

# Inadvertent Discovery

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Inadvertent Discovery POC





# What are Inadvertent Discoveries And Human Remains?

## ▶ Inadvertent Discoveries

- ▶ ARPA via a google search: the unexpected finding of cultural or archaeological resources during ground-disturbing activities
- ▶ NAGPRA: “Inadvertent discovery means the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (d) of the Act.”
- ▶ NO STATE DEFINITION in ORS or known in OAR’s

## □ Human Remains

- ORS 358.905(1)(g)-Human remains” means the physical remains of a human body, including, but not limited to, bones, teeth, hair, ashes or mummified or otherwise preserved soft tissues of an individual.
- ORS 97.740(3)-Human remains” has the meaning given that term in ORS 358.905 (Definitions for ORS 358.905 to 358.961).



# Identification of Human Remains

## ► Identification of Human Remains

- Oregon laws (ORS 146.090 & .095) outline the types of deaths that require investigation and the accompanying responsibilities for that investigation. The law enforcement official, district medical examiner, and the district attorney for the county where the death occurs are responsible for deaths requiring investigation. Deaths that require investigation include those *occurring under suspicious or unknown circumstances*.
- If human remains that are inadvertently discovered or discovered through criminal investigations ***are not clearly modern***, then there is high probability that the remains are Native American and therefore ORS 97.745(4) applies, which requires immediate notification with State Police, State Historic Preservation Office, Commission on Indian Services, and all appropriate Native American Tribes. To determine who the "appropriate Native American Tribe" is, the responsible parties should contact the Legislative Commission on Indian Services (LCIS). To determine whether the human remains are Native American, the responsible parties should contact the appropriate Native American Tribes and the state physical anthropologist at the initial discovery. It should be noted that there may be more than one appropriate Native American Tribe to be contacted.
- If the human remains are possibly Native American then the area should be secured from further disturbance. The human remains and associated objects **should not be disturbed, manipulated, or transported from the original location until a plan is developed in consultation with the above named parties**. These actions will help ensure compliance with Oregon state law that prohibits any person willfully removing human remains and/or objects of cultural significance from its original location (ORS 97.745).
- All parties involved and the appropriate Native American Tribes shall implement a culturally sensitive plan for reburial.



# ORS 97.745 Prohibited Acts

- ▶ **(1) Except as provided in [ORS 97.750 \(Permitted acts\)](#), no person shall willfully remove, mutilate, deface, injure or destroy any cairn, burial, human remains, funerary object, sacred object or object of cultural patrimony of any native Indian. Persons disturbing native Indian cairns or burials through **inadvertence**, including by construction, mining, logging or agricultural activity, shall at their own expense reinter the human remains or funerary object under the supervision of the appropriate Indian tribe.**
- ▶ (2) Except as authorized by the appropriate Indian tribe, no person shall:
  - ▶ **(a)** Possess any native Indian artifacts, human remains or funerary object having been taken from a native Indian cairn or burial in a manner other than that authorized under [ORS 97.750 \(Permitted acts\)](#).
  - ▶ **(b)** Publicly display or exhibit any native Indian human remains, funerary object, sacred object or object of cultural patrimony.
  - ▶ **(c)** Sell any native Indian artifacts, human remains or funerary object having been taken from a native Indian cairn or burial or sell any sacred object or object of cultural patrimony.
- ▶ **(3)** This section does not apply to:
  - ▶ **(a)** The possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or burials; **or**
  - ▶ **(b)** Actions taken in the performance of official law enforcement duties.
- ▶ **(4) Any discovered human remains suspected to be native Indian shall be reported to the state police, the State Historic Preservation Officer, the appropriate Indian tribe and the Commission on Indian Services.**



# ORS 97.745-Permitted Acts

- ▶ Any proposed excavation by a professional archaeologist of a native Indian cairn or burial shall be initiated only after prior written notification to the State Historic Preservation Officer and the state police, as defined in [ORS 358.905 \(Definitions for ORS 358.905 to 358.961\)](#), and with the prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within 30 days of its mailing shall be deemed consent. All associated material objects, funerary objects and human remains removed during such an excavation shall be reinterred at the archaeologist's expense under the supervision of the Indian tribe.**(2)**
- ▶ In order to determine the appropriate Indian tribe under this section and [ORS 97.745 \(Prohibited acts\)](#), a professional archaeologist or other person shall consult with the Commission on Indian Services which shall designate the appropriate tribe.

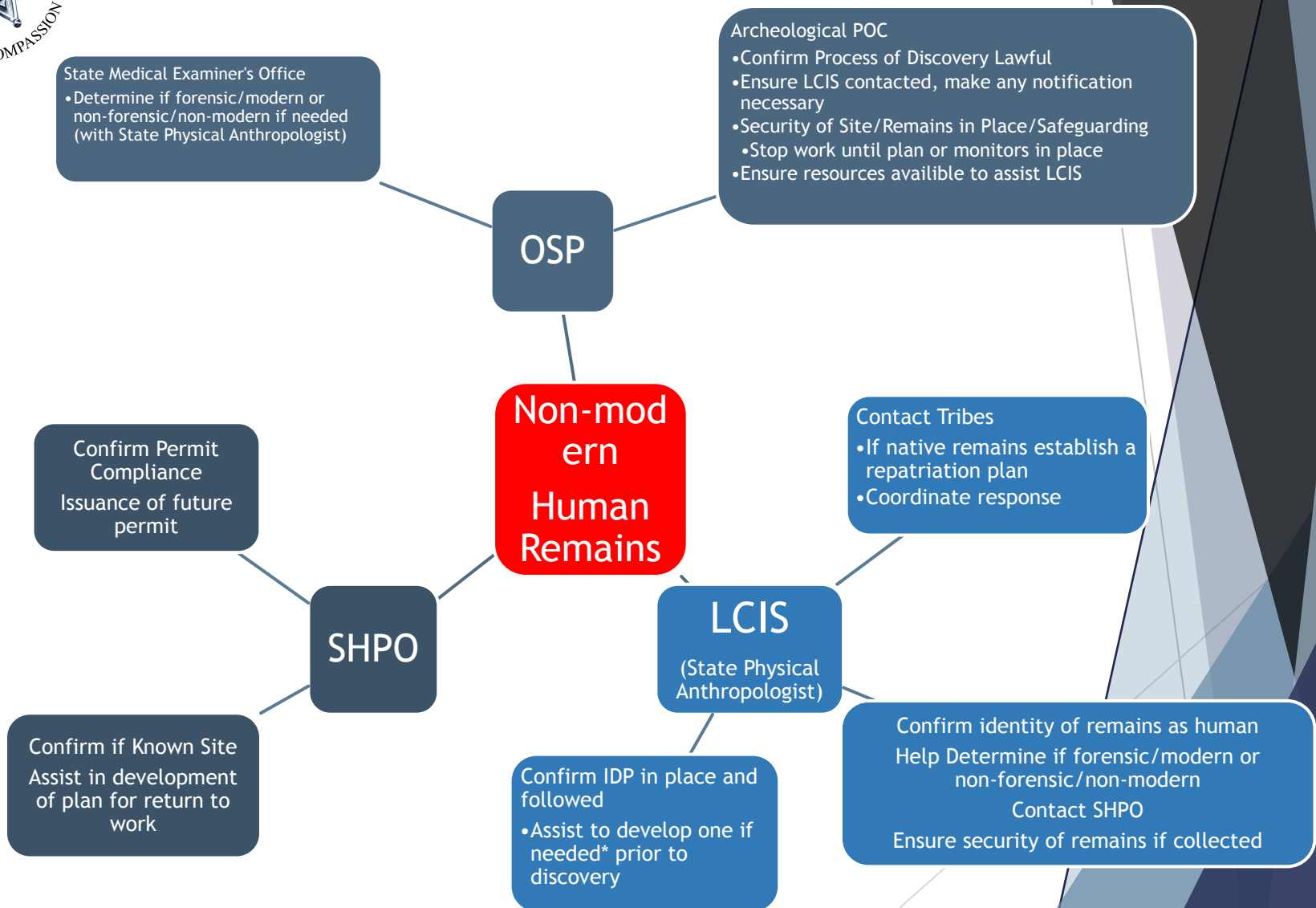


# ORS 358.920 Related to Notification

- ▶ (6) If human remains are encountered during excavations of an archaeological site on privately owned property, the person shall stop all excavations and report the find to the landowner, the state police, the State Historic Preservation Officer and the Commission on Indian Services. All funerary objects relating to the burial shall be delivered as required by [ORS 358.940](#) ([Reinterment required](#)).



# This is a Draft





# What about the Inadvertent Discoveries of Archeological Objects

- ▶ **ORS 358.945** Notice required upon finding of object
- ▶ **(1)** If a person who is conducting an archaeological investigation on public lands according to the provisions of [ORS 390.235 \(Permits and conditions for excavation or removal of archaeological or historical material\)](#) or on private land with the owner's written permission finds a sacred object or object of cultural patrimony, the person conducting the archaeological investigation shall notify in writing:
  - ▶ **(a)** The State Historic Preservation Officer; **and**
  - ▶ **(b)** The appropriate ethnic group, religious group or Indian tribe with which the object is associated.
- ▶ **(2)** If a sacred object or object of cultural patrimony is recovered on any land, the State Historic Preservation Officer shall assist the appropriate group to repossess the object.
- ▶ **(3)** This section does not apply to the contents of an Indian cairn or burial regulated under [ORS 97.740 \(Definitions for ORS 97.740 to 97.760\)](#) to [97.760 \(Civil action by Indian tribe or member\)](#).
- ▶ **(4)** Failure to notify the appropriate Indian tribe as required by subsection (1)(b) of this section is a Class B misdemeanor.



# Inadvertent vs Intentional

- ▶ The Inadvertent Discovery process is for incidental/unintentional discovery of items.
- ▶ Some steps of criminal investigation mirror that of the inadvertent discovery process.
- ▶ Culpable Mental State is required to charge someone of crime
  - ▶ Firms/Corporations can be cited in Oregon though most permit violations are likely civil in nature
- ▶ Any law enforcement agency can investigate general law violations
  - ▶ OSP is required to be notified of Non-Forensic Suspected “Native Indian or Native American” Human Remains, all other items, no requirement to notify
  - ▶ OSP Fish and Wildlife Division Leadership has taken the stance that we will investigate violations of Oregon archeological laws when requested or discovered.
    - ▶ Most complaint eventually go to the FW POC/Liaison
  - ▶ OSP jurisdiction is only STATE Public Land and Private Land.
    - ▶ No jurisdiction on federal property for archeological or NAGPRA related rules.



# Questions or Comments?

Legal Disclaimer, this presentation is not intended to provide legal advice or be construed as such. Please seek legal advice for any legal questions.