

## Chapter 21. Tribal Historic Preservation Office Statute

*Codification Note: Repeals and replaces WOS 2018-022*

### **15.2101 PURPOSE**

The purpose of this Statute is to establish the Tribal Historic Preservation Office (THPO) that assumes the duties under National Historic Preservation Act of 1966, as amended (NHPA) within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians (LTBB) reservation; and fulfills the duties of the Native American Graves Protection and Repatriation Act (NAGPRA) representative(s); and such others as duties and functions as designated by Tribal Council. This Statute repeals and replaces Waganakising Odawak Statute 2018-022 Tribal Historic Preservation Office Protection and Management of Archaeological, Historical and Cultural Properties and Cultural Resources, 2014-013, 2013-002, and any and all previous Statutes.

(Source: WOS 2019-006, June 12, 2019, Section I)

### **15.2102 ABROGATION AND GREATER RESTRICTIONS**

- A.** Where this Statute imposes greater restrictions than those contained in relevant Federal Laws and Regulations, this Statute shall govern.
  
- B.** Other Federal laws and regulations that apply to Tribal Lands administered by the Bureau of Indian Affairs, but may be superseded by this Statute include: National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470(1988); Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469; National Environmental Policy Act (NEPA), 42 U.S.C. 4321 (1988); 36 C.F.R. Part 800: Protection of Historic Properties; American Indian Religious Freedom Act (AIRFA), 42 U.S.C. 1996 (1988); Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001; Archaeological Resources Protection Act of 1979, as amended (ARPA), 16 U.S.C. 470; and Executive Order 13007.
  
- C.** This Statute shall not affect the application of separate actions occurring under State or Federal laws.

(Source: WOS 2019-006, June 12, 2019, Section II)

## **15.2103 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.

(Source: WOS 2019-006, June 12, 2019, Section III)

## **15.2104 DEFINITIONS**

- A.** “Ancestral Remains” means Tribal ancestral remains or Native American remains along with any funerary objects.
- B.** "BIA-MAO" means the Bureau of Indian Affairs-Minneapolis Area Office.
- C.** "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 of ceremonies of a culture.
- D.** “Consultant” means individuals with expertise who meet the United States, Department of Interior Secretary's Standards.
- E.** "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.
- 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.** “NAGPRA” means the Native American Graves Protection and Repatriation Act (as amended).

**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.** "Secretary" means the United States, Department of Interior Secretary.

**L.** "THPO" means the Tribal Historic Preservation Office composed of the Tribal Historic Preservation Officer and staff.

**M.** "Tribal Citizen" means a person enrolled with the Tribe.

**N.** "Tribal Culturally Significant Sites" means sites that are currently or in the past used by the Tribe or its Tribal Citizens for gathering of medicines, conducting ceremonies or other tribal activities; or the site is associated with the cultural practices or beliefs of a Tribal community; or the site is closely tied to the cultural identity of the community.

**O.** "Tribal Historic Properties" means any prehistoric or historic sites, districts, structures, or objects that are significant to the prehistory, history, architecture, archeology, culture, or spiritual nature of the Tribe,

**P.** "Tribal Sacred Site" means any specific, discrete, narrowly delineated location that is identified as sacred by virtue of its established religious significance or ceremonial use.

**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.

(Source: WOS 2019-006, June 12, 2019, Section IV)

## **15.2105 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. 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, and the THPO shall have the following duties:

- 1.** In cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct, conduct and maintain a comprehensive Tribal-wide survey of historic properties and maintain inventories of such properties within the exterior boundaries of the Tribe's reservation and shall maintain the system for the survey and inventory of historic properties.
- 2.** 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;
- 3.** Establish and maintain the Odawa Historic and Cultural Site Registries in accordance with applicable laws.
- 4.** Prepare and implement a comprehensive Tribal-wide historic preservation plan;
- 5.** The THPO shall administer Federal assistance funds received by the Tribe for Historic Preservation activities;
- 6.** Advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
- 7.** Cooperate with the LTBB Tribe, Secretary, the Advisory Council on Historic Preservation, and other Tribal, Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

- 8.** Provide public information, education, and training, and technical assistance in historic preservation;
  - 9.** Consult with the appropriate Federal agencies in accordance with the National Historic Preservation Act on— (i) Federal undertakings that may affect historic properties; and (ii) the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties; and Advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance;
  - 10.** The THPO shall provide a report to the Tribal Council monthly or as requested by Tribal Council;
  - 11.** The THPO will hold public hearings to gather information from the Tribal Community and Citizens; and provides for adequate public participation in the THPO program, including the process of recommending properties for nomination to the National Register; and
  - 12.** The THPO may share information regarding repatriation of remains and protection of traditional cultural properties the Tribal Community and Citizens.
  - 13.** The THPO shall assume responsibility under 16 U.S.C. 470a 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.
  - 14.** The THPO shall assume responsibility under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C 306108.
- B.** 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.
- C.** The THPO Office may utilize consultants, as needed, who meet the Secretary's Standards.

(Source: WOS 2019-006, June 12, 2019, Section V)

#### **15.2106 MACPRA and NAGPRA DUTIES**

- A.** The THPO shall be the Tribe's representative to Inter-tribal organizations.
- B.** The THPO shall be the designated NAGPRA representative of the Tribe.
- C.** The THPO may provide advice to Tribal Council on repatriation and protection of traditional cultural properties.

(Source: WOS 2019-006, June 12, 2019, Section VI)

#### **15.2107 STAFFING**

Tribal Historic Preservation Office (THPO) shall continue operations with existing staff. If a Tribal Historic Preservation Office position is designated or created, this position will be filled with a Tribal Citizen.

(Source: WOS 2019-006, June 12, 2019, Section VII)

#### **15.2108 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 Office 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 Office 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 Office 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 Office.

(Source: WOS 2019-006, June 12, 2019, Section VIII)

#### **15.2109 PERMITS TO PROCEED WITH AN UNDERTAKING ON LAND WITHIN THE RESERVATION**

**A.** The Tribal Historic Preservation Office is responsible for the issuance of "Permits to Proceed with an Undertaking on Lands within the Reservation" as delineated within this Statute.

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

**C.** 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, 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 Investigation. 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 Investigation. The project area presented in the Permit application, if applicable, may be investigated by a qualified archaeologist to record and describe any historic properties.

**3.** Permit Contingencies. Based upon the results of the 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 twenty-one (21) days of the completion of the investigations 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.

(Source: WOS 2019-006, June 12, 2019, Section IX)

## **15.2110 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 from 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.

(Source: WOS 2019-006, June 12, 2019, Section X)

## **15.2111 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 reasonably 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.

(Source: WOS 2019-006, June 12, 2019, Section XI)

#### **15.2112 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.

(Source: WOS 2019-006, June 12, 2019, Section XII)

#### **15.2113 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.

(Source: WOS 2019-006, June 12, 2019, Section XIII)

#### **15.2114 OTHER RELATED STATUTES**

See Odawa Historic and Cultural Site Registry, as may be amended.

(Source: WOS 2019-006, June 12, 2019, Section XIV)