

WAGANAKISING ODAWAK STATUTE 2006-016

WETLAND PROTECTION AND MANAGEMENT STATUTE

SECTION I FINDINGS

- A. Importance to Ecosystem. Wetlands Areas are an integral and essential part of the ecosystem. Their functions include:
1. Sediment control;
 2. They provide a natural filtration system needed to maintain surface and ground water quality;
 3. They store water after high rainfalls thereby preventing erosion and failure of storm and sewage runoff and discharge systems;
 4. Groundwater recharge;
 5. They provide a habitat for many plants and animals, including aquatic life and endangered or threatened species;
 6. Wetland habitats are needed for outdoor recreation, as well as fishing and hunting.
- B. Cultural Values. The critical environmental functions of Wetland Areas make them very important to Little Traverse Bay Bands of Odawa Indians (LTBB) culture in that they provide medicinal, food and utilitarian plants, and a forum for outdoor education and ceremony.

SECTION II PURPOSE

By protecting wetlands we protect our heritage for the next seven generations. The purposes of this Statute are:

- A. Protection, preservation, proper maintenance, and use in accordance with the character, adaptability, and stability of the reservations' Wetlands in order to prevent pollution, or contamination; outlaw their disturbance and disturbance to the natural habitat therein; and prevent damage from erosion, siltation, and flooding.
- B. Encourage education and proper cultural uses of our Wetlands, and reduce their over harvesting.
- C. The coordination with, and support for the enforcement of any applicable federal statutes, ordinances and regulations involving wetlands protection and enhancement.
- D. The establishment of standards and procedures for review of the regulation and uses of wetlands.

- E. The establishment of enforcement procedures and penalties for the violation of the Statute.
- F. To prevent the loss of Native Wetlands and any other Wetlands within the jurisdiction of LTBB.

SECTION III DEFINITIONS

- A. Applicant: Any person or entity applying to conduct activity on or in any way alter wetlands, including but not limited to individuals, sole proprietorships, partnerships, corporations, associations, governments, and governmental agencies.
- B. Coastal Wetland: Wetlands that are within one mile or less of the Lake Michigan shoreline.
- C. Conservation Enforcement Officer: Any Tribal Conservation or Law Enforcement officer authorized by Tribal law to enforce Tribal conservation regulations, or federal enforcement agents, including Special Agents of the U.S. Fish and Wildlife Service.
- D. Contiguous Wetland: Wetland bordering a lake or stream or that is directly connected to, or within 500 feet of, the surface waters of the Great Lakes.
- E. High quality wetlands: Those wetlands determined to be of high quality by the LTBB Wetland Protection Officer using the rapid assessment for functional values analysis.
- F. Hydric Soils: A soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop an anaerobic condition in the upper part or as recognized in the United States Department of Agriculture Soil Surveys for the reservation land as a Hydric Soil.
- G. Inland Wetland: Any wetland over one mile from the Lake Michigan shoreline.
- H. Non-contiguous Wetland: A wetland over 500 feet from the surface waters of the Reservation land and not directly connected to waters therein.
- I. Native Wetlands: Wetlands that are within or connected to the 1855 LTBB Treaty Delineated Reservation that include marshes, bogs, fens, sedge meadows, seeps, or wet prairies.
- J. Sediment Control: When wetland vegetation greatly reduces the velocity of water flow, allowing suspended material to settle.
- K. Wetland: Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, not contiguous to the Great Lakes, an inland lake or pond, or a river or stream. Wetlands must have hydric soils, wetland vegetation and presence of wetland hydrology.
- L. Wetland Delineation: Determining the boundaries of a wetland utilizing aerial photography, satellite telemetry data, digital imagery, other graphic representation of the area, and/or field reconnaissance.

M. Wetland Vegetation: Plants that exhibit adaptations to allow, under normal conditions, germination and propagation, and to allow growth with at least their root systems in the water or saturated soils.

SECTION IV WETLAND PROTECTION OFFICER

The duties of the Wetland Protection Officer will be performed by the Wetland Technician or other qualified staff within the Environmental Services Department as determined by the Environmental Services Director.

- A. Wetland Protection Officer Duties and Responsibilities:
1. Enforce regulations promulgated pursuant to this Statute;
 2. Wetlands permitting and activities review;
 3. Wetlands Delineation;
 4. Conduct an annual review of this Statute and Regulations to recommend changes, identify conflicts between this Statute and Regulations and other governments' local ordinances and zoning laws/ordinances, and address accordingly;
 5. Assist in development and review of LTBB's operating procedures for implementation of this Statute and Regulations;
 6. Serve as a liaison between Tribal, Federal, County, State and local units of government on Wetland protection issues;
 7. Apply for U.S. Army Corps of Engineers permits; Standard or Regional, if needed under Section 404 of the Clean Water Act, 33 U.S.C. § 1344.

SECTION V NATURAL RESOURCE COMMISSION

Pursuant to Const. art. VII, § D (16) a Wetland Review Board ("WRB") is hereby created.

- A. Composition: The Natural Resource Commission shall serve as the WRB.
- B. Wetland Review Board Mandates:
1. Hear permit application appeals under § VIII of this Statute.
 2. Develop procedures for permit application appeal hearings.
 3. Provide recommendations to the Environmental Services Department

SECTION VI LANDS TO WHICH THIS STATUTE APPLIES

This Statute shall apply to:

- A. Non-contiguous and contiguous wetlands at least 1/3 acre in size;
- B. All high quality wetlands, regardless of size, located on lands held in fee by, or trust for, LTBB, or otherwise under the jurisdiction of LTBB.

SECTION VII WETLAND VERIFICATION AND DELINEATION

A. The Environmental Services Department and GIS Department, along with any other departments or staff assigned by the Tribal Administrator, shall prepare and keep current an inventory of all wetlands to which this Statute applies, including the preparation of composite Wetlands maps, using available resources including but not limited to United States Department of Agricultural Soil surveys, Wetland Criteria as established by the Army Corps of Engineers, field inspection, topographical maps, and aerial photography. The inventory and maps shall note areas of particular cultural significance. This inventory shall be in compliance with the proposed LTBB Cultural Areas Policy and Procedures.

SECTION VIII REGULATIONS; ADMINISTRATIVE PROCEDURES; DEPARTMENTAL PROCEDURES

A. Regulations.

- 1. Uses Allowed Without a Permit: The Environmental Services Department shall develop regulations for uses allowed in a wetland without a permit.
- 2. Uses Allowed With a Permit: The Environmental Services Department shall develop regulations for activities allowed in a wetland with a permit.
- 3. Prohibited Uses:

The Environmental Services Department shall develop regulations for uses that are prohibited in a wetland. They will include but are not limited to the following:

- i. Deposit or permit the placing of fill material in a Wetland;
- ii. Dredge, remove, or permit the removal of soil or minerals from a wetland;
- iii. Construct, operate, or maintain any use or development in a wetland;
- iv. Drain surface water from a wetland;
- v. Engage in wanton destruction or waste of fish, game, reptiles, amphibians or plants.

B. Administrative Procedures.

- 1. Permit Applications: The Environmental Services Department shall develop administrative procedures for permit applications for permits required by regulations promulgated pursuant to this Statute.

2. Appeals: The Environmental Services Department shall develop administrative procedures for appeals from the grant or denial of permit applications for permits required by regulations promulgated pursuant to this Statute.

SECTION IX ENFORCEMENT AND PENALTIES

A. Enforcement:

3. The Tribal Court shall have jurisdiction to hear and adjudicate alleged violations of this Statute.
4. LTBB Conservation Enforcement Officers shall have the authority to issue civil citations for violations of any of the provisions of this Statute, or for any regulations promulgated pursuant to this Statute.

B. Penalties. If the Court finds that any person or entity destroyed or harmed wetlands in violation of this Statute, or any regulations promulgated pursuant to this Statute, it shall enter such orders as it deems necessary to restore such wetlands; including the issuance of injunctions requiring the restoration of such wetlands, or the assessment of monetary fees in amounts adequate to cover restoration costs, or any other appropriate civil penalty.

SECTION X 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 XI EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

As the 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 August 20, 2006 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Regina Gasco Bentley	X			
Fred Harrington, Jr.	X			
Dexter McNamara	X			
Mary Roberts	X			
Rita Shananaquet	X			
Alice Yellowbank	X			
Shirley Oldman				X
Melvin L. Kiogima	X			
Beatrice A. Law	X			

Date: 9/20/06

Beatrice A. Law
Beatrice A. Law, Legislative Leader

Date: 8/20/06

Melvin L. Kiogima
Melvin L. Kiogima, Secretary

Received by the Executive Office on 8-21-06 by Ellie Payton

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.

Date: 9-18-2006

Frank Ettawageshik
Frank Ettawageshik, Tribal Chairperson

