

# Laws and Regulations Relating to Archaeology and Historic Preservation in Alaska (Excerpts Related to Permits Only)

*The complete text of the laws can be found at:*

<http://www.touchngo.com/lglcncr/akstats/Statutes/Title41/Chapter35.htm>

<http://www.touchngo.com/lglcncr/akstats/aac/title11/chapter016.htm>

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## **AS 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 that 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 commission created in AS [41.35.300](#) 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 commission finds that a local cultural group is not properly taking care of an item the group shall return it to the department.

## **AS 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.

### **AS 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.

(c) [Repealed, Sec. 3 ch 83 SLA 2001].

(d) An historic, prehistoric, or archeological resource that 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.

### **AS 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.

### **AS 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.

### **AS 41.35.230. Definitions.**

In AS [41.35.010](#) - [41.35.240](#), unless the context otherwise requires,

(1) "commission" means the Alaska Historical Commission established in AS [41.35.300](#) ;

(2) "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.

## **11 AAC 16.010. Jurisdiction.**

The division of parks shall administer the historic, prehistoric, and archaeological resources of the state.

History: Eff. 1/13/73, Register 44

## **11 AAC 16.020. Title to collected items.**

- (a) Each item collected from lands owned or controlled by the state is the property of the state and shall be registered with the division.
- (b) An item may be removed from the state in accordance with a permit from the director. The repository of the item is subject to his restrictions. The director may require the items to be returned to the state upon giving 60 days' notice.

History: Eff. 1/13/73, Register 44

## **11 AAC 16.030. Investigation and collection permits.**

- (a) A person qualified under 11 AAC [16.040](#) may apply to the director upon an application form provided by him for a permit to investigate or collect historic, prehistoric or archaeological resources of the state.
- (b) After consultation with the state archaeologist the director may issue a permit to a qualified person for investigation, excavation, gathering and removal from the natural state of historic, prehistoric or archaeological resources of the state.
- (c) A permit designating a large area for general investigation may not exclude other permittees from the area. A permit for a well-defined small site may exclude all other persons from the site, in which case the first qualified applicant shall be the permittee.
- (d) A person issued a permit under this section may not begin work prior to obtaining the consent of any other state or other agency or private owner having control over the area or site which is the subject of the permit.
- (e) A permittee operating on state land shall comply with the Miscellaneous Land Use Regulations, 11 AAC [96](#).

History: Eff. 1/13/73, Register 44

## **11 AAC 16.040. Qualified person.**

A permit may be issued under 11 AAC [16.030](#) to

- (1) the Alaska State Museum, an accredited university, an accredited museum, and such foreign institutions or museums as meet the standards of the respective accrediting services when the site work by the Alaska State Museum, university, museum or foreign institution or museum is supervised or conducted by a person qualified under (2) of this section;
- (2) an individual person who has
  - (A) a college degree equivalent to a B.A. or B.S. in history or anthropology with specialization in archaeology; and
  - (B) a minimum of six months of field work in archaeology.

History: Eff. 1/13/73, Register 44

## **11 AAC 16.050. Reports.**

The permittee shall provide the director with a preliminary report within six months after September 1 of each year in which the permit is valid and within six months after completion of the work under the permit. The report shall designate in detail

- (1) extent of activities;
- (2) scope of work undertaken;
- (3) nature and extent of collection;
- (4) plans for analysis and study of collection; and
- (5) reason for any continued site work.

History: Eff. 1/13/73, Register 44

## **11 AAC 16.060. Restoration of area.**

(a) Each permittee shall restore, to a condition satisfactory to the director, each site or area which has been excavated.

(b) As a condition to the issuance of the permit the director may require the permittee to file with the division a performance bond to insure the restoration of the excavation site.

History: Eff. 8/1/68, Register 27; am 1/13/73, Register 44

## **11 AAC 16.070. Permit restrictions.**

(a) A permit is not valid for a period longer than three years and may be extended for a period not longer than three years if the permittee complies with the provisions of this chapter.

(b) The permit is forfeited if the permittee fails to begin work in the area or site within three months of its effective date or fails to comply with the provisions of this chapter.

History: Eff. 8/1/68, Register 27; am 1/13/73, Register 44

## **11 AAC 16.080. Cancellation of permits.**

A permit may be terminated by the director if he determines that the termination is in the best interest of the state or is necessary to preserve the health, safety and welfare of the site workers or the public.

History: Eff. 8/1/68, Register 27; am 1/13/73, Register 44

## **11 AAC 16.090. Examination of site.**

A state official designated by the director may enter upon an investigation, collection, or excavation site at any time. The state official may review and examine any investigation, collected item, or excavation.

History: Eff. 8/1/68, Register 27; am 1/13/73, Register 44

## **11 AAC 16.900. Definitions.**

In this chapter

- (1) "accredited museum" means a museum which is accredited by the American Association of Museums;
- (2) "accredited university" means a university accredited by the cognizant member of the Federation of Regional Accrediting Commission of Higher Education;
- (3) "accrediting services" means the organizations cited in (1) and (2) of this section;
- (4) "Alaska landmark" means a particular historic, prehistoric or archaeological structure, deposit, site or other object of scientific or historic interest, designated by the governor on recommendation of the Historic Sites Advisory Committee to be of outstanding significance in a defined theme of state or national history or to be among the best examples of a type of cultural art form;
- (5) "director" means the director of the division of parks in the Department of Natural Resources;
- (6) "eligible costs" means costs excluding donated labor and material
  - (A) that are incurred within the project period specified in the project agreement; and
  - (B) that conform to the limitations of Federal Management Circular 74-4, cost principles applicable to grants and contracts with state and local governments;
- (7) "excavation" means physical removal of subsurface remains of all or a defined portion of a site where the objective is to determine the human activities carried on therein or identification of fossil remains;
- (8) "gathering" means the collection of surface material remains of life and activities;
- (9) "grant" means state financial assistance for all or part of the eligible costs involved in maintenance, restoration, or rehabilitation of designated state monuments or historic sites if they are kept accessible to the general public;
- (10) "historic, prehistoric and archaeological resources" means the material remains of past life and processes;
- (11) "Historic Sites Advisory Committee" means the body appointed by the governor under [AS 41.35.110](#) - 41.35.190;

(12) "investigation" means location, identification and examination of material remains of past life and activities for the purpose of evaluating historic, prehistoric, or archaeological resources of a site for potential significance and extent;

(13) "item" means an object of scientific or historic interest collected under terms of a permit issued under this chapter;

(14) "person" means a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

(15) "privately owned" means ownership held by others than the State of Alaska.

(16) "property owner" means the person who official public records show to have fee or less than fee interest in real or personal property;

(17) "Historic Sites Advisory Committee" means the committee established by [AS 41.35.110](#) and authorized by [AS 41.35.180](#) to approve properties for nomination to the National Register of Historic Places;

(18) "National Register of Historic Places" means the nationwide catalog of significant historic districts, sites, buildings, structures and objects established by the National Historic Preservation Act of 1966 and maintained by the U.S. Secretary of the Interior;

(19) "state historic preservation officer" means the state official appointed by the governor to cooperate with the U.S. Secretary of the Interior in maintaining and expanding the National Register of Historic Places.

History: Eff. 11/19/76, Register 60; am 8/6/77, Register 63