

Chapter 8. Conservation and Cultural Preservation Easement Act

4.801 PURPOSE

The way of life of the Little Traverse Bay Bands of Odawa Indians (LTBB) relies upon environmental protection for cultural perpetuation. This is rooted in the traditional reliance on Great Lakes and inland fishing and hunting, and the many plant species that have cultural, medicinal, and spiritual values for the Tribe. For centuries, LTBB Tribal members have subsisted by making good use of the natural resources available to them, including the flora and fauna in their environment, for food, medicines, clothing, shelter, and heat. This way of life continues to be threatened by the increasing popularity of LTBB's 1836 and 1855 Treaty Reservation and surrounding area both as a resort locale and as a permanent home. Development is still on the rise to accommodate the large numbers of people visiting and relocating in the area. The escalating development and rise in population density will continue to have a negative impact on the area's natural resources that hold such central importance to the Tribe.

The Little Traverse Bay Bands of Odawa Indians strives to protect vital areas such as sites of cultural significance, scenic view-sheds, open space, wetland areas, waterfront property, plant and animal habitat, and endangered/threatened species, etc. By protecting these vital areas in perpetuity, LTBB ensures that these areas and thus the LTBB way of life will be protected for the next seven generations.

(Source: WOS 2004-01, July 25, 2004, Section I)

4.802 DEFINITIONS

As used in this Statute:

A. "Conservation Easement" means an interest in land which provides limitation on the use of land or a body of water, or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.

B. “Cultural/Historic preservation easement” means an interest in land which provides a limitation on the use of a structure or site that is listed as a national historic landmark pursuant to the historic sites act of 1935, Public Law 74-292; is listed on the national register of historic places pursuant to the national historic preservation act of 1966, Public Law 89-665; is recognized as a site of cultural and/or historical significance according to the Little Traverse Bay Bands of Odawa Indians Archives and Records Department, or prohibits certain acts on or with respect to the structure or site, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the structure or site or in an order of taking, which interest is appropriate to the preservation or restoration of the structure or site.

C. “Traditional Use Easement” means a provision in a restriction, easement, covenant, deed, will or other instrument executed by or on behalf of the owner of the land that allows LTBB members to hunt, fish, gather plants, hold ceremonies and/or erect temporary or permanent structures as specified in such provision. A conservation easement as defined in Section II(A) and a cultural/historic preservation easement as defined in Section II(B) may also contain traditional use easements.

(Source: WOS 2004-01, July 25, 2004, Section II)

4.803 ENFORCEABILITY AND CONSERVATION EASEMENT: RECORDATION

A conservation easement granted to a governmental entity, including but not limited to the LTBB Tribal Government, or to a charitable or educational association, corporation, trust, or other legal entity, including but not limited to those formed under the laws of LTBB, before or after the effective date of this Statute, shall be enforceable against the owner of the land or body or water subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to particular land or a body of water, or the fact that the benefit may be assigned to another governmental entity or legal entity. Any such easement created after the effective date of this Statute that is for lands within the exclusive jurisdiction of LTBB or granted to LTBB or an entity formed under the laws of LTBB shall be filed with the LTBB Archives and Records Department as well as the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value or other grantee without actual notice.

(Source: WOS 2004-01, July 25, 2004, Section III)

4.804 ENFORCEABILITY OF CULTURAL / HISTORIC PRESERVATION EASEMENT: RECORDATION

A cultural/historic preservation easement granted to a governmental entity including but not limited to the LTBB Tribal Government, or to a charitable or educational association, corporation, trust, or other legal entity, including but not limited to those formed under the laws of LTBB, before or after the effective date of this Statute, whose purposes include the preservation or restoration of structures or sites described in section II(B) shall be enforceable against the owner of the structure or site subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to the particular structure or site, or the fact that the benefit may be assigned to another governmental entity or legal entity whose purposes include the preservation or restoration of structures or sites described in section II(B). Any such easement created after the effective date of this Statute that is for lands within the exclusive jurisdiction of LTBB or granted to LTBB or an entity formed under the laws of LTBB shall be filed with the LTBB Archives and Records Department as well as the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value or other grantee without actual notice.

(Source: WOS 2004-01, July 25, 2004, Section IV)

4.805 ENFORCEABILITY OF TRADITIONAL USE EASEMENT

A traditional use easement granted to a governmental entity, including but not limited to the LTBB Tribal Government, or to a charitable or educational association, corporation, trust, or other legal entity, including but not limited to those formed under the laws of LTBB, before or after the effective date of this Statute, shall be enforceable against the owner of the land or body or water subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to particular land or a body of water, or the fact that the benefit may be assigned to another governmental entity or legal entity. Any such easement created after the effective date of this Statute that is for lands within the exclusive jurisdiction of LTBB or granted to LTBB or an entity formed under the laws of LTBB shall be filed with the LTBB Archives and Records Department as well as the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value or other grantee without actual notice.

(Source: WOS 2004-01, July 25, 2004, Section V)

4.806 ENFORCEABILITY OF OTHER RESTRICTIONS, EASEMENTS, COVENANTS OR CONDITIONS

This Statute does not render a restriction, easement, covenant, or condition which does not have the benefit of this Statute unenforceable.

(Source: WOS 2004-01, July 25, 2004, Section VI)

4.807 RECORDATION OF EASEMENTS; ENFORCEMENT; ASSIGNMENT AND ACQUISITION

A. A conservation easement, historic preservation easement or traditional use easement is an interest in real estate, and a document creating one or more of those easements shall be considered a conveyance of real estate and shall be enforced either by an action at law or by an injunction or other equitable proceedings.

B. A conservation easement described in section II(A) and a traditional use easement described in section II(C) may be assigned to a governmental or other legal entity, which shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

C. A cultural/historic preservation easement described in section II(B) may be assigned to a governmental or other legal entity whose purposes include preservation or restoration of structures or sites described in section II(B), which shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

(Source: WOS 2004-01, July 25, 2004, Section VII)

4.808 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2004-01, July 25, 2004, Section VIII)

4.809 EFFECTIVE DATE

This Statute takes effect thirty days from the date of enactment.[from July 25, 2004]

(Source: WOS 2004-01, July 25, 2004, Section IX)