

WAGANAKISING ODAWAK STATUTE 2014-013

**TRIBAL HISTORIC PRESERVATION OFFICE PROTECTION AND MANAGEMENT
OF ARCHAEOLOGICAL, HISTORICAL AND CULTURAL PROPERTIES AND
CULTURAL RESOURCES**

OVERRIDE VETO STATEMENT

The Statute passed by Tribal Council establishes the Tribal Historic Preservation Office (THPO), and the office shall be established within the Legislative Branch. This position will assist Tribal Council in assessing and planning land use and acquisition within the reservation along with protecting historical, spiritual and cultural sites. The THPO will locate, document, and evaluate historic properties within the LTBB reservation. Also, the THPO will develop a file of identified historic properties within the exterior boundaries of the Tribe's reservation. THPO shall identify and nominate eligible properties to the National Register, and the THPO shall consult with appropriate Federal agencies in accordance with the National Historic Preservation Act regarding Federal undertakings that may affect historic properties and evaluate the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties, and assure that these undertakings are conducted in full compliance with tribal laws and traditional practices. The THPO shall advise Federal, State and local governments as to their responsibilities regarding undertakings of archaeological properties within the Tribe's jurisdiction.

Also, assisting Tribal Council, the THPO will be responsible for the issuance of "Permits to Proceed with an Undertaking on Lands within the Reservation" and shall assume responsibility under section 101 (d) 6 and in cooperation with the State Historic Preservation Officer, determine and recommend properties for inclusion on the National Register, properties that are of traditional, religious/spiritual and cultural importance to the Tribe.

Additionally, in the past several years, no one from the Tribe has the authority or responsibility to respond to requests made under Section 106 of Native American Graves Protection and Repatriation Act, (NAGPRA). NAGPRA is a federal law that provides greater protection for Native American burial sites and more careful control over the removal of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony on Federal and tribal lands. NAGPRA requires that Indian tribes or Native Hawaiian organizations be consulted whenever archeological investigations encounter, or are expected to encounter, Native American

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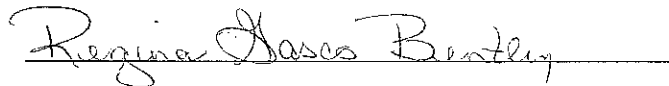
cultural items or when such items are unexpectedly discovered on Federal or tribal lands. So, without anyone assigned to address these issues, the Tribe has not had the protection of NAGPRA.

The Department of Repatriation, Archives and Record (RAR) is a repository for cultural materials discovered on Tribal and allotted lands. The RAR preserve and maintains the items. The RAR does not assess the reservation from a historical, spiritual and cultural aspect nor has the RAR ever prepared a report for Tribal Council's review that gave any recommendations on acquisition or land use regarding historical, spiritual and cultural interests of the Tribe. Nor does the RAR provide permits for archaeological undertakings or supervise archaeological digs. The THPO and RAR will work independently with different authorities and duties, but work in collaboration to ensure that any items repatriated are handled with respect and care.

The Legislative Branch will hire a "Tribal Historic Preservation Officer" to carry out the statutory responsibilities. This person will need to meet the following: *"Requirements of A Qualified Archaeologist. Archaeological surveys shall be conducted by an archaeologist meeting the Department of Interior's Standards for Archaeologists, or by a Tribal Archeology Para-Professional under the supervision of a qualified archaeologist."*

This position will be filled with one person, NOT six people as the Executive suggested. Further, with the passage of this Statute, whether under Legislative or Executive, the hiring of one person should not be anywhere near the costs of \$350,000.00 as suggested by the Executive.

Dated: October 23, 2014



Regina Gasco Bentley, Legislative Leader

SECTION III. APPLICABILITY

This Statute shall apply to all individuals, activities, and property, whether free or in trust, within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians Reservation.

SECTION IV. DEFINITIONS

- A. "*BIA-MAO*" means the Bureau of Indian Affairs-Minneapolis Area Office.
- B. "*Burial Site*" means any place of interment, by any means, natural or a physically prepared location, whether originally below, on, or above the surface of the earth, where human remains or associated funerary objects are deposited, as part of the death rites or ceremonies of a culture.
- C. "Field Archeology" means the study of the traces of human culture by means of controlled, systematic surveying, digging, sampling, excavating or removing objects.
- D. "Funerary Objects" means objects, that as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later.
- E. "Historic Properties" means any prehistoric or historic site, district, structure, object, or remains, significant to the prehistory, history, architecture, archeology, culture, or spiritual nature of the Tribe, the State, and the United States of America. Historic properties are generally greater than fifty (50) years in age.
- F. "Historic Preservation" means the research, protection, restoration, and rehabilitation of historic properties and resources.
- G. "Human Remains" includes any part of a deceased human being in any state of decomposition, including the surrounding soil immediately within and adjacent to the burial.

- H.** "Land and Reservation Committee" means the standing Committee of Tribal Council.
- I.** "Qualified Archaeologist" means any person who meets the Secretary of Interior's standards for archaeologist: a graduate degree in archeology, anthropology or a closely related field and at least one full year of full-time professional experience or equivalent specialized training in archaeological or physical anthropological research, administration or management, at least four month of supervised field and analytical experience in general North American archeology or physical anthropology and a demonstrated ability to carry research to completion.
- J.** "Reservation" means all lands within the boundaries of the Reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 Reservation is determined to include lands which are not included within the 1855 Reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians Reservation by the U.S. Department of the Interior.
- K.** "Sacred Site" means any specific, discrete, narrowly delineated location that is identified as sacred by virtue of its established religious significance or ceremonial use.
- L.** "Traditional Cultural Property" means a place eligible for inclusion in the Tribal, State, and/or National Register because of its association with cultural practices or beliefs of a community that is rooted in that community's history and are important in maintaining the continuing cultural identity of the community.
- M.** "Tribal Archeology Para-Professional" means a tribal member that has undergone formal training in basic archaeological field methods and has maintained the minimum annual requirements.
- N.** "THPO" means the Tribal Historic Preservation Office composed of the Tribal Historic Preservation Officer and staff.
- O.** "Tribal Historic Preservation Officer" means the person who is employed by the Tribal

Council.

P. "Tribal Citizen" means a person enrolled with the Tribe.

Q. "Tribe" means the Little Traverse Bay Bands of Odawa Indians.

R. "Undertaking" includes any project, activity, or program and any of its elements that may have potential to affect an historic property, burial site, human remains, sacred site or traditional cultural property and includes construction, rehabilitation, planning, repair projects, land clearing, licenses, and permits for buildings, roads and development.

SECTION V. TRIBAL HISTORIC RESERVATION OFFICE DUTIES AND AUTHORITY

A. A Tribal Historic Preservation Office (THPO) shall be established within the Legislative Branch to increase efforts in locating, documenting, and evaluating historic properties within the LTBB reservation. This information shall provide a record of the past for future generations and a copy of the record shall be housed with the Department of Repatriation, Archives and Records. Information on historic properties recorded in the ceded territory shall also be collected, evaluated, and recorded.

B. The THPO shall develop a file of identified historic properties within the exterior boundaries of the Tribe's reservation. This file shall also contain an inventory of areas that have been investigated and found not to contain historic properties, the foundations of buildings and the adjacent builder's trench, burial sites, sacred sites or traditional cultural properties. The Tribal Historic Preservation Officer shall be solely responsible for the active collection and cataloging of known historic properties, surveyed areas, and the locations of potential archaeological sites.

C. With Tribal Council approval via the Land and Reservation Committee, the THPO shall identify and nominate eligible properties to the National Register, and otherwise submit applications for listing historic properties on the National Register.

- D. The THPO shall administer Federal assistance funds received by the Tribe for Historic Preservation activities.
- E. The THPO shall consult with appropriate Federal agencies in accordance with the National Historic Preservation Act regarding Federal undertakings that may affect historic properties and evaluate the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties, and assure that these undertakings are conducted in full compliance with tribal laws and traditional practices, for Tribal Council's approval via the Land and Reservation Committee,
- F. The THPO shall advise Federal, State and local governments as to their responsibilities regarding undertakings of archaeological properties within the Tribe's jurisdiction.
- G. The Tribal Historic Preservation Officer is responsible for the issuance of "Permits to Proceed with an Undertaking on Lands within the Reservation" as delineated within this Statute.
- H. The Department of Repatriation, Archives and Record shall be the permanent repository for cultural materials discovered on Tribal and allotted lands. Access to the use of collections for educational and research purposes, shall be controlled by the Department.
- I. The THPO shall assume responsibility under section 101 (d) 6 and in cooperation with the State Historic Preservation Officer, determine and recommend properties for inclusion on the National Register, properties that are of traditional, religious/spiritual and cultural importance to the Tribe.

SECTION VI. BURIAL SITES AND TREATMENT OF HUMAN REMAINS

- A. No individual shall knowingly excavate or damage a burial site, human remains or funerary objects. No individual shall intentionally cause or permit the disturbance of a burial site or established buffer zone surrounding a burial site. Further, an individual shall immediately notify the Tribal Historic Preservation Officer if the person knows of or has reasonable grounds to believe that a burial site or established buffer zone is being disturbed contrary to this sub chapter.

B. Only in the extreme cases of unavoidable destruction, natural exposure or accidental discovery shall burial sites, human remains or funerary objects be approved for intentional disturbance. When disturbance is found to be necessary, or has already occurred, the Tribal Historic Preservation Officer will agree to a procedure in writing by which the disturbance shall be mitigated.

C. At all times during the process of disturbing any human remains, the Tribal Historic Preservation Officer or his or her designee shall be on hand to assist and ensure that the parties employed to remove or expose any human remains or grave goods implement the written procedure as previously agreed upon.

D. No Scientific Analysis or Reburial will occur unless agreed upon by the Tribal Historic Preservation Officer.

SECTION VII. PERMITS TO PROCEED WITH AN UNDERTAKING ON LAND WITHIN THE RESERVATION

A. Prior to beginning any undertaking on land within the Reservation, all individuals shall have a signed Permit to Proceed from the Tribal Historic Preservation Officer.

B. Procedures for Obtaining a Permit to Proceed.

1. Submission of Application for Permit to Proceed. During the planning stage of all undertakings on land within the Reservation, all individuals shall complete and submit an application for a Permit to Proceed. Permits to Proceed can only be issued by the THPO. The THPO shall review the application, and determine, following a review of the THPO files covering that area, if a field investigation will be required. The THPO shall notify the applicant in writing within thirty (30) days if a field investigation is required. If no field investigation is required, the THPO shall either issue the Permit to Proceed or notify the applicant in writing of the reason for Permit denial.

2. Field Investigation. All areas within the Reservation boundaries that will undergo

earth disturbing activities, not specifically excluded below (66.404), and not previously subjected to a field investigation, shall be subject to a review process to determine the presence or absence of historic properties, burial sites, sacred sites or traditional cultural properties. The review consists of the following:

a. File Search and Pre-Field Investigations. THPO staff will check files and maps recording the locations of identified historic properties, burial sites, sacred site and traditional cultural properties, as well as the locations of areas previously investigated. Additional information may be sought from Tribal Elders and other individuals if deemed necessary in areas identified as highly sensitive.

b. Field Archeology. The project area presented in the Permit application will be investigated by a qualified archaeologist to record and describe any historic properties. Archaeological investigations are dependent on weather and ground conditions.

3. Permit Contingencies. Based upon the results of the field investigations, the THPO will determine whether or not a Permit to Proceed will be granted and shall make a recommendation to Tribal Council via the Land and Reservation Committee. Within fourteen (14) days of the completion of the field investigation and with Tribal Council approval, the THPO shall issue one of the following:

a. A Permit to Proceed with no contingencies.

b. A Permit to Proceed with contingencies.

c. A letter denying the Permit to Proceed stating that the project may not proceed according to the plans presented by the applicant. The applicant may submit a new application based upon changes made in consultation with the THPO, which would remove or minimize any impacts to historic properties.

C. Appeal of Denied Permits to Proceed. An applicant may appeal any denied Permits by requesting a hearing before Tribal Council. The request must be made in writing within fourteen

(14) days of the Permit denial. A determination from Tribal Council shall be final.

D. Lands within the Reservation, Excluded from Pre-Field and Field Archeology Investigations. The THPO may permit the following areas to be excluded from field archeology investigations:

1. Activities that are excluded from pre-field and field investigations:
 - a. Gardening, in general, in pre-existing gardens, or new garden construction;
 - b. Projects less than one (1) square meter in size (i.e.) digging postholes, planting trees, bushes, etc.);
 - c. Maintenance activities including but not limited to: basic road maintenance, grading, snowplowing;
 - d. Any areas that have previously undergone an archaeological survey and has been permitted with no contingencies;
 - e. Projects that will not have ground disturbing affects; i.e. mowing lawn, winter logging activity on frozen ground.

2. Activities that, at the discretion of the THPO, may be excluded from field archeology investigations, but may require a pre-field archaeological investigation:
 - a. Swampy areas or areas with mucky soils;
 - b. Locations directly on steep slopes which would prohibit construction of historic or prehistoric dwellings or settlements;
 - c. Areas already disturbed by a depth of greater than three (3) feet; i.e. Gravel pits;

- d. Emergency situations (septic replacement, etc.);
- e. Hazardous conditions that jeopardize the safety of THPO staff or individuals.

E. Payment for Field Archaeological Surveys of Tribal Lands leased by Tribal Citizens. The Tribe shall pay for required field archaeological surveys of Tribal Citizens. All other surveys, including projects receiving funding from Federal agencies and other entities shall not be paid for by the Tribe; unless, otherwise and previously approved by Tribal Council.

SECTION VIII. PERMITS TO CONDUCT ACHAEOLOGICAL INVESTIGATIONS

A. Tribal Permit to Conduct Archaeological Investigations. All individuals intending to conduct archaeological investigations or engaging in the excavation or removal of archaeological materials from historic properties on lands within the reservation must have a "Permit to Conduct Archaeological Investigations" approved by Tribal Council via the Land and Reservation Committee, signed by the THPO and must satisfy the requirements of a qualified archaeologist.

B. Permits for Non-Tribal Citizens. Any Individual intending to conduct archaeological investigations or engaging in excavation or removal of archaeological materials form historic properties on Federal, Tribal or allotted lands, that is not an enrolled Tribal Citizen, must have a valid ARPA Permit approved by Tribal Council via the Land and Reservation Committee, signed by the Area Director of the BIA-MOA as required in 25 C.F.R. 262.4. This permit is in addition to the Permit required by the Tribe.

C. Permits to Conduct Field Archeology on State Land within the Exterior Boundaries of the Reservation. Any individual wishing to conduct field archeology on State land within the exterior boundaries of the Reservation shall in addition to the requirements under this Statute, contact the Office of the State Archaeologist of Michigan to determine the need and process of applying for a State permit or license to conduct field archeology as encouraged in State Statute 1710.19. This permit is in addition to the Permit required by the Tribe.

D. Requirements of Qualified Archaeologist. Archaeological surveys shall be conducted by an archaeologist meeting the Department of Interior's Standards for Archaeologists, or by a Tribal Archeology Para-Professional under the supervision of a qualified archaeologist.

SECTION IX. ENFORCEMENT OF PENALTIES

A. Enforcement by Duly Authorized Law Enforcement Officer.

- 1.** The duly authorized Law Enforcement Officer shall have the responsibility and authority to enforce and implement the provisions of this Statute, which includes the issuance of citations.
- 2.** Criminal Penalties. Any person who violates, counsels, procures, solicits, or employs any other person to violate any prohibition, or fails to follow the above stated procedures, shall, upon conviction, be fined an amount not to exceed \$1,000.00 or imprisoned for a term not to exceed twelve (12) months, or both. Such person may also be subject to the civil penalties provided for in this Statute. Criminal penalties shall also apply in Tribal Court.
- 3.** Civil Penalties. Any person violating the provisions of this chapter commits a civil infraction punishable by fine and/or exclusion from the Reservation. The infraction shall be punishable by a fine not to exceed \$1,000.00. The Tribal Court shall hear the trial of any such infraction and the prosecution shall have the burden of proving the alleged infraction by a preponderance of the evidence. Penalties cannot be suspended or waived.
- 4.** Civil Damages. Any person violating the provisions of this chapter shall be liable to the Tribe for civil damages to be assessed by the Tribal Court after the hearing. "Civil Damages" shall be interpreted liberally by the Tribal Court to include, but not limited to, the following:
 - a.** Costs of restoration of the damaged site;

- b. Costs associated with the enforcement of the provisions of this Chapter;
- c. Costs associated with mitigation of protected historic properties, burial sites, sacred sites or traditional cultural properties, including reburial;
- d. Costs associated with documentation, testing, and evaluating the damaged site in order to assess the character of the site.

5. Forfeiture of Contraband. All remains from historic properties, burial sites, sacred sites, or traditional cultural properties obtained in violation of the provisions of this Chapter shall be deemed contraband and forfeited to the Tribe after a hearing in the Tribal Court.

6. Seizure of Security. At the discretion of the duly appointed Law Enforcement Officer, the Officer shall seize such property in the possession of the defendant as the Officer deems reasonable necessary to secure payment of any fine or civil damage(s), which may be levied upon the defendant upon conviction of the infraction or crime. The Officer shall further advise the defendant of his/her right to post security.

SECTION VII. SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION VIII. EFFECTIVE DATE

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

Certification


As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on September 11, 2014 at which a quorum was present, by a vote of 8 in favor, 1 opposed, 0 abstentions, and 0 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Bill A. Denemy	X			
John W. Keshick III	X			
Beatrice A. Law	X			
Michael J. Naganashe	X			
Aaron Otto		X		
Winnay Wemigwase	X			
Marcella R. Reyes	X			
Julia A. Shananaquet	X			
Regina Gasco Bentley	X			

Date: 09-11-14


Regina Gasco Bentley, Legislative Leader

Date: 09-11-14


Julie A. Shananaquet, Secretary

Received by the Executive Office on: 09-12-14 by: Rebecca Fisher

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

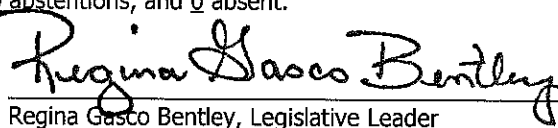
VETO

Date: 10-10-14


Fred Kiogima, Tribal Chairperson

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that **this Statute was duly enacted by Tribal Council Override of Executive Veto** at a regular meeting of the Tribal Council of the Little Traverse Bay Bands of Odawa Indians held on **October 23, 2014** at which a quorum was present, by a vote of 8 in favor, 1 opposed, 0 abstentions, and 0 absent.

Date: 10-23-14


Regina Gasco Bentley, Legislative Leader

Date: 10-23-14


Julie A. Shananaquet, Secretary

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005. The Tribal Council hereby overrides the Executive veto.

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Waganakising Odawak Statute Tribal Historic Preservation Office Protection and Management of Archaeological, Historical, and Cultural Properties and Cultural Resources Secretary Shananaquet 