfare of the public in

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§ 41.35.020

PUBLIC RESOURCES

§ 41.35.030

order that these resources may be located, preserved, studied, exhibited and evaluated. (§ 1 ch 130 SLA 1971)

Sec. 41.35.020. Title to historic, prehistoric and archeological resources; local display. (a) The state reserves to itself title to all historic, prehistoric and archeological resources situated on land owned or controlled by the state, including tideland and submerged land, and reserves to itself the exclusive right of field archeology on state-owned or controlled land. However, nothing in AS 41.35.010 — 41.35.240 diminishes the cultural rights and responsibilities of persons of aboriginal descent or infringes upon their right of possession and use of those resources which may be considered of historic, prehistoric or archeological value.

(b) Although title to historic, prehistoric and archeological resources is in the state, local cultural groups may obtain from the state, or retain, for study or display, artifacts and other items of these resources from their respective cultures or areas if the committee created in AS 41.35.110 finds that (1) the group has a durable building with weatherproof and fireproof construction and humidity control and other factors necessary to serve as a museum which will assure safe preservation of the items, (2) the item sought to be obtained is not one for which there is an undue risk of damage during transportation, and (3) the item sought to be obtained or retained is not one requiring special treatment or care beyond the ability or means of the group requesting it. A group retaining such an item or obtaining one from the state shall house it in the museum building and shall make every reasonable effort to assure its safe preservation. If the committee finds that a local cultural group is not properly taking care of an item the group shall return it to the department. (§ 1 ch 130 SLA 1971)

Sec. 41.35.030. Designation of monuments and historic sites. Upon the recommendation of the committee, the governor may declare by public order any particular historic, prehistoric or archeological structure, deposit, site or other object of scientific or historic interest that is situated on land owned or controlled by the state to be a state monument or historic site and the governor may designate as a part of the monument or site as much land as is considered necessary for the proper access, care and management of the object or site to be protected. When an object or site is situated on land held in private ownership, it may be declared a state monument or historic site in the same manner, with the written consent of the owner. (§ 1 ch 130 SLA 1971)

Sec. 41.35.040. Administration and financial support of monuments and historic sites. State-owned monuments, sites and other historic, prehistoric or archeological properties owned or purchased by the state are under the control of the department and their maintenance shall be covered in the appropriations made to the department. Privately owned state monuments or historic sites are eligible to receive state support for their maintenance, restoration and rehabilitation if they are kept accessible to the general public and application for support is made in conformity with regulations adopted by the commissioner. (§ 1 ch 130 SLA 1971)

Sec. 41.35.045. Fees for guided tours through historical sites. [Repealed, § 3 ch 89 SLA 1987.]

Revisor's notes. — Enacted as AS 41.21.021. Renumbered in 1984.

Sec. 41.35.050. Regulations. The commissioner shall adopt regulations to carry out the purposes of AS 41.35.010 — 41.35.240. (§ 1 ch 130 SLA 1971)

Sec. 41.35.060. Power to acquire historic, prehistoric or archeological properties. (a) The department, with the recommendation of the committee, may acquire real and personal properties that have statewide historic, prehistoric or archeological significance by gift, purchase, devise or bequest. The department shall preserve and administer property so acquired. The department may acquire property adjacent to the property having historic, prehistoric or archeological significance when it is determined to be necessary for the proper use and administration of the significant property.

(b) If an historic, prehistoric or archeological property which has been found by the department, upon the recommendation of the committee, to be important for state ownership is in danger of being sold or used so that its historic, prehistoric or archeological value will be destroyed or seriously impaired, or is otherwise in danger of destruction or serious impairment, the department may establish the use of the property in a manner necessary to preserve its historic, prehistoric or archeological character or value. If the owner of the property does not wish to follow the restrictions of the department, the department may acquire the property by eminent domain under AS 09.55.240 — 09.55.460. (§ 1 ch 130 SLA 1971)

Sec. 41.35.070. Archeological sites. (a) The department shall maintain records information on archeological sites, including the location, the head of the site, and the date of discovery.

(b) Before any excavation or other work is undertaken on an archeological site by a private individual or by a private government, the department shall be notified and the site shall be protected.

(c) If the department determines that an archeological site is of public concern, the department shall cause the site to be excavated or improved, or shall cause the site to be excavated or improved by a private individual or by a private government.

(d) If in the course of the excavation of an archeological site, historic objects are discovered, the department shall cause the objects to be preserved and the area to be protected. The survey shall include the location, the date of discovery, the result of the excavation, the significance of the objects, and the date of discovery. The department shall cause the objects to be preserved and the area to be protected.

(e) If the department determines that an archeological site is of public concern, the department shall cause the site to be excavated or improved, or shall cause the site to be excavated or improved by a private individual or by a private government.

(f) The department shall cause the site to be excavated or improved, or shall cause the site to be excavated or improved by a private individual or by a private government.

(g) Notwithstanding any other law, the department shall cause the site to be excavated or improved, or shall cause the site to be excavated or improved by a private individual or by a private government.

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Sec. 41.35.070. Preservation of historic, prehistoric and archeological resources threatened by public construction.
(a) The department shall locate, identify and preserve in suitable records information regarding historic, prehistoric and archeological sites, locations and remains. The information shall be submitted to the heads of the executive departments of the state.

(b) Before public construction or public improvement of any nature is undertaken by the state, or by a governmental agency of the state or by a private person under contract with or licensed by the state or governmental agency of the state, the department may survey the affected area to determine if the area contains historic, prehistoric or archeological values.

(c) If the department determines that historic, prehistoric or archeological sites, locations or remains will be adversely affected by the public construction or improvement, the proposed public construction or improvement may not be commenced until the department has performed the necessary investigation, recording and salvage of the site, location or remains. All investigation, recording and salvage work shall be performed as expeditiously as possible so that no state construction project will be unduly impaired, impeded or delayed.

(d) If in the course of performing public construction or improvements, historic, prehistoric or archeological sites, locations, remains or objects are discovered, the department shall be notified and its concurrence shall be requested in continuing the construction or improvement. Upon receipt of this notice, the department shall survey the area to determine whether the area contains historic, prehistoric or archeological data which should be preserved in the public interest. The survey shall be conducted as expeditiously as possible. If, as a result of the survey, it is determined that (1) this data exists in the area, (2) the data has exceptional historic, prehistoric or archeological significance, and should be collected and preserved in the public interest, and (3) it is feasible to collect and preserve the data, the department shall perform the necessary work to collect and preserve the data. This work shall be performed as expeditiously as possible.

(e) If the concurrence of the department required under (b) and (c) of this section is not obtained after 90 days from the filing of a request for its concurrence to proceed with the project, the agency or person performing the construction or improvement may apply to the governor for permission to proceed without that concurrence and the governor may take the action the governor considers best in overruling or sustaining the department.

(f) The costs of investigation, recording and salvage of the site shall be reimbursed by the agency sponsoring the construction project.

(g) Notwithstanding (a) — (f) of this section, all actions to stop any project must first be approved in writing by the commissioner. (§ 1 ch 130 SLA 1971; am § 1 ch 112 SLA 1974)

Revisor's notes. — In 1971, "(a) — (f)" was substituted for "(a) and (f)" in subsection (g) to correct a typographical error in ch. 130, SLA 1971.

Sec. 41.35.080. Permits. The commissioner may issue a permit for the investigation, excavation, gathering or removal from the natural state, of any historic, prehistoric or archeological resources of the state. A permit may be issued only to persons or organizations qualified to make the investigations, excavations, gatherings or removals and only if the results of these authorized activities will be made available to the general public through institutions and museums interested in disseminating knowledge on the subjects involved. If the historic, prehistoric or archeological resource involved is one which is, or is located on a site which is, sacred, holy or of religious significance to a cultural group, the consent of that cultural group must be obtained before a permit may be issued under this section. (§ 1 ch 130 SLA 1971; am § 2 ch 112 SLA 1974)

Sec. 41.35.090. Notice required of private persons. Before any construction, alteration or improvement of any nature is undertaken on a privately owned, officially designated state monument or historic site by any person, the person shall give the department three months notice of intention to construct on, alter or improve it. Before the expiration of the three-month notification period, the department shall either begin eminent domain proceedings under AS 41.35.060(b) or undertake or permit the recording and salvaging of any historic, prehistoric or archeological information considered necessary. (§ 1 ch 130 SLA 1971; am § 3 ch 112 SLA 1974)

Sec. 41.35.100. Excavation and removal of historic, prehistoric or archeological remains on private land. Before any historic, prehistoric or archeological remains are excavated or removed from private land by the department, the written approval of the owner shall first be secured. When the value of the private land is diminished by the excavation or removal, the owner of the land shall be compensated for the loss at a monetary sum mutually agreed on by the department and the owner or at a monetary sum set by the court. (§ 1 ch 130 SLA 1971; am § 4 ch 112 SLA 1974)

Sec. 41.35.110. Historic sites advisory committee. There is created in the Department of Natural Resources the Historic Sites Advisory Committee. (§ 1 ch 130 SLA 1971)

Sec. 41.35.120
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Sec. 41.35.120. Composition of committee. The committee consists of the following persons:

- (1) the director of the Alaska State Museum;
- (2) the state liaison officer appointed under 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);
- (3) three persons with professionally relevant backgrounds appointed from each of the following fields: history, architecture and archeology; and
- (4) two persons appointed to represent indigenous ethnic groups. (§ 1 ch 130 SLA 1971; am §§ 5, 6 ch 112 SLA 1974)

Sec. 41.35.130. Appointment of members. Members of the committee are appointed by the governor and confirmed by the legislature meeting in joint session. The members of the committee shall serve at the pleasure of the governor. (§ 1 ch 130 SLA 1971)

Sec. 41.35.140. Term of membership. The term of office for a member of the committee is three years, except for those who are members by virtue of their positions with the state, who serve for as long as they remain in the position by virtue of which they are members of the committee. A member appointed to fill a vacancy serves for the unexpired term of the member succeeded. (§ 1 ch 130 SLA 1971; am § 36 ch 85 SLA 1988)

Effect of amendments. — The 1988 amendment combined together the former first two sentences and deleted the former last sentence, which read "Of those mem- bers listed under AS 41.35.120(3) and (4), upon initial appointment, one shall serve for one year, two for two years, and two for three years."

Sec. 41.35.150. Compensation. The members of the committee serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards and commissions. (§ 1 ch 130 SLA 1971)

Cross references. — For transportation and per diem expenses for members of boards, commissions, etc., see AS 39.20.180.

Sec. 41.35.160. Officers. At the first meeting of each year, the committee shall elect a chairman from among its members. (§ 1 ch 130 SLA 1971)

Sec. 41.35.170. Meetings and quorum. The committee shall meet at least twice a year. Additional meetings may be called by the chairman or by petition of at least five members. Five members of the committee constitutes a quorum. (§ 1 ch 130 SLA 1971)

Sec. 41.35.180. Duties of committee. The committee shall

(1) develop criteria for the evaluation of state monuments and historic sites and all real and personal property which may be considered to be of historic, prehistoric or archeological significance as would justify their acquisition and ownership by the state;

(2) cooperate with the department in formulating and administering a statewide historic sites survey under 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);

(3) review those surveys and historic preservation plans that may be required, and approve properties for nomination to the National Register as provided for in 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);

(4) provide necessary assistance to the governor and the legislature for achieving balanced and coordinated state policies and programs for the preservation of the state's historic, prehistoric and archeological resources;

(5) consult with local historical district commissions regarding the establishment of historical districts under AS 29.55.010 — 29.55.020 and the approval of project alterations under AS 45.98.040; recommend, if appropriate, the formulation of additional criteria for the designation of historical districts under AS 29.55.020(b); approve plans for and evaluate the suitability of specific structures for purposes of loan eligibility and continuance under the historical district revolving loan fund (AS 45.98); and consult with the Department of Commerce and Economic Development relative to the adoption of regulations for historical district loans under AS 45.98. (§ 1 ch 130 SLA 1971; am § 7 ch 112 SLA 1974; am § 4 ch 139 SLA 1977; am § 66 ch 74 SLA 1985)

Effect of amendments. — The 1985 29.48.108 — 29.48.110" and "AS amendment in paragraph (5) substituted 29.55.020(b)" for "AS 29.48.110(b)." "AS 29.55.010 — 29.55.020" for "AS

Sec. 41.35.190. Powers of chairman. Subject to available appropriations the chairman may, with the concurrence of a majority of the committee, employ necessary personnel and may contract for the services of experts and other persons who may be needed. (§ 1 ch 130 SLA 1971)

Sec. 41.35.200. Unlawful acts. (a) A person may not appropriate, excavate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric or archeological resources of the state.

(b) A person may not possess, sell, buy or transport within the state, or offer to sell, buy or transport within the state, historic, prehistoric or archeological resources taken or acquired in violation of this section or 16 U.S.C. 433.

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(c) A person may not unlawfully destroy, mutilate, deface, injure, remove or excavate a gravesite or a tomb, monument, gravestone or other structure or object at a gravesite, even though the gravesite appears to be abandoned, lost or neglected.

(d) An historic, prehistoric or archeological resource which is taken in violation of this section shall be seized by any person designated in AS 41.35.220 wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository. (§ 1 ch 130 SLA 1971; am § 8 ch 112 SLA 1974)

Sec. 41.35.210. Criminal penalties. A person who is convicted of violating a provision of AS 41.35.010 — 41.35.240 is guilty of a class A misdemeanor. (§ 1 ch 130 SLA 1971; am § 1 ch 84 SLA 1988)

Effect of amendments. — The 1988 amendment added "Criminal" at the beginning of the catchline and rewrote the remainder of the section, which read "A person who violates a provision of AS 41.35.010 — 41.25.240 is guilty of a misdemeanor, and upon conviction is punishable by a fine of \$1,000, or by imprisonment for not more than six months, or by both."

Sec. 41.35.215. Civil penalties. In addition to other penalties and remedies provided by law, a person who violates a provision of AS 41.35.010 — 41.35.240 is subject to a maximum civil penalty of \$100,000 for each violation. (§ 2 ch 84 SLA 1988)

Sec. 41.35.220. Enforcement authority. The following persons are peace officers of the state and shall enforce AS 41.35.010 — 41.35.240:

- (1) an employee of the department authorized by the commissioner;
- (2) a peace officer in the state;
- (3) any other person authorized by the commissioner. (§ 1 ch 130 SLA 1971)

Cross references. — For definition of "peace officer," see AS 01.10.060.

Sec. 41.35.230. Definitions. In AS 41.35.010 — 41.35.240, unless the context otherwise requires,

- (1) *[Repealed, § 43 ch 85 SLA 1988.]*
- (2) "committee" means the Historic Sites Advisory Committee;
- (3) *[Repealed, § 43 ch 85 SLA 1988.]*
- (4) "historic, prehistoric and archeological resources" includes deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state. (§ 1 ch 130 SLA 1971; am § 43 ch 85 SLA 1988)

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CODE OF CRIMINAL PROCEDURE

§ 12.65.110

Effect of amendments. — The 1982 amendment substituted "its number" for "their number" and "signed and setting out" for "signed by them and setting forth" in the introductory language, substituted "the deceased" for "the person killed" in

paragraph (1), and inserted "it believes" in paragraph (2).

Collateral references. — Reviewing, setting aside, or quashing of verdict at coroner's inquest, 78 ALR2d 1218.

Sec. 12.65.090. Notification of prosecuting attorney. If the jury finds that a killing occurred by criminal means, the coroner shall submit the verdict to the prosecuting attorney. (§ 10.09 ch 34 SLA 1962; am § 3 ch 24 SLA 1966; am § 8 ch 107 SLA 1982)

Effect of amendments. — The 1982 amendment substituted the present provisions of this section for the former provisions, which read "If the jury finds that a crime was committed in the killing, and

also charges a person with the commission of the crime, the coroner, as a district judge or magistrate, shall immediately issue a warrant for the arrest of that person."

NOTES TO DECISIONS

Quoted in *Stevens v. State*, Sup. Ct. Op. No. 493 (File No. 873), 443 P.2d 600 (1968).

Sec. 12.65.100. Unclaimed bodies. When a person dies and no person appears to claim the body for burial, and no provision is made for the body under AS 13.50, the coroner shall notify the Department of Health and Social Services which shall cause the body to be plainly and decently buried or cremated and the remains decently interred. (§ 10.10 ch 34 SLA 1962; am § 2 ch 131 SLA 1970; am § 6 ch 104 SLA 1971; am § 1 ch 20 SLA 1973; am § 9 ch 107 SLA 1982)

Effect of amendments. — The 1982 amendment substituted "person dies, and no person appears" for "coroner holds an inquest upon a body, and no friend or relative appears."

Collateral references. — 18 C.J.S., Coroners, § 25.

Sec. 12.65.110. Inventory and disposition of property. If a body is unclaimed as described in AS 12.65.100 and money or other property belonging to the deceased is found, the coroner shall inventory it for the coroner's records and take it into possession. The coroner shall, within 30 days after interment, transmit a certified copy of the inventory and the money or property to the public administrator of that judicial district for disposition under AS 22.15.320. (§ 10.11 ch 34 SLA 1962; am § 3 ch 24 SLA 1966; am § 10 ch 107 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "a body is unclaimed as described in AS 12.65.100 and" and substituted "belonging to the deceased is found" for "is found on the body," and

"coroner shall inventory" for "judge or magistrate shall make an inventory of" in the first sentence, substituted "interment" for "the inquest" and "public administrator of his judicial district for disposition



The Associated Press

Eugenie's first outing

Prince Andrew stands by his wife, the Duchess of York, who cradles their newborn daughter, Princess Eugenie Victoria Helena, as they leave Portland Hospital in London on Friday. Born on March 23, the baby princess is the couple's second daughter.

Mass grave to 'rest in peace'

The Associated Press

ORANIENBURG, East Germany — Hundreds of people will remain buried near a prison camp first used by the Nazis and then by the Soviets because the dead "should rest in peace," an official said Friday.

Local officials in Oranienburg discovered the remains at the site this week after a resident said he saw Soviet soldiers gun down hundreds of German prisoners there after World War II.

The Nazis ran the prison camp near the town during World War II and the Soviets

later used it to intern German prisoners after the war.

"Mass Grave of Unknown Victims — Entry Forbidden," said the sign posted after authorities unearthed dozens more remains on Friday. Skeletal parts from 200 to 1,000 people, some of them children, have been unearthed, officials said.

They said that after more than four decades, identification of the victims would be "extremely difficult" and that it would be better not to further disturb the remains.

Oranienburg authorities

have now decided to seal off the mass grave, said Heinz Erdmann, deputy Oranienburg district leader. "The dead should rest in peace, they will not be transplanted," Erdmann said.

The camp, about 30 miles north of Berlin, is one of several Nazi camps later used by the Soviets to hold German prisoners.

regular army soldiers around the capital, some of whom have been seen in combat gear drilling or traveling in trucks, despite the ostensible lifting of martial law in January.

"These security measures show how terrified the leadership is," said a government official who spoke on condition of anonymity.

According to the official, the Communist Party fears that the current political liberalization in the Soviet Union and Eastern Europe could lead to another popular uprising such as occurred a year ago. That seven-week movement, which presented the Communists with their greatest challenge during four decades in power, was crushed in early June by the army.

Dissident pro-democracy groups have called on Beijing citizens to "take walks" to the square, the symbolic heart of China used last spring by pro-democracy activists as their headquarters.

The walks are to start Sunday and continue through Thursday, which stands as an important test

ens of demonstrators who had gathered on the square to lay wreaths.

The government official said the party has brought thousands of members of the People's Armed Police into the capital over the past two weeks because "they don't want to use the army again if anything happens."

"They want to use the police if they can," the official said.

This week, leaders of many party-controlled Chinese work units warned their employees not to go near Tiananmen Square during the first five days of April, Chinese sources said. Some units also placed the square off-limits on days in May and June that mark the anniversaries of key events in the democracy movement.

Beijing Mayor Chen Xitong told reporters Friday that he knew of no new security measures. "That's the first I've heard about it," said Chen, when asked about warnings issued to Chinese citizens to stay away from Tiananmen Square.

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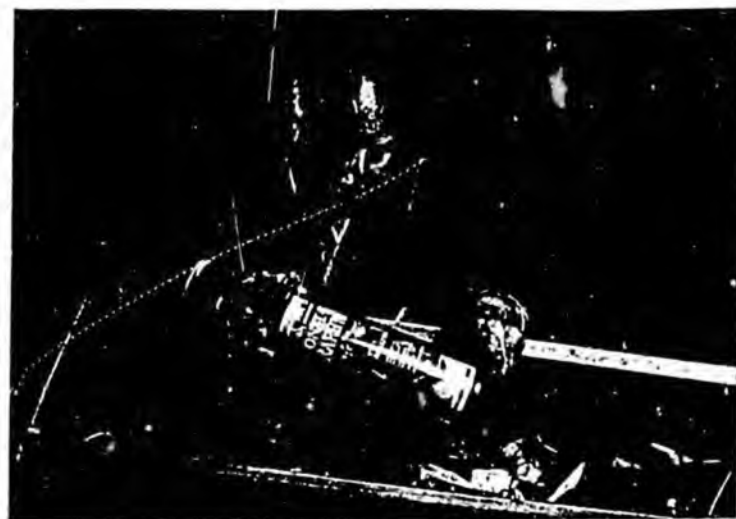
Granny Is Reburied, This Time With Dignity

fter 368 years Granny has been given a decent and proper burial.

Granny is the name archaeologists gave to a woman whose skeleton they found in a rubbish pit while excavating the remains of Wolstenholme Towne (NATIONAL GEOGRAPHIC, January 1982). This site on Virginia's James River is the oldest British-American town plan yet found. Granny—so named because she had lost all her lower molars, though she was only about 40 years old—was one of some 60 English settlers killed there on March 22, 1622, during a colony-wide Indian attack by the Powhatan Confederacy.

When a Colonial Williamsburg team removed Granny's skeleton for study, a court order required them to return it eventually to the site where it was found. "We couldn't put her back in the trash pit where we found her," says Ivor Noël Hume, retired Colonial Williamsburg archaeologist (above right). "So we decided to put her back in a proper grave." Services were held, and Granny was reburied in a gabled colonial-style coffin. A sealed tube containing a copy of the January 1982 GEOGRAPHIC was buried with her.

In the meantime, researchers have changed their original idea of who Granny was. They now think she was a maid, not the wife of a prominent settler. That might explain why survivors of the Indian attack did not rebury her body. In any event, says Noël Hume, she remains the earliest female Virginia colonist found so far.



RAYMOND GEMMAN

How War Stimulated Geographic Knowledge

When the U. S. Civil War broke out in 1861, few field maps were available to either the Union or the Confederate Army.

By the end of the war four years later, each had mobilized an array of skilled mapmakers to guide its forces. At the same time, commercial mapmakers seized upon cartographic techniques, such as panoramic "bird's-eye views," to explain the course of the war to an avid public. And newspapers started to publish battle maps routinely.

The result was an explosion of interest and geographic knowledge among

Americans, both North and South. Richard W. Stephenson, a historian of cartography at the Library of Congress, tells of this explosion in his introduction to a newly published, annotated compilation of more than 2,300 Civil War maps, charts, and atlases in the library's collections.

"A wide interest in maps was beginning to develop just before the war," Stephenson says. "But the war itself added to the growth of the map industry. Maps became essential because so many people were fighting in areas they had never heard of. It wasn't just military maps; Maps were being produced for the general public too."

Three-quarters of the maps contained in the book were produced during the war. But there are also many produced later, including several created in the 1960s to illustrate GEOGRAPHIC articles for the Civil War centennial period.

Across Bering Strait, an International Park

ags are calling it "Glasnost and Glaciers" park.

It's a plan to link parts of Siberia's Chukotskiy Peninsula and Alaska's Seward Peninsula, which face each other across the Bering Strait, as an international park. Such a park has been proposed since the 1960s, but it has gained impetus with the loosening of the U. S.-U.S.S.R. border that brought such results as the Friendship Flight (GEOGRAPHIC, October 1988).



PANORAMIC VIEW OF FORTRESS MONROE, VIRGINIA. PHOTOGRAPHED BY VICTOR R. BOSWELL, JR., 1909

program to provide stipend support to Indians for training in museum development and management.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$2,000,000 for each fiscal year, beginning with fiscal year 1991, to carry out subsections (b) and (c).

SEC. 11. INVENTORY, IDENTIFICATION, AND RETURN OF INDIAN HUMAN REMAINS AND INDIAN FUNERARY OBJECTS IN THE POSSESSION OF THE SMITHSONIAN INSTITUTION.

(a) **INVENTORY AND IDENTIFICATION.**—The Secretary of the Smithsonian Institution, in consultation and cooperation with traditional Indian religious leaders and government officials of Indian tribes, shall—

(1) inventory the Indian human remains and Indian funerary objects in the possession or control of the Smithsonian Institution; and

(2) using the best available scientific and historical documentation, identify the origins of such remains and objects.

(b) **NOTICE IN CASE OF IDENTIFICATION OF TRIBAL ORIGIN.**—If the tribal origin of any Indian human remains or Indian funerary object is identified shall so notify any affected Indian tribe at the earliest opportunity.

(c) **RETURN OF INDIAN HUMAN REMAINS AND ASSOCIATED INDIAN FUNERARY OBJECTS.**—If any Indian human remains are identified by a preponderance of the evidence as those of a particular individual or as those of an individual culturally affiliated with a particular Indian tribe, the Secretary, upon the request of the descendants of such individual or of the Indian tribe shall expeditiously return such remains (together with any associated funerary objects) to the descendants of tribe, as the case may be.

(d) **RETURN OF INDIAN FUNERARY OBJECTS NOT ASSOCIATED WITH INDIAN HUMAN REMAINS.**—If any Indian funerary object not associated with Indian human remains is identified by a preponderance of the evidence as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe, the Secretary, upon the request of the Indian tribe, shall expeditiously return such object to the tribe.

(e) **INTERPRETATION.**—Nothing in this section shall be interpreted as—

(1) limiting the authority of the Smithsonian Institution to return or repatriate Indian human remains or Indian funerary objects to Indian tribe or individuals; or

(2) delaying actions on pending repatriation requests, denying or otherwise affecting access to the courts, or limiting any procedural or substantive rights which may otherwise be secured to Indian tribes or individuals.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$1,000,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years to carry out this section.

SEC. 12. SPECIAL COMMITTEE TO REVIEW THE INVENTORY, IDENTIFICATION, AND RETURN OF INDIAN HUMAN REMAINS AND INDIAN FUNERARY OBJECTS.

(A) **ESTABLISHMENT; DUTIES.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Smithsonian Institution shall appoint a special committee to monitor and review the inventory, identification, and return of Indian human remains and Indian funerary objects under section 11. In carrying out its duties, the committee shall—

(1) with respect to the inventory and identification, ensure fair and objective consideration and assessment of all relevant evidence;

(2) upon the request of any affected party or otherwise, review any finding relating to the origin or the return of such remains or objects;

(3) facilitate the resolution of any dispute that may arise between Indian tribes with respect to the return of such remains or objects; and

(4) perform such other related functions as the Secretary may assign.

(b) **MEMBERSHIP.**—The committee shall consist of five members, of whom—

(1) three members shall be appointed from among nominations submitted by Indian tribes and organizations; and

(2) the Secretary shall designate one member as chairman.

The Secretary may not appoint to the committee any individual who is an officer or employee of the Government (including the Smithsonian Institution) or any individual who is otherwise affiliated with the Smithsonian Institution.

(c) **ACCESS.**—The Secretary shall ensure that the members of the committee have full and free access to the Indian human remains and Indian funerary objects subject to section 11 and to any related evidence, including scientific and historical documents.

(d) **PAY AND EXPENSES OF MEMBERS.**—Members of the committee shall—

(1) be paid the daily equivalent of the annual rate of basic pay payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code; and

(2) be entitled (to the same extent as provided in section 5703 of such title, with respect to employees serving intermittently in the Government service) to per diem, travel, and transportation expenses;

for each day (including travel time) during which they are engaged in the performance of their duties.

(e) **RULES AND ADMINISTRATIVE SUPPORT.**—The Secretary shall prescribe regulations and provide administrative support for the committee.

(f) **REPORT AND TERMINATION.**—At the conclusion of the work of the committee, the Secretary shall so certify by report to the Congress. The committee shall cease to exist 120 days after the submission of the report.

(g) **NONAPPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the committee.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$250,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years to carry out this section.

SEC. 13. INVENTORY, IDENTIFICATION, AND RETURN OF NATIVE HAWAIIAN HUMAN REMAINS AND NATIVE HAWAIIAN FUNERARY OBJECTS IN THE POSSESSION OF THE SMITHSONIAN INSTITUTION.

(a) **IN GENERAL.**—The Secretary of the Smithsonian Institution shall—

(1) in conjunction with the inventory and identification under section 11, inventory and identify the Native Hawaiian human remains and Native Hawaiian funerary objects in the possession of the Smithsonian Institution;

(2) enter into an agreement with appropriate Native Hawaiian organizations with expertise in Native Hawaiian affairs (which may include the Office of Hawaiian Affairs and the Malama I Na Kupuna O Hawai'i Nei) to provide for the return of such human remains and funerary objects; and

(3) to the greatest extent practicable, apply, with respect to such human remains and funerary objects, the principles and procedures set forth in sections 11 and 12 with respect to the Indian human remains

and Indian funerary objects in the possession of the Smithsonian Institution.

(b) **DEFINITIONS.**—As used in this section—

(1) the term "Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization, incorporated under the laws of the State of Hawaii by that name on April 17, 1989, the purpose of which is to provide guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues; and

(2) the term "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the Constitution of the State of Hawaii.

SEC. 14. GRANTS BY THE SECRETARY OF THE INTERIOR TO ASSIST INDIAN TRIBES WITH RESPECT TO AGREEMENTS FOR THE RETURN OF INDIAN HUMAN REMAINS AND INDIAN FUNERARY OBJECTS.

(a) **IN GENERAL.**—The Secretary of the Interior may make grants to Indian tribes to assist such tribes in reaching and carrying out agreements with—

(1) the Board of Regents for the return of Indian human remains and Indian funerary objects under section 11; and

(2) other Federal and non-Federal entities for additional returns of Indian human remains and Indian funerary objects.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$1,000,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years for grants under subsection (a).

SEC. 15. GRANTS BY THE SECRETARY OF THE INTERIOR TO ASSIST INDIAN ORGANIZATIONS WITH RESPECT TO RENOVATION AND REPAIR OF MUSEUM FACILITIES AND EXHIBIT FACILITIES.

(a) **GRANTS.**—The Secretary of the Interior may make grants to Indian organizations, including Indian tribes, museums, cultural centers, educational institutions, libraries, and archives, for renovation and repair of museum facilities and exhibit facilities to enable such organizations to exhibit objects and artifacts on loan from the collection of the Smithsonian Institution or from other sources. Such grants may be made only from the Tribal Museum Endowment Fund.

(b) **INDIAN ORGANIZATION CONTRIBUTION.**—In making grants under subsection (a), the Secretary may require the organization receiving the grant to contribute, in cash or in kind, not more than 50 percent of the cost of the renovation or repair involved. Such contribution may be derived from any source other than the Tribal Museum Endowment Fund.

(c) **TRIBAL MUSEUM ENDOWMENT FUND.**—

(1) **ESTABLISHMENT.**—There is established in the Treasury a fund, to be known as the "Tribal Museum Endowment Fund" (hereinafter in this subsection referred to as the "Fund") for the purpose of making grants under subsection (a). The Fund shall consist of (A) amounts deposited and credited under paragraph (2), (B) obligations obtained under paragraph (3), and (C) amounts appropriated pursuant to authorization under paragraph (5).

(2) **DEPOSITS AND CREDITS.**—The Secretary of the Interior is authorized to accept contributions to the Fund from non-Federal sources and shall deposit such contributions in the Fund. The Secretary of the Treasury shall credit to the Fund the interest on, and the proceeds from sale and redemption of, obligations held in the Fund.

(3) **INVESTMENTS.**—The Secretary of the Treasury may invest any portion of the Fund in interest-bearing obligations of the United States. Such obligations may be acquired on original issue or in the open market and may be held to maturity or sold

ALASKA FEDERATION OF NATIVES, INC.

1989 ANNUAL CONVENTION

RESOLUTION NO. 89-63

TITLE: PROTECTION OF HISTORICAL/BURIAL/CULTURAL SITES

WHEREAS on March 24, 1989, the tanker Exxon Valdez ran aground on Bligh Reef and created the largest oil spill ever on the North American continent; and

WHEREAS efforts to contain the oil spill were largely unsuccessful and the Prudhoe Bay crude oil was carried by currents throughout Prince William Sound, down the coast of Kenai Peninsula, up Cook Inlet, around Kodiak and Afognak Islands, and down the Alaska Peninsula and Aleutian Islands; and

WHEREAS the Eskimos, Indians and Aleuts have innumerable cultural, burial and historical sites throughout Alaska including many within the areas impacted by the oil spill; and

WHEREAS the historical, burial, and cultural sites were violated by cleanup workers and others invited by the consequences of America's worst oil spill; and

WHEREAS human skeletal remains of the ancestors of the Alaska Natives were removed from traditional burial sites and artifacts collected as curiosity pieces by trespassers and others who went beyond the scope of normal cleanup activities;

NOW THEREFORE BE IT RESOLVED by the delegates of the 1989 annual convention of the Alaska Federation of Natives, Inc. condemns the taking and removal of any and all skeletal remains and artifacts from oil impacted areas; and

BE IT FURTHER RESOLVED that trespassers, government agencies, contractors, subcontractors, and others are urged to return all artifacts and skeletal remains to their traditional final resting places.

SUBMITTED BY: 1989 Youth Conference

COMMITTEE RECOMMENDATION: Do Pass

CONVENTION ACTION:

ALASKA FEDERATION OF NATIVES, INC.

1989 ANNUAL CONVENTION

RESOLUTION NO. 89-62

TITLE: PRESERVATION OF NATIVE ALASKAN ARCHEOLOGICAL SITES
AND ARTIFACTS

WHEREAS Archeological sites have been interrupted by
unnatural disasters; and

WHEREAS the history of Native archeological sites is
plagued by the removal of the artifacts and
destruction of the sites; and

WHEREAS the Natives feel their beliefs and customs have
not been respected by others;

NOW THEREFORE BE IT RESOLVED that significant archeological
sites and the artifacts from the sites, if
uncovered, should not be disturbed or removed
without the approval of the tribal council or
local Natives.

SUBMITTED BY: 1989 Youth Convention

COMMITTEE RECOMMENDATION: Do Pass

CONVENTION ACTION:

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

POLICY STATEMENT REGARDING TREATMENT OF HUMAN REMAINS AND GRAVE GOODS

Adopted by the Advisory Council on Historic Preservation

September 27, 1988

Gallup, New Mexico

When human remains or grave goods are likely to be exhumed in connection with an undertaking subject to review under Section 106 of the National Historic Preservation Act, the consulting parties under the Council's regulations should agree upon arrangements for their disposition that, to the extent allowed by law, adhere to the following principles:

o Human remains and grave goods should not be disinterred unless required in advance of some kind of disturbance, such as construction;

o Disinterment when necessary should be done carefully, respectfully, and completely, in accordance with proper archeological methods;

o In general, human remains and grave goods should be reburied, in consultation with the descendants of the dead.

o Prior to reburial, scientific studies should be performed as necessary to address justified research topics;

o Scientific studies and reburial should occur according to a definite, agreed-upon schedule; and

o Where scientific study is offensive to the descendants of the dead, and the need for such study does not outweigh the need to respect the concerns of such descendants, reburial should occur without prior study. Conversely, where the scientific research value of human remains or grave goods outweighs any objections that descendants may have to their study, they should not be reburied, but should be retained in perpetuity for study.

Representative Cliff Davidson
February 7, 1990

I strongly urge you and the other co-sponsors of HB 436 to take the time to create such a consensus and craft a more workable bill. I appreciate your consideration of my views.

If I can answer any questions or provide any additional input, please do not hesitate to contact me. I can be reached at the following phone numbers: 474-7039 (office), 479-8406 (home), 474-6967 (FAX).

Sincerely,

Wendy H. Arundale

Wendy H. Arundale, Ph.D.
Research Associate, IAB
Adjuct Faculty, Department of Anthropology

Attachment

UNIVERSITY OF ALASKA FAIRBANKS

INSTITUTE OF ARCTIC BIOLOGY
Fairbanks, Alaska 99775-0180 U.S.A.

(907) 474-7640
FAX: (907) 474-6967

February 7, 1990

Representative Cliff Davidson
Alaska House of Representatives

Dear Representative Davidson:

I understand that you are cosponsoring HB. 436, a bill to amend the Alaska state historic preservation act. I am very glad to see you and other legislators working to improve historic preservation legislation in our state. I am also glad to see you taking up the issue of Native rights in relation to human remains and grave objects. These are important issues, deserving careful consideration.

As an archaeologist/anthropologist who has worked extensively on historic Native sites, including major projects for the North Slope Borough and Doyon, Ltd. I am keenly aware of and sympathetic with the concerns Native people have for cultural resources that are rightfully theirs. In the past archaeologists and physical anthropologists often have not respected Native concerns in these matters. I am painfully aware, for example, of the anguish and anger aroused by the activities of Ales Hrdlicka and some of his contemporaries. A few of my colleagues still display outmoded attitudes on these issues, but many people working in the field of cultural resources today appreciate Native people's concerns and would like to see enacted workable legislation that respects Native views.

After reading HB 436, however, I have some real concerns about whether this bill can achieve the goals its authors have in mind. I also believe there are some additional goals of potential benefit to Native people--as well as others with buried ancestors in Alaska--that are omitted. Let me indicate just a few of the problems I see with the bill and suggest a future course that I feel would have broad benefits for all Alaskans.

For example, to be really workable, HB 436 needs some clearer definitions. How are tribes or cultural groups who will have a number of rights under the bill to be designated? The definition of "reasonably identifiable" is very weak; the preponderance of evidence is often not the best or most scientifically sound way to make an identification. Sometimes wrong or inaccurate identifications get perpetuated in the scientific literature, making up a "preponderance of the evidence" but then later are

Representative Cliff Davidson
February 7, 1990

shown to be wrong. What will happen when items can be identified with a tribe or cultural group that have no living descendants? Would a site containing graves from such a group be ineligible for designation as a state monument or historic site because there is no one to give written consent?

A more serious issue is language in section AS 41.35.040 (d) and (h). For some time the principle of survey and mitigation in advance of construction projects has been a standard mode of operation. This section fails to make this standard practice part of the law, thus potentially taking historic preservation efforts back 15 or more years, and possibly creating serious economic hardships for construction projects. Further, section (h) fails to specify any clear mechanism for returning human remains or funerary objects to the group of origin. There are other problematic sections that I could cite as well, but my point is not to be overly critical. My point is simply to say that the bill needs much more careful thought and rewriting if its tasks are to be carried out successfully.

The bill also fails to make provisions, where appropriate, for studies of disinterred human remains and funerary objects, Native or otherwise, where the studies can be carried out in a respectful way, and where they might well benefit descendants of the dead. I think the way the Utkiagvik Project handled the "frozen family" research in Barrow could serve as a good model on which to build. In this case the archaeologists worked closely with Public Safety, local leaders, and the elders to develop an acceptable plan for excavation, study, and reburial. The result was not only respectful treatment of the human remains, but also important information on the history and heritage of the Barrow area, as well as valuable medical and health-related data, all beneficial to Barrow-area people.

I feel strongly that HB 436 would benefit greatly from a much broader range of input from all interested parties--Native people, archaeologists, the Office of History and Archaeology in DNR, Public Safety people and so on. Such an effort could also benefit from consulting documents such as the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods" (a copy is attached) and some of the laws already enacted by other states on this matter. By working with the various interested groups to build a consensus, you are much more likely to get legislation that will really work to protect the human remains and funerary objects, lead to their respectful treatment, and where appropriate, return to their rightful place, while preventing onerous over-regulation, costly litigation, or worse yet, loss of the remains altogether.

Anchorage Daily News

V, NO. 340 110 PAGES

ANCHORAGE, ALASKA, WEDNESDAY, DECEMBER 6, 1989

\$100 fine for Sound grave robber brings criticism from Native group

Cleanup worker who took bones from ancient site pleads no contest

By CHARLES WOHLFORTH
Daily News reporter

An oil-spill cleanup worker who robbed an ancient Native grave in Prince William Sound last summer pleaded no contest to federal charges and was fined \$100 last month, angering Chugach Alaska Corp. Natives who say the penalty is too light.

The U.S. Forest Service, which prosecut-

ed the case, recommended the sentence and later refused to disclose the name of the grave robber to protect him from unwanted publicity. It announced the Nov. 14 sentence Tuesday.

Eugene F. Wall, 39, also received a suspended \$400 fine and a year of "infor-

Please see Back Page, 111

FINE: Sentence angers Native group

Continued from Page A-1

mal" probation from federal magistrate John Roberts in a brief hearing. Wall could not be reached for comment.

Forest Service archeologist John Mattson said the agency is not allowed to make plea bargains, but said, "I believe the convicted party was well aware of what penalty would be recommended to the magistrate before they ever went into court."

Mattson refused to reveal Wall's name, and a Forest Service press release left him unnamed.

"The lesson of promoting the respect for human remains would not be served by burning this individual," Mattson said. "We would like to use this in a positive standpoint."

Mattson also said that Wall cooperated with investigators and turned himself in when he found out taking the bones was a crime.

But University of Alaska Anchorage anthropology Professor David Yessner said he turned in Wall, a former student, when Wall shared his finds with him. He was sympathetic with Wall, but not as sympathetic as Mattson.

Yessner said Wall came to him with the bones, and other objects, with an interest in talking about them.

"I'm not sure how much wrongdoing he was actually admitting," Yessner said, "because he was enjoying the fact that he knew all these secret sites where he could get stuff in Prince William Sound."

Yessner asked Wall to bring him the human bones — six scattered skeletal pieces — then gave them to John Johnson, cultural resources manager for Chugach Alaska Corp. Johnson reported the find to the Forest Service, which obtained Wall's name from Yessner.

Yessner said he was reluctant to implicate Wall, and did so only after investigator Andrew Gifford said he hoped to uncover incidents of grave robbing by others by talking to Wall. Gifford could not be reached for comment, and Mattson said Gifford would not comment if he were reached.

Yessner said Wall told him collecting archaeological artifacts was widespread on the oil-spill cleanup.

"There was not a great deal of vigilance in terms of what people did," Yessner said Wall told him. "People were able to slip off and collect things. He told me that in the evening people would compare the bones and artifacts they had found."

But the director of Exxon's oil-spill cultural resource program, Charles M. Mohley,

said the company took pains to prevent grave robbing, and he said the Wall incident was an anomaly. He said Exxon-protected archaeological sites from workers by showing supervisors a 14-minute video on the subject and by distributing a memo that outlined criminal penalties for taking artifacts and threatened to turn in and immediately dismiss anyone who took them.

Mohley said the Forest Service could have charged Wall under the Archaeological Resources Protection Act, which provides felony sentences for grave robbing. Instead, Wall was charged with a misdemeanor under another statute.

Johnson said Chugach Alaska officials are angry because they think that the sentence is too light, and that the Forest Service sought to avoid releasing Wall's name.

"Making a press release like that is like saying, 'No problem. We won't give you any trouble,'" Johnson said. "It gives you a weird sense of feeling — that Native people aren't human or something. That you can go out and mess with their burial sites and they'll only fine you \$100."

Johnson said Wall, who he has never met, doesn't deserve a prison term, but should have been forced to do community service — he suggested work in a mortuary.

"They give him a \$100 fine," Johnson said. "That's got a lot of people here pissed, to say the least. If I went downtown and dug up some bones, I'm sure I'd get more than a \$100 fine."

Wall apparently removed the bones from cave on Knight Island where they are thought to have lain for about 1,000 years. The cave was first found on July 4 by cleanup workers. Two days later an Alaska State Trooper from Cordova removed some bones as evidence of a possible murder, although they were surrounded by other ancient artifacts, and sent them to the state crime lab in Anchorage.

Johnson said he visited the cave and found that its contents had been trampled by cleanup workers.

The crime lab determined that the bones were ancient and they were reinterred in a Russian Orthodox ceremony in August. Then, in October, the bones Wall removed turned up. Johnson said the crime lab determined they were probably from the same skeleton as the bones that were already reinterred.

Johnson said the additional bones will be reinterred as soon as possible in the same cave.

"That's something the elders really stress," he said. "You don't keep them in a shoe box. You get them out there and put them back."

by Warren Jarvis
for the Tundra Times

Last week, with a prayer said softly over a remote tomb, a man torn from his grave seven months ago was at last laid once again to rest.

This man was not the victim of a crime, brought forth to provide evidence against his killer. Nor had he been sought out for study to further the knowledge of man.

He was simply old.
Most people hold in their hearts a

certain fascination for old things, ancient objects which one can hold up and use to dream of times and events long gone. Problems arise, however, when the objects being collected are from burial sites — perhaps even the very bodies themselves.

In this case, the body was that of a man who lived about 200 years ago in what is today the Chugach area. When oil spread through Prince William Sound last spring, following quickly in its path were thousands of cleanup workers.

One of these workers, Eugene Wall, found a cave on Knight Island. It was a fairly large cave and held the remains of six people. Despite a 14-minute video and a handout given to crew supervisors, information said to have been passed on to the workers warning them not to disturb artifacts, Wall removed several parts of one of the bodies.

On June 22, other oil spill workers found the cave and reported the

continued on page sixteen

• Chugach bones reburied

continued from page one

disturbed remains. An Alaska State Trooper from Cordova visited the site two days later and removed some bones from the disturbed remains to be tested at the crime lab in Anchorage.

On Aug. 14, after the lab determined the bones to be ancient artifacts and Chugach Alaska Corp. demanded their return, the bones taken by the State Troopers were reinterred in the cave with a small Russian Orthodox ceremony.

Wall's bones, however, were still missing. They included up to four ribs and two vertebrae.

Finally, in October, the missing bones surfaced. These are the bones laid to rest Jan. 15, and these are the bones which sparked many people's anger.

The anger over the theft was not only in the act itself, but in the penalty Wall received for it. Rather than a possible \$10,000 fine and/or one year imprisonment under the National Historic Preservation Act, Wall was charged under a different law resulting in a fine of \$500, with \$400 suspended, and given an "informal" one year probation.

John Johnson, cultural resources manager for Chugach Alaska Corp., said that such action amounted to telling people that it was almost alright to dig up Native grave sites.

"The bottom line is that people think they're just curiosity pieces," Johnson said. "If I went down to Anchorage's cemetery and just started digging, I bet I'd get more than just a hundred dollar fine."

And this is not, it seems, an isolated incident.

According to Judy Vitmer, head of the History and Archeology Office for the state, the robbing of historical sites is a common occurrence in Alaska.

"In my estimation, yes, there is a problem. . . the practice is widespread by the look of the vandalized sites," she said.

Vitmer said that at present Alaska has more than 10,000 historical sites on the state inventory. Among the things needed to qualify as a historical site, Vitmer said, is that it must be at least 50 years old, be significant for its association with the history of an area and have the poten-

tial to yield information about that time or place.

Despite having lasted for hundreds, perhaps thousands of years, the sites are easily harmed by souvenir hunters or those looking for artifacts to sell.

"Often the casual collector will just pick up things off the surface, whereas the amateur collector can cause a tremendous amount of damage by digging," Vitmer said.

A good example of this, Vitmer said, is St. Lawrence Island. Formerly one of only a couple hundred national landmarks nationwide, she said, it lost that status due to vandalism and the taking of artifacts for souvenirs and sale.

Still, she does not believe stricter enforcement would affect the situation very much.

"The state is so big that no one can police the whole state, so it has to get into the value system of the people."

Unless this happens, Vitmer said, it is unlikely that such destruction of the past will end.



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Alaska's Oldest Statewide Newspaper

January 22, 1990

Vol. XXVII

Tundra Times

ALITH FOR

Original sponsor(s): REP. DAVIDSON, Hoffman, MacLean, Goll, Jacko,
Collins, Grussendorf, Menard

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 436 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the protection of Alaska Native
7 unmarked burials."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 41.35.010 is amended to read:

10 Sec. 41.35.010. DECLARATION OF POLICY. It is the policy of the
11 state to preserve and protect the historic, prehistoric, and archeo-
12 logical resources of Alaska from loss, desecration, and destruction so
13 that the scientific, historic, and cultural heritage embodied in these
14 resources may pass undiminished to future generations. To this end,
15 the legislature finds and declares that the historic, prehistoric, and
16 archeological resources of the state are properly the subject of
17 concerted and coordinated efforts exercised on behalf of the general
18 welfare of the public in order that these resources may be located,
19 preserved, studied, exhibited, and evaluated. The legislature also
20 finds and declares that disinterred Alaska Native human remains or
21 funerary objects should be returned to the tribe or cultural group
22 whenever the tribal or cultural origins of the remains or objects are
23 reasonably identifiable.

24 * Sec. 2. AS 41.35.020 is amended to read:

25 Sec. 41.35.020. TITLE TO HISTORIC, PREHISTORIC, AND ARCHEOLOGICAL
26 RESOURCES; LOCAL DISPLAY. (a) Except as provided in (c) of this
27 section, the [THE] state reserves to itself title to all historic,
28 prehistoric, and archeological resources situated on land owned or
29 controlled by the state, including tideland and submerged land, and

1 reserves to itself the exclusive right of field archeology on state-
2 owned or controlled land. However, nothing in AS 41.35.010 - 41.35.-
3 240 diminishes the cultural rights and responsibilities of persons of
4 aboriginal descent or infringes upon their right of possession and use
5 of those resources that [WHICH] may be considered of historic, prehis-
6 toric, or archeological value.

7 (b) Although title to historic, prehistoric, and archeological
8 resources is, except as provided in (c) of this section, in the
9 state, local cultural groups may obtain from the state, or retain, for
10 study or display, artifacts and other items of these resources from
11 their respective cultures or areas if the committee created in AS
12 41.35.110 finds that (1) the group has a durable building with wea-
13 therproof and fireproof construction and humidity control and other
14 factors necessary to serve as a museum that [WHICH] will assure safe
15 preservation of the items, (2) the item sought to be obtained is not
16 one for which there is an undue risk of damage during transportation,
17 and (3) the item sought to be obtained or retained is not one requir-
18 ing special treatment or care beyond the ability or means of the group
19 requesting it. A group retaining such an item or obtaining one from
20 the state shall house it in the museum building and shall make every
21 reasonable effort to assure its safe preservation. If the committee
22 finds that a local cultural group is not properly taking care of an
23 item the group shall return it to the department.

24 * Sec. 3. AS 41.35.020 is amended by adding a new subsection to read:

25 (c) Title to historic, prehistoric, and archeological resources
26 that consist of disinterred Native human remains or funerary objects
27 lies in the tribe or cultural group from which the remains or objects
28 originated when the origins are reasonably identifiable.

29 * Sec. 4. AS 41.35.030 is amended to read:

1 Sec. 41.35.030. DESIGNATION OF MONUMENTS AND HISTORIC SITES.

2 Upon the recommendation of the committee, the governor may declare by
3 public order any particular historic, prehistoric, or archeological
4 structure, deposit, site, or other object of scientific or historic
5 interest that is situated on land owned or controlled by the state to
6 be a state monument or historic site, and the governor may designate
7 as a part of the monument or site as much land as is considered neces-
8 sary for the proper access, care, and management of the object or site
9 to be protected. When an object or site is situated on land held in
10 private ownership, it may be declared a state monument or historic
11 site in the same manner, with the written consent of the owner. When
12 a site includes Native human remains or funerary objects for which the
13 tribal or cultural origins are reasonably identifiable, the site may
14 not be designated as a state monument or historic site without the
15 written consent of the tribe or cultural group from which the remains
16 originated.

17 * Sec. 5. AS 41.35.040 is amended to read:

18 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONU-
19 MENTS AND HISTORIC SITES. State-owned monuments, sites, and other
20 historic, prehistoric, or archeological properties owned or purchased
21 by the state are under the control of the department, and their main-
22 tenance shall be covered in the appropriations made to the department.
23 Privately owned state monuments or historic sites are eligible to
24 receive state support for their maintenance, restoration, and reha-
25 bilitation if they are kept accessible to the general public, they are
26 in compliance with state laws pertaining to Native human remains and
27 funerary objects, and application for support is made in conformity
28 with regulations adopted by the commissioner.

29 * Sec. 6. AS 41.35.060 is amended to read:

1 Sec. 41.35.060. POWER TO ACQUIRE HISTORIC, PREHISTORIC, OR
2 ARCHEOLOGICAL PROPERTIES. (a) The department, with the recommenda-
3 tion of the committee, may acquire real and personal properties that
4 have statewide historic, prehistoric, or archeological significance by
5 gift, purchase, devise, or bequest. If the department acquires disin-
6 terred Native human remains or funerary objects under this subsection,
7 it shall return the remains or objects to the tribe or cultural group
8 from which they originated if the tribe or group is reasonably identi-
9 fiable. The department shall preserve and administer property so
10 acquired. The department may acquire property adjacent to the proper-
11 ty having historic, prehistoric, or archeological significance when it
12 is determined to be necessary for the proper use and administration of
13 the significant property.

14 (b) If an historic, prehistoric, or archeological property that
15 [WHICH] has been found by the department, upon the recommendation of
16 the committee, to be important for state ownership is in danger of
17 being sold or used so that its historic, prehistoric, or archeological
18 value will be destroyed or seriously impaired, or is otherwise in
19 danger of destruction or serious impairment, the department may estab-
20 lish the use of the property in a manner necessary to preserve its
21 historic, prehistoric, or archeological character or value. If the
22 owner of the property does not wish to follow the restrictions of the
23 department, the department may acquire the property by eminent domain
24 under AS 09.55.240 - 09.55.460. This subsection does not apply to
25 real property containing Native human remains or funerary objects if
26 the property is owned by the tribe or cultural group from which the
27 remains originated.

28 * Sec. 7. AS 41.35.070(d) is amended to read:

29 (d) If in the course of performing [PUBLIC] construction or

1 improvements, historic, prehistoric, or archeological sites, loca-
2 tions, remains, or objects are discovered, the department shall be
3 notified and its concurrence shall be requested in continuing the
4 construction or improvement. Upon receipt of this notice, the depart-
5 ment shall survey the area to determine whether the area contains
6 historic, prehistoric, or archeological data that [WHICH] should be
7 preserved in the public interest. The survey shall be conducted as
8 expeditiously as possible. If, as a result of the survey, it is
9 determined that (1) this data exists in the area, (2) the data has
10 exceptional historic, prehistoric, or archeological significance [,]
11 and should be collected and preserved in the public interest, and (3)
12 it is feasible to collect and preserve the data, the department shall
13 perform the necessary work to collect and preserve the data. This
14 work shall be performed as expeditiously as possible.

15 * Sec. 8. AS 41.35.070 is amended by adding a new subsection to read:

16 (h) If the department determines during a survey under (d) of
17 this section that the historic, prehistoric, or archeological re-
18 sources discovered include human remains, the department shall notify
19 the nearest law enforcement agency. If the department determines that
20 the resources include Native human remains or funerary objects for
21 which the tribal or cultural origins are reasonably identifiable, the
22 department shall also notify the appropriate tribe or group about
23 their discovery. After collection under (d) of this section and
24 appropriate investigation or other action by law enforcement author-
25 ities, Native human remains and funerary objects shall be returned to
26 the tribe or cultural group of origin if the appropriate tribe or
27 cultural group is reasonably identifiable.

28 * Sec. 9. AS 41.35 is amended by adding a new section to read:

29 Sec. 41.35.075. DISCOVERY OF HUMAN REMAINS OR FUNERARY OBJECTS.

1 (a) A person who encounters human remains or funerary objects in or
2 on the ground, other than in a situation covered under AS 41.35.070,
3 shall

4 (1) immediately cease any activity that may cause further
5 disturbance of the area; and

6 (2) report the presence and location of the remains and
7 objects to the department as soon as possible considering the location
8 of the discovery and the availability of communication alternatives.

9 (b) Upon receiving a report under (a) of this section, the
10 department shall promptly notify the landowner on whose property the
11 remains or objects were discovered, the Department of Public Safety or
12 other appropriate law enforcement agency, and the Historic Sites
13 Advisory Committee.

14 (c) Upon notification under (b) of this section and completion
15 of related law enforcement activities, the committee shall assist the
16 department in determining if the remains or objects are historic,
17 prehistoric, or archeological resources of Native origin. If they are
18 historic, prehistoric, or archeological resources of Native origin and
19 it is feasible to collect and preserve them, the department shall
20 perform the necessary work or issue a permit under AS 41.35.080 for
21 their collection.

22 * Sec. 10. AS 41.35.080 is amended to read:

23 Sec. 41.35.080. PERMITS. The commissioner may issue a permit
24 for the investigation, excavation, gathering, or removal from the
25 natural state [,] of any historic, prehistoric, or archeological
26 resources of the state or Native human remains or funerary objects
27 discovered under AS 41.35.070 or 41.35.075. A permit may be issued
28 only to persons or organizations qualified to make the investigations,
29 excavations, gatherings, or removals and, except as otherwise provided

1 in this section, only if the results of these authorized activities
2 will be made available to the general public through institutions and
3 museums interested in disseminating knowledge on the subjects involved
4 or returned to the tribe or cultural group of origin. If the his-
5 toric, prehistoric, or archeological resource involved is one that
6 [WHICH] is, or is located on a site that [WHICH] is, sacred, holy, or
7 of religious significance to a cultural group, the consent of that
8 cultural group must be obtained before a permit may be issued under
9 this section. If the resource is or contains Native human remains or
10 funerary objects for which the tribal or cultural origins are reason-
11 ably identifiable, the consent of that tribe or cultural group must be
12 obtained before a permit may be issued under this section. At the
13 request of the reasonably identifiable tribe or cultural group, infor-
14 mation related to Native human remains or funerary objects may not be
15 disseminated to anyone other than the tribe or cultural group, except
16 when required for law enforcement activities. If the resource con-
17 tains human remains, the consent of the Department of Public Safety
18 must also be obtained before a permit may be issued under this sec-
19 tion.

20 * Sec. 11. AS 41.35.090 is amended to read:

21 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any
22 construction, alteration, or improvement of any nature is undertaken
23 on a privately owned, officially designated state monument or historic
24 site by any person, the person shall give the department three months'
25 [MONTHS] notice of intention to construct on, alter, or improve it.
26 If the construction, alteration, or improvement involves Native human
27 remains or funerary objects for which the tribe or cultural group of
28 origin is reasonably identifiable, the person shall also give the
29 tribe or cultural group three months' notice of intention to

1 construct, alter, or improve. Before the expiration of the three-
2 month notification period, the department shall either begin eminent
3 domain proceedings under AS 41.35.060(b) or undertake or permit the
4 recording and salvaging of any historic, prehistoric, or archeological
5 information considered necessary.

6 * Sec. 12. AS 41.35.100 is amended to read:

7 Sec. 41.35.100. EXCAVATION AND REMOVAL OF HISTORIC, PREHISTORIC,
8 OR ARCHEOLOGICAL REMAINS ON PRIVATE LAND. Before any historic, pre-
9 historic, or archeological remains are excavated or removed from
10 private land by the department, the written approval of the owner
11 shall first be secured. If the remains include human remains, the
12 written approval of the Department of Public Safety shall also first
13 be secured. In the case of Native human remains or funerary objects
14 for which the tribe or cultural group of origin is reasonably identi-
15 fiable, the department must also secure the prior approval of the
16 tribe or cultural group. When the value of the private land is dimin-
17 ished by the excavation or removal, the owner of the land shall be
18 compensated for the loss at a monetary sum mutually agreed on by the
19 department and the owner or at a monetary sum set by the court.

20 * Sec. 13. AS 41.35 is amended by adding a new section to read:

21 Sec. 41.35.105. DISPOSITION OF NEWLY-DISCOVERED NATIVE HUMAN
22 REMAINS AND FUNERARY OBJECTS. (a) Whenever historic, prehistoric, or
23 archeological resources are discovered under AS 41.35 070 '1.35.100,
24 the department shall notify the committee. If the resources include
25 human remains, the department shall also notify the Department of
26 Public Safety or other appropriate law enforcement agency. After law
27 enforcement activities related to the resources have ceased or permis-
28 sion to investigate has been received from the Department of Public
29 Safety, the committee shall assist the department in determining

1 whether the resources include Native human remains or funerary ob-
2 jects. If the resources include Native human remains or funerary
3 objects, the department and committee shall determine with as much
4 specificity as possible the tribal or cultural origin of the remains
5 or objects.

6 (b) If the Native human remains and funerary objects are reason-
7 ably identifiable, the person in possession of them shall notify the
8 appropriate tribe or cultural group and return them to the descendants
9 of the individual, tribe, or cultural group, as the case may be, upon
10 request of the appropriate party unless

11 (1) title to them has been transferred to the person by the
12 appropriate tribe or cultural group; or

13 (2) law enforcement authorities retain possession for the
14 purpose of law enforcement activities.

15 (c) If there is no evidence available to indicate the tribal or
16 cultural origins of Native human remains or funerary objects examined
17 under this section, the person who lawfully possessed them before they
18 were examined under this section remains in lawful possession of them
19 until evidence of their origin becomes available unless possession is
20 demanded by appropriate law enforcement authorities for the purpose of
21 law enforcement activities.

22 * Sec. 14. AS 41.35.200(d) is amended to read:

23 (d) A [AN] historic, prehistoric, or archeological resource that
24 [WHICH] is taken in violation of this section shall be seized by any
25 person designated in AS 41.35.220 wherever found and at any time.
26 Objects seized may be disposed of as the commissioner determines by
27 deposit in the proper public depository except that Native human
28 remains and funerary objects shall be disposed of under AS 41.35.105.

29 * Sec. 15. AS 41.35.220 is amended by adding a new subsection to read:

1 (b) Notwithstanding other provisions of this chapter, a person
2 described in (a) of this section may, without a permit from the de-
3 partment or consent from a tribe or cultural group of origin, lawfully
4 possess, remove, transport, and alter a historic, prehistoric, or
5 archeological resource for the purpose of law enforcement activities.

6 * Sec. 16. AS 41.35.230 is amended to read:

7 Sec. 41.35.230. DEFINITIONS. In AS 41.35.010 - 41.35.240,
8 unless the context otherwise requires,

9 (1) [REPEALED

10 (2)] "committee" means the Historic Sites Advisory Commit-
11 tee;

12 (2) "funerary objects" means items that are reasonably
13 believed to have been intentionally placed with the remains of a
14 Native, either at the time of burial or interment or at some subse-
15 quent time, as a part of the death rites or ceremonies of a culture;

16 (3) [REPEALED

17 (4)] "historic, prehistoric and archeological resources"
18 includes deposits, structures, ruins, sites, buildings, graves, arti-
19 facts, fossils, or other objects of antiquity which provide informa-
20 tion pertaining to the historical or prehistorical culture of people
21 in the state as well as to the natural history of the state;

22 (4) "Native" means a person who is a descendant or ancestor
23 of the aboriginal races inhabiting the state when it was annexed to
24 the United States or a descendant or ancestor of an Indian or Eskimo
25 who, after the year 1867, migrated into the state from Canada;

26 (5) "reasonably identifiable" means identifiable, by a
27 preponderance of the evidence, as to individual, familial, tribal, or
28 cultural origin based on available archeological, historical, ethno-
29 logical, or other direct circumstantial evidence or expert opinion;

1 (6) "tribe or cultural group" means a tribe defined or
2 established under 25 U.S.C. 461 - 492 (Indian Reorganization Act), as
3 supplemented by the Alaska Native Act, an Alaska Native village de-
4 finied in or established under 43 U.S.C. 1601 - 1641 (Alaska Native
5 Claims Settlement Act), or a corporation or other group designated by
6 a tribe or Native village to act for the tribe or village under this
7 chapter.

8 * Sec. 17. DISPOSITION OF ITEMS ALREADY HELD. (a) A person who on the
9 effective date of this Act is in possession of historic, prehistoric, and
10 archeological resources that consist of Native human remains or funerary
11 objects, other than a member of a tribe or cultural group from which the
12 remains or objects originated, shall, within 30 days after the effective
13 date of this Act, notify the Department of Natural Resources and the De-
14 partment of Public Safety of the existence and location of the remains and
15 objects. Within 120 days after the effective date of this Act, the person
16 shall, unless prohibited by appropriate law enforcement authorities,

17 (1) determine the tribal or cultural origins of the remains and
18 objects with the most specificity possible and notify the tribe or cultural
19 group of the existence of the remains and objects; or

20 (2) transfer possession of the remains and objects to the de-
21 partment, which shall determine the tribal or cultural origin of the re-
22 mains and objects and notify the tribe or cultural group.

23 (b) When a preponderance of the evidence ascertained under (a) of
24 this section establishes that the human remains and funerary objects are of
25 a particular individual or are of an individual who was culturally affili-
26 ated with a particular tribe or cultural group, the person in possession of
27 them shall notify the affected tribe or group and return them to the de-
28 scendants of the individual, tribe, or cultural group, as the case may be,
29 upon request of the appropriate party unless title to them has been

1 transferred to the person from the descendant, tribe, or cultural group.

2 (c) Upon request, the Historic Sites Advisory Committee established
3 under AS 41.35.110 - 41.35.190 shall assist in determinations under this
4 section.

5 (d) If there is no evidence available to indicate the tribal or
6 cultural origins of Native human remains or funerary objects examined under
7 this section, the person who lawfully possessed them before they were
8 examined under this section remains in lawful possession of them until
9 evidence of their origin becomes available.

10 (e) A person who does not comply with this section, in addition to
11 other penalties that may be applicable, is not eligible for state funds
12 related to the maintenance of historic, prehistoric, or archeological
13 resources.

14 (f) In this section,

15 (1) "funerary objects," "historic, prehistoric, and archeologi-
16 cal resources," "Native," and "tribe or cultural group" have the meanings
17 given in AS 41.35.230, as amended in sec. 16 of this Act;

18 (2) "person" has the meaning given in AS 01.10.060 and also
19 includes a public entity of any type.
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6-1654J
Lauterbach
3/22/90

Original sponsor(s): REP. DAVIDSON, Hoffman, MacLean, Goll, Jacko,
Collins, Grussendorf, Menard

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 436 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the protection of Alaska Native
7 human remains and funerary objects; and relating to
8 discovery, possession, sale, barter, and display of
9 human remains."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 12.65 is amended by adding new sections to read:

12 ARTICLE 2. HUMAN REMAINS.

13 Sec. 12.65.150. REPORTS OF HUMAN REMAINS. (a) Except as pro-
14 vided in (b) of this section, a person who encounters human remains in
15 or on the ground shall

16 (1) immediately cease any activity that may cause further
17 disturbance of the area; and

18 (2) report the presence and location of the remains to the
19 nearest law enforcement agency as soon as possible considering the
20 location of the discovery and the availability of communication alter-
21 natives.

22 (b) The requirements of (a) of this section do not apply to a
23 person who encounters human remains while operating under a permit
24 issued under AS 41.35.080.

25 (c) If the law enforcement agency determines that remains re-
26 ported to it under (a) of this section are unrelated to a prosecutable
27 offense and may be Native human remains, the agency shall notify the
28 Department of Natural Resources.

29 (d) A person who knowingly fails to comply with (a) of this

1 section is guilty of a class A misdemeanor.

2 Sec. 12.65.160. UNLAWFUL ACTS. A person may not sell, buy, or
3 barter human remains. A person may not display human remains except
4 in connection with funeral or burial rites or as required for medical
5 or law enforcement activities. A person who violates this section is
6 guilty of a class A misdemeanor.

7 Sec. 12.65.170. DEFINITION. In AS 12.65.150 - 12.65.170, "human
8 remains" means a dead human body, or part of a dead body, in any stage
9 of decomposition.

10 * Sec. 2. AS 41.35.040 is amended to read:

11 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONU-
12 MENTS AND HISTORIC SITES. State-owned monuments, sites, and other
13 historic, prehistoric, or archeological properties owned or purchased
14 by the state are under the control of the department, and their main-
15 tenance shall be covered in the appropriations made to the department.
16 Privately owned state monuments or historic sites are eligible to
17 receive state support for their maintenance, restoration, and reha-
18 bilitation if they are kept accessible to the general public, they are
19 in compliance with state laws pertaining to Native human remains and
20 funerary objects, and application for support is made in conformity
21 with regulations adopted by the commissioner.

22 * Sec. 3. AS 41.35.060(a) is amended to read:

23 (a) The department, with the recommendation of the committee,
24 may acquire real and personal properties that have statewide historic,
25 prehistoric, or archeological significance by gift, purchase, devise,
26 or bequest. If the department acquires disinterred human remains or
27 funerary objects under this subsection, it shall comply with AS 41.-
28 35.410. The department shall preserve and administer property so
29 acquired. The department may acquire property adjacent to the

1 property having historic, prehistoric, or archeological significance
2 when it is determined to be necessary for the proper use and adminis-
3 tration of the significant property.

4 * Sec. 4. AS 41.35.070 is amended by adding a new subsection to read:

5 (h) If the department discovers human remains or funerary ob-
6 jects during a survey under (d) of this section, the department shall
7 comply with AS 12.65.150 and AS 41.35.410.

8 * Sec. 5. AS 41.35.080 is amended to read:

9 Sec. 41.35.080. PERMITS. The commissioner may issue a permit
10 for the investigation, excavation, gathering, or removal from the
11 natural state [,] of any historic, prehistoric, or archeological
12 resources of the state or human remains or funerary objects reported
13 under AS 12.65.150 or AS 41.35.410. A permit may be issued only to
14 persons or organizations qualified to make the investigations, exca-
15 vations, gatherings, or removals and, except as otherwise provided in
16 permit restrictions included under (b) of this section, only if the
17 results of these authorized activities will be made available to the
18 general public through institutions and museums interested in dissemi-
19 nating knowledge on the subjects involved. If the historic, prehis-
20 toric, or archeological resource involved is one that [WHICH] is, or
21 is located on a site that [WHICH] is, sacred, holy, or of religious
22 significance to a cultural group, the consent of that cultural group
23 must be obtained before a permit may be issued under this section.

24 * Sec. 6. AS 41.35.080 is amended by adding a new subsection to read:

25 (b) If the area for which a permit is issued under (a) of this
26 section contains, or is reasonably expected to contain, human remains
27 or funerary objects, the department shall include in the permit re-
28 strictions and procedures for the treatment and disposition of the
29 human remains and funerary objects. The restrictions and procedures

1 may not conflict with the requirements of AS 41.35.410 and, notwith-
2 standing AS 09.25.110 - 09.25.120 and (a) of this section, may provide
3 for restrictions on the disclosure of information related to Native
4 human remains and funerary objects that may be discovered.

5 * Sec. 7. AS 41.35.090 is amended to read:

6 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any
7 construction, alteration, or improvement of any nature is undertaken
8 on a privately owned, officially designated state monument or historic
9 site by any person, the person shall give the department three months'
10 [MONTHS] notice of intention to construct on, alter, or improve it.
11 If the construction, alteration, or improvement involves known Native
12 human remains or funerary objects for which the tribe of origin is
13 reasonably identifiable, the person shall also give the governing body
14 of the tribe three months' notice of intention to construct, alter, or
15 improve. Before the expiration of the three-month notification
16 period, the department shall either begin eminent domain proceedings
17 under AS 41.35.060(b) or undertake or permit the recording and salvag-
18 ing of any historic, prehistoric, or archeological information con-
19 sidered necessary.

20 * Sec. 8. AS 41.35.230 is amended to read:

21 Sec. 41.35.230. DEFINITIONS. In this chapter [AS 41.35.010 -
22 41.35.240], unless the context otherwise requires,

23 (1) [REPEALED

24 (2)] "committee" means the Historic Sites Advisory Commit-
25 tee;

26 (2) "funerary objects" means items that are reasonably
27 believed to have been intentionally placed with the remains of a
28 Native, either at the time of burial or interment or at some subse-
29 quent time, as a part of the death rites or ceremonies of a culture;

1 (3) [REPEALED

2 (4)] "historic, prehistoric and archeological resources"
3 includes deposits, structures, ruins, sites, buildings, grave sites
4 [GRAVES], artifacts, fossils, or other objects of antiquity that
5 [WHICH] provide information pertaining to the historical or prehistor-
6 ical culture of people in the state as well as to the natural history
7 of the state, except that the term does not include human remains or
8 funerary objects;

9 (4) "human remains" means a dead human body, or part of a
10 dead body, in any stage of decomposition;

11 (5) "Native" means a person who is a descendant or ancestor
12 of the aboriginal races inhabiting the state when it was annexed to
13 the United States or a descendant or ancestor of an Indian or Eskimo
14 who, after the year 1867, migrated into the state from Canada;

15 (6) "reasonably identifiable" means identifiable, by a
16 preponderance of the evidence, as to individual, familial, or tribal
17 origin based on available archeological, historical, ethnological, or
18 other direct circumstantial evidence or expert opinion;

19 (7) "tribe" means a group recognized as a tribe by the
20 United States Secretary of Interior, or a Native village or regional
21 corporation or other Native group defined in or established under 43
22 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement Act).

23 * Sec. 9. AS 41.35 is amended by adding a new section to read:

24 ARTICLE 3. DISCOVERY OF HUMAN REMAINS AND FUNERARY OBJECTS.

25 Sec. 41.35.400. POLICY. It is the policy of the state that no
26 person can lawfully assert title to human remains. The right of
27 disposition of human remains lies with the state unless the decedent's
28 living relatives or tribe are reasonably identifiable as provided in
29 AS 41.35.410.

1 Sec. 41.35.410. HUMAN REMAINS AND FUNERARY OBJECTS. (a) When
2 human remains are discovered by or reported to the department, the
3 department shall notify the nearest law enforcement agency unless a
4 report has already been made under AS 12.65.150. After law enforce-
5 ment activities related to the remains have ceased, the department
6 shall comply with (c) of this section.

7 (b) A person who discovers objects that may be funerary objects
8 in or on the ground shall promptly report the discovery to the depart-
9 ment. If the department determines upon further investigation that
10 the objects are probably funerary objects, the department shall comply
11 with (c) of this section.

12 (c) If human remains or funerary objects described in (a) and
13 (b) of this section are not disinterred, the department shall leave
14 them in the place where they are interred. If the human remains or
15 funerary objects are disinterred and the decedent's living descendants
16 are reasonably identifiable, the department shall notify the dece-
17 dent's relative with the closest kinship ties that the remains and
18 funerary objects are available for disposition. If the remains and
19 funerary objects include Native human remains or funerary objects and
20 the department is unable to ascertain the existence and address of
21 living descendants of the decedent, the department shall determine
22 with as much specificity as possible their tribe of origin and notify
23 the governing body of the tribe of their discovery and location. If a
24 specific tribe of origin is not reasonably identifiable, the depart-
25 ment shall give the notice of the discovery and its location to the
26 governing body of the tribe whose members predominate in the vicinity
27 of the discovery.

28 (d) At the request of a descendant or the governing body of a
29 tribe notified under (c) of this section, the department shall provide

1 for access to the remains or funerary objects so that the descendant
2 or the tribe may dispose of them. A tribe may not be allowed to have
3 access until the tribe's plan for disposition of the remains or
4 objects has been submitted to the department. If, within 120 days
5 after notification by the department, neither a descendant nor a tribe
6 seeks the right to dispose of the remains or funerary objects, the
7 department shall treat them in the same manner as it treats other
8 unclaimed human remains or historic, prehistoric, and archeological
9 resources under this chapter, as applicable.

10 (e) A person may request a tribe to grant to the person an
11 opportunity to study human remains or funerary objects for which the
12 tribe is granted disposition rights under (c) of this section.

13 Sec. 41.35.420. DISPUTE RESOLUTION COMMITTEE. The governor
14 shall establish committees to resolve disputes concerning the tribe of
15 origin for Native human remains and funerary objects. A committee
16 consists of the state liaison officer appointed under 16 U.S.C. 470 -
17 470n (National Historic Preservation Act) and the following persons,
18 who shall be appointed by the governor as the need arises:

19 (1) a physical anthropologist;

20 (2) a person from each tribe that has a colorable claim to
21 the human remains or funerary objects that are the subject of the
22 dispute; and

23 (3) another resident of the area from which the remains and
24 objects originated who does not meet the requirement of (2) of this
25 section.

26 * Sec. 10. DISPOSITION OF ITEMS ALREADY HELD. (a) .. person who on the
27 effective date of this Act possesses human remains or funerary objects,
28 other than a member of a tribe from which the remains or objects origi-
29 nated, shall, within 120 days after the effective date of this Act, notify

1 the Department of Natural Resources of the nature and location of the re-
2 mains and objects.

3 (b) The department shall prepare an abstract containing indexed
4 information related to the reports made under (a) of this section. The
5 abstract must include, with reference to the remains or funerary objects,

6 (1) the name of the person who possesses them;

7 (2) the permit number under which they were obtained, if appli-
8 cable;

9 (3) their current physical location;

10 (4) the physical location from which they were originally ob-
11 tained;

12 (5) their probable tribe of origin if the remains or objects
13 appear to be Native in origin; and

14 (6) the general time period during which they were originally
15 deposited in or on the ground.

16 (c) The department shall send the abstract prepared under (b) of this
17 section to the governing body of each tribe in the state. The governing
18 body of a tribe may file a claim with the department requesting that Native
19 human remains or funerary objects associated with that tribe be returned to
20 the tribe for disposition. If the governing body of more than one tribe
21 files a claim for the same human remains or funerary objects, a committee
22 established under AS 41.35.420, enacted by sec. 9 of this Act, shall deter-
23 mine which tribe's claim should be honored by the department.

24 (d) If no tribe files a claim for some of the remains or objects
25 under (c) of this section within 120 days after receiving the abstract
26 prepared under (b) of this section, the department shall

27 (1) take possession of those remains and objects; or

28 (2) enter into agreements with persons or institutions for
29 protective custody of the remains and objects.

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(e) In this section,

(1) "department" means the Department of Natural Resources;

(2) "funerary objects," "human remains," "Native," and "tribe" have the meanings given in AS 41.35.230, as amended by sec. 8 of this Act.

6-1654D.
Lauterbach
4/4/90

Original sponsor(s): REP. DAVIDSON, Hoffman, MacLean, Goll, Jacko,
Collins, Grussendorf, Menard

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 436 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to human remains and funerary ob-
7 jects."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 12.65 is amended by adding new sections to read:

10 ARTICLE 2. HUMAN REMAINS.

11 Sec. 12.65.150. REPORTS OF HUMAN REMAINS. (a) Except as pro-
12 vided in (b) of this section, a person who encounters human remains in
13 or on land or water in the state shall

14 (1) immediately cease any activity that may cause further
15 disturbance of the area; and

16 (2) report the presence and location of the remains to the
17 nearest law enforcement agency as soon as possible considering the
18 location of the discovery and the availability of communication alter-
19 natives.

20 (b) The requirements of (a) of this section do not apply to a
21 person who encounters human remains while operating under a permit
22 issued under AS 41.35.080.

23 (c) If the law enforcement agency determines that remains re-
24 ported to it under (a) of this section are unrelated to a prosecutable
25 offense and may be historic or prehistoric human remains, as defined
26 in regulations of the Department of Natural Resources, the agency
27 shall notify the Department of Natural Resources.

28 (d) A person who knowingly fails to comply with (a) of this
29 section is guilty of a class A misdemeanor.

1 Sec. 12.65.160. UNLAWFUL ACTS. (a) A person may not

2 (1) sell, buy, or barter or offer to sell, buy, or barter
3 human remains;

4 (2) display human remains except in connection with funeral
5 or burial rites, as a customary or personal practice to honor a de-
6 ceased relative, or as required for medical or law enforcement activi-
7 ties; or

8 (3) charge anything of value to view displayed human re-
9 mains.

10 (b) A person who knowingly violates (a) of this section is
11 guilty of a class A misdemeanor.

12 Sec. 12.65.170. DEFINITION. In AS 12.65.150 - 12.65.170, "human
13 remains" means a dead human body, or part of a dead body, in any stage
14 of decomposition, excluding nonskeletal body parts that are normally
15 shed during life, such as hair, nails, and isolated teeth.

16 * Sec. 2. AS 41.35.040 is amended to read:

17 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONU-
18 MENTS AND HISTORIC SITES. State-owned monuments, sites, and other
19 historic, prehistoric, or archeological properties owned or purchased
20 by the state are under the control of the department, and their main-
21 tenance shall be covered in the appropriations made to the department.
22 Privately owned state monuments or historic sites are eligible to
23 receive state support for their maintenance, restoration, and reha-
24 bilitation if they are kept accessible to the general public, they are
25 in compliance with state laws pertaining to human remains and funerary
26 objects, and application for support is made in conformity with regu-
27 lations adopted by the commissioner.

28 * Sec. 3. AS 41.35.060(a) is amended to read:

29 (a) The department, with the recommendation of the committee,

1 may acquire real and personal properties that have statewide historic,
2 prehistoric, or archeological significance by gift, purchase, devise,
3 or bequest. If the department acquires disinterred human remains or
4 funerary objects under this subsection, it shall comply with AS 41.-
5 35.410. The department shall preserve and administer property so
6 acquired. The department may acquire property adjacent to the proper-
7 ty having historic, prehistoric, or archeological significance when it
8 is determined to be necessary for the proper use and administration of
9 the significant property.

10 * Sec. 4. AS 41.35.070 is amended by adding a new subsection to read:

11 (h) If the department discovers human remains or funerary ob-
12 jects during a survey under (d) of this section, the department shall
13 comply with AS 12.65.150 and AS 41.35.410.

14 * Sec. 5. AS 41.35.080 is amended to read:

15 Sec. 41.35.080. PERMITS. The commissioner may issue a permit
16 for the investigation, excavation, gathering, or removal from the
17 natural state [,] of any historic, prehistoric, or archeological
18 resources of the state or human remains or funerary objects reported
19 under AS 12.65.150 or AS 41.35.410. A permit may be issued only to
20 persons or organizations qualified to make the investigations, exca-
21 vations, gatherings, or removals and, except as otherwise provided in
22 permit restrictions included under (b) of this section, only if the
23 results of these authorized activities will be made available to the
24 general public through institutions and museums interested in dissemi-
25 nating knowledge on the subjects involved. If the historic, prehis-
26 toric, or archeological resource involved is one that [WHICH] is, or
27 is located on a site that [WHICH] is, sacred, holy, or of religious
28 significance to a cultural group, the consent of that cultural group
29 must be obtained before a permit may be issued under this section.

1 * Sec. 6. AS 41.35.080 is amended by adding a new subsection to read:

2 (b) If the area for which a permit is issued under (a) of this
3 section contains, or is reasonably expected to contain, human remains
4 or funerary objects, the department shall include in the permit re-
5 strictions and procedures for the treatment and disposition of the
6 human remains and funerary objects. The restrictions and procedures
7 may not conflict with the requirements of AS 41.35.410 and, notwith-
8 standing AS 09.25.110 - 09.25.120 and (a) of this section, may provide
9 for restrictions on the disclosure of information related to Native
10 human remains and funerary objects that may be discovered.

11 * Sec. 7. AS 41.35.090 is amended to read:

12 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any
13 construction, alteration, or improvement of any nature is undertaken
14 on a privately owned, officially designated state monument or historic
15 site by any person, the person shall give the department three months'
16 [MONTHS] notice of intention to construct on, alter, or improve it.
17 If the construction, alteration, or improvement involves known human
18 remains or funerary objects for which a living descendant or the tribe
19 of origin is reasonably identifiable, the person shall also give a
20 living descendant or the governing body of the tribe three months'
21 notice of intention to construct, alter, or improve. Before the
22 expiration of the three-month notification period, the department
23 shall either begin eminent domain proceedings under AS 41.35.060(b) or
24 undertake or permit the recording and salvaging of any historic,
25 prehistoric, or archeological information considered necessary.

26 * Sec. 8. AS 41.35.200 is amended by adding a new subsection to read:

27 (e) A person may not knowingly possess, sell, buy, or offer to
28 sell or buy a funerary object.

29 * Sec. 9. AS 41.35.230 is amended to read:

1 Sec. 41.35.230. DEFINITIONS. In this chapter [AS 41.35.010 -
2 41.35.240], unless the context otherwise requires,

3 (1) [REPEALED

4 (2)] "committee" means the Historic Sites Advisory Commit-
5 tee;

6 (2) "funerary objects" means items for which there is
7 direct circumstantial evidence, expert opinion, or documentation that
8 the items were directly associated with human remains and were inten-
9 tionally placed with human remains either at the time of burial or
10 interment or at some subsequent time as a part of death rites or
11 ceremonies;

12 (3) [REPEALED

13 (4)] "historic, prehistoric and archeological resources"
14 includes deposits, structures, ruins, sites, buildings, grave sites
15 [GRAVES], artifacts, fossils, or other objects of antiquity that
16 [WHICH] provide information pertaining to the historical or prehistor-
17 ical culture of people in the state as well as to the natural history
18 of the state, except that the term does not include human remains or
19 funerary objects;

20 (4) "human remains" means a dead human body, or part of a
21 dead body, in any stage of decomposition, excluding nonskeletal body
22 parts that are normally shed during life, such as hair, nails, and
23 isolated teeth;

24 (5) "Native" means a person who is a descendant or ancestor
25 of the aboriginal races inhabiting the state when it was annexed to
26 the United States or a descendant or ancestor of an Indian or Eskimo
27 who, after the year 1867, migrated into the state from Canada;

28 (6) "reasonably identifiable" means identifiable, by a
29 preponderance of the evidence, as to individual, familial, or tribal

1 origin based on available archeological, historical, ethnological, or
2 other direct circumstantial evidence or expert opinion;

3 (7) "tribe" means a group recognized as a tribe by the
4 United States Secretary of Interior, or a Native village or regional
5 corporation or other Native group defined in or established under 43
6 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement Act).

7 * Sec. 10. AS 41.35 is amended by adding a new section to read:

8 ARTICLE 3. DISCOVERY OF HUMAN REMAINS AND FUNERARY OBJECTS.

9 Sec. 41.35.400. POLICY. It is the policy of the state that no
10 person can lawfully assert title to human remains. The right of
11 disposition of human remains lies with the state unless the decedent's
12 living relatives or tribe are reasonably identifiable as provided in
13 AS 41.35.410.

14 Sec. 41.35.410. HUMAN REMAINS AND FUNERARY OBJECTS. (a) When
15 human remains are discovered by or reported to the department, the
16 department shall notify the nearest law enforcement agency unless a
17 report has already been made under AS 12.65.150. After law enforce-
18 ment activities related to the remains have ceased, the department
19 shall comply with (c) of this section.

20 (b) A person who discovers funerary objects shall promptly
21 report the discovery to the department. Unless the department deter-
22 mines upon further investigation that the objects are probably not
23 funerary objects, the department shall comply with (c) of this sec-
24 tion.

25 (c) If the department can reasonably identify the living descen-
26 dants of the person whose human remains or funerary objects were
27 reported under (a) and (b) of this section, the department shall, by
28 certified mail, notify the decedent's relative with the closest kin-
29 ship ties that the remains and funerary objects are available for

1 disposition. If the remains and funerary objects include Native human
2 remains or funerary objects and the department is unable to ascertain
3 the existence and address of living descendants of the decedent, the
4 department shall determine with as much specificity as possible their
5 tribe of origin and notify the governing body of the tribe of their
6 discovery and location. If a specific tribe of origin is not reason-
7 ably identifiable, the department shall, by certified mail, give the
8 notice of the discovery and its location to the governing body of the
9 tribe whose members predominate in the vicinity of the discovery.

10 (d) At the request of a descendant or the governing body of a
11 tribe notified under (c) of this section, the department shall provide
12 for access to the remains or funerary objects so that the descendant
13 or the tribe may dispose of them. A descendant or tribe may not be
14 allowed to have access until the tribe's plan for disposition of the
15 remains or objects has been submitted to the department. If, within
16 120 days after notification by the department by certified mail,
17 neither a descendant nor a tribe seeks the right to dispose of the
18 remains or funerary objects, the department shall treat them in the
19 same manner as it treats other unclaimed human remains or historic,
20 prehistoric, and archeological resources under this chapter, as appli-
21 cable.

22 (e) A person may request a tribe or descendant to grant to the
23 person an opportunity to study human remains or funerary objects for
24 which the tribe or descendant is granted disposition rights under (c)
25 of this section.

26 Sec. 41.35.420. DISPUTE RESOLUTION COMMITTEE. The governor
27 shall establish committees to advise the department concerning con-
28 flicting claims of tribes and descendants with respect to disposition
29 rights for human remains and funerary objects. A committee consists

1 of the state liaison officer appointed under 16 U.S.C. 470 - 470n
2 (National Historic Preservation Act) and the following persons, who
3 shall be appointed by the governor as the need arises:

4 (1) a physical anthropologist;

5 (2) a person from each tribe that has a colorable claim to
6 the human remains or funerary objects that are the subject of the
7 dispute or up to three descendants of the person whose remains are in
8 dispute; and

9 (3) a resident of the area from which the remains and
10 objects originated who does not meet the requirement of (2) of this
11 section.

12 * Sec. 11. DISPOSITION OF ITEMS ALREADY HELD. (a) A person who on the
13 effective date of this Act possesses human remains or funerary objects,
14 other than a member of a tribe from which the remains or objects originated
15 or a descendant of the person whose remains comprise the human remains,
16 shall notify the Department of Natural Resources of the nature and location
17 of the remains and objects. The department shall publish notice of this
18 requirement on three separate occasions in newspapers of general circula-
19 tion in the state. The report required under this subsection is due 120
20 days after the day the department's third notice is published.

21 (b) The department shall prepare an abstract containing indexed
22 information related to the reports made under (a) of this section. The
23 abstract must include, with reference to the remains and funerary objects,

24 (1) the name of the person who possesses them;

25 (2) the permit number under which they were obtained, if appli-
26 cable;

27 (3) their current physical location;

28 (4) the physical location from which they were originally ob-
29 tained;

1 (5) their probable tribe of origin if the remains or objects
2 appear to be Native in origin; and

3 (6) the general time period during which they were originally
4 deposited in or on the ground or water.

5 (c) The department shall, by certified mail, send the abstract pre-
6 pared under (b) of this section to the governing body of each tribe in the
7 state and to the descendant with the closest kinship ties if living descen-
8 dants of the person whose remains comprise the human remains is identifi-
9 able. The governing body of a tribe or a descendant may file a claim with
10 the department requesting that the human remains and funerary objects asso-
11 ciated with that tribe or descendant be returned to the tribe or descendant
12 for disposition. If the governing body of more than one tribe or more than
13 one descendant files a claim for the same human remains or funerary ob-
14 jects, a committee established under AS 41.35.420, enacted by sec. 10 of
15 this Act, shall determine which tribe's or descendant's claim should be
16 honored by the department.

17 (d) If no tribe or descendant files a claim for some of the remains
18 or objects under (c) of this section within 120 days after receiving the
19 abstract prepared under (b) of this section, the Department shall

20 (1) take possession of those remains and objects; or

21 (2) enter into agreements with persons or institutions for
22 protective custody of the remains and objects.

23 (e) In this section,

24 (1) "department" means the Department of Natural Resources;

25 (2) "funerary objects," "human remains," "Native," and "tribe"
26 have the meanings given in AS 41.35.230, as amended by sec. 9 of this Act.
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