

1 **WAGANAKISING ODAWAK STATUTE #2018-**
2 **TRIBAL HISTORIC PRESERVATION OFFICE PROTECTION AND MANAGEMENT**
3 **OF ARCHAEOLOGICAL, HISTORICAL AND CULTURAL PROPERTIES AND**
4 **CULTURAL RESOURCES**

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7 **SECTION I. PURPOSE**

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9 The purpose of this Statute is to establish the Tribal Historic Preservation Office (THPO)
10 that engages in a comprehensive program of historic preservation to promote the protection and
11 conservation of such archaeological, historical and cultural properties and resources located within
12 the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians (LTBB) reservation for
13 the preservation, education, and enrichment of the Citizens of the Tribe; fulfills the duties of the
14 Michigan Anishnaabeg Cultural Preservation and Repatriation Alliance (MACPRA) and Native
15 American Graves Protection and Repatriation Act (NAGPRA) representative(s); and such others as
16 duties and functions as designated by Tribal Council. This Statute repeals and replaces
17 Waganakising Odawak Statute 2014-013, 2013-002, and any and all previous Statutes.

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20 **SECTION II. ABROGATION AND GREATER RESTRICTIONS**

- 21
22 **A.** Where this Statute imposes greater restrictions than those contained in relevant Federal
23 Laws and Regulations, this Statute shall govern.
24
25 **B.** Other Federal laws and regulations that apply to Tribal Lands administered by the Bureau of
26 Indian Affairs, but may be superseded by this Statute include: National Historic Preservation Act of
27 1966, as amended (NHPA), 16 U.S.C. 470(1988); Archaeological and Historic Preservation Act of
28 1974, 16 U.S.C. 469; National Environmental Policy Act (NEPA), 42 U.S.C. 4321 (1988); 36
29 C.F.R. Part 800: Protection of Historic Properties; American Indian Religious Freedom Act
30 (AIRFA), 42 U.S.C. 1996 (1988); Native American Graves Protection and Repatriation Act of 1990
31 (NAGPRA), 25 U.S.C. 3001; Archaeological Resources Protection Act of 1979, as amended
32 (ARPA), 16 U.S.C. 470; and Executive Order 13007.
33

1 C. This Statute shall not affect the application of separate actions occurring under State of
2 Federal laws.

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4

5 **SECTION III. APPLICABILITY**

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

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11 **SECTION IV. DEFINITIONS**

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13 A. "Ancestral Remains" means Tribal ancestral remains or Native American remains along
14 with any funerary objects.

15

16 B. "BIA-MAO" means the Bureau of Indian Affairs-Minneapolis Area Office.

17

18 C. "Burial Site" means any place of interment, by any means, natural or a physically prepared
19 location, whether originally below, on, or above the surface of the earth, where human remains or
20 associated funerary objects are deposited, as part of the death rites of ceremonies of a culture.

21

22 D. "Field Archeology" means the study of the traces of human culture by means of controlled,
23 systematic surveying, digging, sampling, excavating or removing objects.

24

25 E. "Funerary Objects" means objects, that as a part of the death rite or ceremony of a culture,
26 are reasonably believed to have been placed with individual human remains either at the time of
27 death or later.

28

29 F. "Historic Properties" means any prehistoric or historic site, district, structure, object, or
30 remains, significant to the prehistory, history, architecture, archeology, culture, or spiritual nature
31 of the Tribe, the State, and the United States of America. Historic properties are generally greater
32 than fifty (50) years in age.

33

- 1 **G.** "Historic Preservation means the research, protection, restoration, and rehabilitation of
2 historic properties and resources.
3
- 4 **H.** "Human Remains" includes any part of a deceased human being in any state of
5 decomposition, including the surrounding soil immediately within and adjacent to the burial.
6
- 7 **I.** "Land and Reservation Committee" means the standing Committee of Tribal Council.
8
- 9 **J.** "MACPRA" means the Michigan Anishnaabeg Cultural Preservation and Repatriation
10 Alliance. An alliance of the Tribe of Michigan that defend and protect indigenous grave and
11 traditional cultural properties.
12
- 13 **K.** "NAGRPA" means the Native American Graves Protection and Repatriation Act (as
14 amended).
15
- 16 **L.** "Qualified Archaeologist" means any person who meets the Secretary of Interior's standards
17 for archaeologist: a graduate degree in archeology, anthropology or a closely related field and at
18 least one full year of full-time professional experience or equivalent specialized training in
19 archaeological or physical anthropological research, administration or management, at least four
20 month of supervised field and analytical experience in general North American archeology or
21 physical anthropology and a demonstrated ability to carry research to completion.
22
- 23 **M.** "Reservation" means all lands within the boundaries of the Reservations for the Little
24 Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the
25 Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of
26 March 28, 1836, 7 Stat. 491, in the event that the 1836 Reservation is determined to include lands
27 which are not included within the 1855 Reservation, plus any lands outside of those boundaries
28 which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians
29 Reservation by the U.S. Department of the Interior.
30
- 31 **N.** "Sacred Site" means any specific, discrete, narrowly delineated location that is identified as
32 sacred by virtue of its established religious significance or ceremonial use.
33

1 **O.** "Traditional Cultural Property" means a place eligible for inclusion in the Tribal, State,
2 and/or National Register because of its association with cultural practices or beliefs of a
3 community that is rooted in that community's history and are important in maintaining the
4 continuing cultural identity of the community.

5
6 **P.** "Tribal Archeology Para-Professional" means a tribal member that has undergone formal
7 training in basic archaeological field methods and has maintained the minimum annual
8 requirements.

9
10 **Q.** "THPO" means the Tribal Historic Preservation Office composed of the Tribal Historic
11 Preservation Officer and staff.

12
13 **R.** "Tribal Historic Preservation Officer" means the person who is employed by the Tribal
14 Council.

15
16 **S.** "Tribal Citizen" means a person enrolled with the Tribe.

17
18 **T.** "Tribe" means the Little Traverse Bay Bands of Odawa Indians.

19
20 **U.** "Undertaking" includes any project, activity, or program and any of its elements that may
21 have potential to affect an historic property, burial site, human remains, sacred site or traditional
22 cultural property and includes construction, rehabilitation, planning, repair projects, land clearing,
23 licenses, and permits for buildings, roads and development.

24
25
26 **SECTION V. TRIBAL HISTORIC RESERVATION OFFICE DUTIES AND**
27 **AUTHORITY**

28
29 **A.** A Tribal Historic Preservation Office (THPO) shall be established within the Legislative
30 Branch to increase efforts in locating, documenting, and evaluating historic properties within the
31 exterior boundaries of the LTBB reservation. This information shall provide a record of the past for
32 future generations and a copy of the record shall be housed with the Department of Repatriation,
33 Archives and Records. Information on historic properties recorded in the ceded territory shall also

1 be collected, evaluated, and recorded.

2

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

9

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

13

14 **A.** The THPO shall advocate for the repatriation of Native Ancestral remains, cultural
15 patrimony, sacred objects and the protection of traditional cultural properties and sacred sites.

16

17 **B.** The THPO shall be the Tribe's representative to MACPRA as a voting member and may
18 include approval of such activities as testifying, authorizing law-suits in the name of MACPRA,
19 negotiating with governments or institutions, protection of lands, and other such activities in
20 repatriating remains or protection of traditional cultural properties.

21

22 **C.** The THPO shall be the designated NAGPRA representative of the Tribe.

23

24 **D.** The THPO may provide advice to Tribal Council on repatriation and protection of
25 traditional cultural properties.

26

27 **E.** The THPO shall provide a report to the Tribal Council monthly or as requested by Tribal
28 Council.

29

30 **F.** The THPO may hold public hearings to gather information from the Tribal Community and
31 Citizens.

32

1 **G.** The THPO may share information regarding repatriation of remains and protection of
2 traditional cultural properties the Tribal Community and Citizens.

3
4 **D.** The THPO shall administer Federal assistance funds received by the Tribe for Historic
5 Preservation activities.

6
7 **E.** The THPO shall consult with appropriate Federal agencies in accordance with the National
8 Historic Preservation Act regarding Federal undertakings that may affect historic properties and
9 evaluate the content and sufficiency of any plans developed to protect, manage, or to reduce or
10 mitigate harm to such properties, and assure that these undertakings are conducted in full compliance
11 with tribal laws and traditional practices, for Tribal Council's approval via the Land and
12 Reservation Committee,

13
14 **F.** The THPO shall advise Federal, State and local governments as to their responsibilities
15 regarding undertakings of archaeological properties within the Tribe's jurisdiction.

16
17 **G.** The Tribal Historic Preservation Officer is responsible for the issuance of "Permits to
18 Proceed with an Undertaking on Lands within the Reservation" as delineated within this Statute.

19
20 **H.** The Department of Repatriation, Archives and Record shall be the permanent repository for
21 cultural materials discovered on Tribal and allotted lands. Access to the use of collections for
22 educational and research purposes, shall be controlled by the Department.

23
24 **I.** The THPO shall assume responsibility under 16 U.S.C. 470a section 101 (d) 6 and in
25 cooperation with the State Historic Preservation Officer, determine and recommend properties for
26 inclusion on the National Register, properties that are of traditional, religious/spiritual and cultural
27 importance to the Tribe.

28
29 **J.** The THPO shall assume responsibility under Section 106 of the National Historic
30 Preservation Act (NHPA), 54 U.S.C 306108.

31
32 **SECTION VI. BURIAL SITES AND TREATMENT OF HUMAN REMAINS**

33

1 **A.** No individual shall knowingly excavate or damage a burial site, human remains or funerary
2 objects. No individual shall intentionally cause or permit the disturbance of a burial site or
3 established buffer zone surrounding a burial site. Further, an individual shall immediately notify
4 the Tribal Historic Preservation Officer if the person knows of or has reasonable grounds to believe
5 that a burial site or established buffer zone is being disturbed contrary to this sub chapter.
6

7 **B.** Only in the extreme cases of unavoidable destruction, natural exposure or accidental
8 discovery shall burial sites, human remains or funerary objects be approved for intentional
9 disturbance. When disturbance is found to be necessary, or has already occurred, the Tribal Historic
10 Preservation Officer will agree to a procedure in writing by which the disturbance shall be
11 mitigated.
12

13 **C.** At all times during the process of disturbing any human remains, the Tribal Historic
14 Preservation Officer or his or her designee shall be on hand to assist and ensure that the parties
15 employed to remove or expose any human remains or grave goods implement the written
16 procedure as previously agreed upon.
17

18 **D.** No Scientific Analysis or Reburial will occur unless agreed upon by the Tribal Historic
19 Preservation Officer.
20

21 **SECTION VII. PERMITS TO PROCEED WITH AN UNDERTAKING ON LAND**
22 **WITHIN THE RESERVATION**
23

24 **A.** Prior to beginning any undertaking on land within the Reservation, all individuals shall
25 have a signed Permit to Proceed from the Tribal Historic Preservation Officer.
26

27 **B.** Procedures for Obtaining a Permit to Proceed.
28

29 **1.** Submission of Application for Permit to Proceed. During the planning stage of all
30 undertakings on land within the Reservation, all individuals shall complete and submit an
31 application for a Permit to Proceed. Permits to Proceed can only be issued by the THPO.
32 The THPO shall review the application, and determine, following a review of the THPO
33 files covering that area, if a field investigation will be required. The THPO shall notify the

1 applicant in writing within thirty (30) days if a field investigation is required. If no field
2 investigation is required, the THPO shall either issue the Permit to Proceed or notify the
3 applicant in writing of the reason for Permit denial.
4

5 **2. Field Investigation.** All areas within the Reservation boundaries that will undergo
6 earth disturbing activities, not specifically excluded below (66.404), and not previously
7 subjected to a field investigation, shall be subject to a review process to determine the
8 presence or absence of historic properties, burial sites, sacred sites or traditional cultural
9 properties. The review consists of the following:
10

11 **a. File Search and Pre-Field Investigations.** THPO staff will check files and
12 maps recording the locations of identified historic properties, burial sites, sacred site
13 and traditional cultural properties, as well as the locations of areas previously
14 investigated. Additional information may be sought from Tribal Elders and other
15 individuals if deemed necessary in areas identified as highly sensitive.
16

17 **b. Field Archeology.** The project area presented in the Permit application will
18 be investigated by a qualified archaeologist to record and describe any historic
19 properties. Archaeological investigations are dependent on weather and ground
20 conditions.
21

22 **3. Permit Contingencies.** Based upon the results of the field investigations, the THPO
23 will determine whether or not a Permit to Proceed will be granted and shall make a
24 recommendation to Tribal Council via the Land and Reservation Committee. Within
25 fourteen (14) days of the completion of the field investigation and with Tribal Council
26 approval, the THPO shall issue one of the following:
27

28 **a.** A Permit to Proceed with no contingencies.
29

30 **b.** A Permit to Proceed with contingencies.
31

32 **c.** A letter denying the Permit to Proceed stating that the project may not
33 proceed according to the plans presented by the applicant. The applicant may

1 submit a new application based upon changes made in consultation with the THPO,
2 which would remove or minimize any impacts to historic properties.
3

4 **C. Appeal of Denied Permits to Proceed.** An applicant may appeal any denied Permits by
5 requesting a hearing before Tribal Council. The request must be made in writing within fourteen
6 (14) days of the Permit denial. A determination from Tribal Council shall be final.
7

8 **D. Lands within the Reservation, Excluded from Pre-Field and Field Archeology**
9 **Investigations.** The THPO may permit the following areas to be excluded from field archeology
10 investigations:
11

12 **1. Activities that are excluded from pre-field and field investigations:**
13

14 **a. Gardening, in general, in pre-existing gardens, or new garden construction;**
15

16 **b. Projects less than one (1) square meter in size (i.e.) digging postholes,**
17 **planting trees, bushes, etc.);**
18

19 **c. Maintenance activities including but not limited to: basic road maintenance,**
20 **grading, snowplowing;**
21

22 **d. Any areas that have previously undergone an archaeological survey and has**
23 **been permitted with no contingencies;**
24

25 **e. Projects that will not have ground disturbing affects; i.e. mowing lawn,**
26 **winter logging activity on frozen ground.**
27

28 **2. Activities that, at the discretion of the THPO, may be excluded from field**
29 **archeology investigations, but may require a pre-field archaeological investigation:**
30

31 **a. Swampy areas or areas with mucky soils;**
32

33 **b. Locations directly on steep slopes which would prohibit construction of**

1 historic or prehistoric dwellings or settlements;

2
3 c. Areas already disturbed by a depth of greater than three (3) feet; i.e. Gravel
4 pits;

5
6 d. Emergency situations (septic replacement, etc.);

7
8 e. Hazardous conditions that jeopardize the safety of THPO staff or
9 individuals.

10
11 **E.** Payment for Field Archaeological Surveys of Tribal Lands leased by Tribal Citizens. The
12 Tribe shall pay for required field archaeological surveys of Tribal Citizens. All other surveys,
13 including projects receiving funding from Federal agencies and other entities shall not be paid for
14 by the Tribe; unless, otherwise and previously approved by Tribal Council.

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17 **SECTION VIII. PERMITS TO CONDUCT ACHAEOLOGICAL INVESTIGATIONS**

18
19 **A.** Tribal Permit to Conduct Archaeological Investigations. All individuals intending to
20 conduct archaeological investigations or engaging in the excavation or removal of archaeological
21 materials from historic properties on lands within the reservation must have a "Permit to Conduct
22 Archaeological Investigations" approved by Tribal Council via the Land and Reservation
23 Committee, signed by the THPO and must satisfy the requirements of a qualified archaeologist.

24
25 **B.** Permits for Non-Tribal Citizens. Any Individual intending to conduct archaeological
26 investigations or engaging in excavation or removal of archaeological materials form historic
27 properties on Federal, Tribal or allotted lands, that is not an enrolled Tribal Citizen, must have a
28 valid ARPA Permit approved by Tribal Council via the Land and Reservation Committee, signed
29 by the Area Director of the BIA-MOA as required in 25 C.F.R. 262.4. This permit is in addition to
30 the Permit required by the Tribe.

31
32 **C.** Permits to Conduct Field Archeology on State Land within the Exterior Boundaries of the
33 Reservation. Any individual wishing to conduct field archeology on State land within the exterior

1 boundaries of the Reservation shall in addition to the requirements under this Statute, contact the
2 Office of the State Archaeologist of Michigan to determine the need and process of applying for a
3 State permit or license to conduct field archeology as encouraged in State Statute 1710.19. This
4 permit is in addition to the Permit required by the Tribe.
5

6 **D.** Requirements of Qualified Archaeologist. Archaeological surveys shall be conducted by an
7 archaeologist meeting the Department of Interior's Standards for Archaeologists, or by a Tribal
8 Archeology Para-Professional under the supervision of a qualified archaeologist.
9

10
11 **SECTION IX. ENFORCEMENT OF PENALTIES**
12

13 **A.** Enforcement by Duly Authorized Law Enforcement Officer.
14

15 **1.** The duly authorized Law Enforcement Officer shall have the responsibility and
16 authority to enforce and implement the provisions of this Statute, which includes the
17 issuance of citations.
18

19 **2.** Criminal Penalties. Any person who violates, counsels, procures, solicits, or
20 employs any other person to violate any prohibition, or fails to follow the above stated
21 procedures, shall, upon conviction, be fined an amount not to exceed \$1,000.00 or
22 imprisoned for a term not to exceed twelve (12) months, or both. Such person may also be
23 subject to the civil penalties provided for in this Statute. Criminal penalties shall also apply
24 in Tribal Court.
25

26 **3.** Civil Penalties. Any person violating the provisions of this chapter commits a civil
27 infraction punishable by fine and/or exclusion from the Reservation. The infraction shall be
28 punishable by a fine not to exceed \$1,000.00. The Tribal Court shall hear the trial of any
29 such infraction and the prosecution shall have the burden of proving the alleged infraction
30 by a preponderance of the evidence. Penalties cannot be suspended or waived.
31

32 **4.** Civil Damages. Any person violating the provisions of this chapter shall be liable to
33 the Tribe for civil damages to be assessed by the Tribal Court after the hearing. "Civil

1 Damages" shall be interpreted liberally by the Tribal Court to include, but not limited to, the
2 following:

- 3
- 4 a. Costs of restoration of the damaged site;
- 5
- 6 b. Costs associated with the enforcement of the provisions of this Chapter;
- 7
- 8 c. Costs associated with mitigation of protected historic properties, burial
9 sites, sacred sites or traditional cultural properties, including reburial;
- 10
- 11 d. Costs associated with documentation, testing, and evaluating the damaged
12 site in order to assess the character of the site.
- 13

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

17

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

23

24

25 **SECTION VII. SEVERABILITY**

26

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

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33 **SECTION VIII. EFFECTIVE DATE**

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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

DRAFT