

1                                   **WAGANAKISING ODAWAK STATUTE #**  
2                                   **TRIBAL HISTORIC PRESERVATION OFFICE STATUTE**

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5   **SECTION I.            PURPOSE**

6  
7            The purpose of this Statute is to establish the Tribal Historic Preservation Office (THPO)  
8 that assumes the duties under National Historic Preservation Act of 1966, as amended (NHPA)  
9 within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians (LTBB)  
10 reservation; and fulfills the duties of the ~~Michigan Anishnaabeg Cultural Preservation and~~  
11 ~~Repatriation Alliance (MACPRA) and~~ Native American Graves Protection and Repatriation Act  
12 (NAGPRA) representative(s); and such others as duties and functions as designated by Tribal  
13 Council. This Statute repeals and replaces Waganakising Odawak Statute 2018-022 Tribal Historic  
14 Preservation Office Protection and Management of Archaeological, Historical and Cultural  
15 Properties and Cultural Resources, 2014-013, 2013-002, and any and all previous Statutes.  
16

17  
18   **SECTION II.            ABROGATION AND GREATER RESTRICTIONS**

- 19  
20   **A.**     Where this Statute imposes greater restrictions than those contained in relevant Federal  
21 Laws and Regulations, this Statute shall govern.  
22  
23   **B.**     Other Federal laws and regulations that apply to Tribal Lands administered by the Bureau of  
24 Indian Affairs, but may be superseded by this Statute include: National Historic Preservation Act of  
25 1966, as amended (NHPA), 16 U.S.C. 470(1988); Archaeological and Historic Preservation Act of  
26 1974, 16 U.S.C. 469; National Environmental Policy Act (NEPA), 42 U.S.C. 4321 (1988); 36  
27 C.F.R. Part 800: Protection of Historic Properties; American Indian Religious Freedom Act  
28 (AIRFA), 42 U.S.C. 1996 (1988); Native American Graves Protection and Repatriation Act of 1990  
29 (NAGPRA), 25 U.S.C. 3001; Archaeological Resources Protection Act of 1979, as amended  
30 (ARPA), 16 U.S.C. 470; and Executive Order 13007.  
31  
32   **C.**     This Statute shall not affect the application of separate actions occurring under State or  
33 Federal laws.  
34  
35

1 **SECTION III. APPLICABILITY**

2  
3 This Statute shall apply to all individuals, activities, and property, whether free or in trust,  
4 within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians Reservation.  
5

6  
7 **SECTION IV. DEFINITIONS**

8  
9 **A.** "Ancestral Remains" means Tribal ancestral remains or Native American remains along  
10 with any funerary objects.  
11

12 **B.** "BIA-MAO" means the Bureau of Indian Affairs-Minneapolis Area Office.  
13

14 **C.** "Burial Site" means any place of interment, by any means, natural or a physically prepared  
15 location, whether originally below, on, or above the surface of the earth, where human remains or  
16 associated funerary objects are deposited, as part of the death rites of ceremonies of a culture.  
17

18 **D.** "Consultant" means individuals with expertise who meet the United States, Department of  
19 Interior Secretary's Standards.  
20

21 **E.** "Funerary Objects" means objects, that as a part of the death rite or ceremony of a culture,  
22 are reasonably believed to have been placed with individual human remains either at the time of  
23 death or later.  
24

25 **F.** "Historic Preservation" means the research, protection, restoration, and rehabilitation of  
26 historic properties and resources.  
27

28 **G.** "Human Remains" includes any part of a deceased human being in any state of  
29 decomposition, including the surrounding soil immediately within and adjacent to the burial.  
30

31 **H.** "Land and Reservation Committee" means the standing Committee of Tribal Council.  
32

33 ~~—"MACPRA" means the Michigan Anishnaabeg Cultural Preservation and Repatriation~~  
34 ~~Alliance. An alliance of the Tribe of Michigan that defend and protect indigenous grave and~~  
35 ~~traditional cultural properties.~~

1 **I.** "NAGPRA" means the Native American Graves Protection and Repatriation Act (as  
2 amended).  
3

4 **J.** "Reservation" means all lands within the boundaries of the Reservations for the Little  
5 Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the  
6 Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of  
7 March 28, 1836, 7 Stat. 491, in the event that the 1836 Reservation is determined to include lands  
8 which are not included within the 1855 Reservation, plus any lands outside of those boundaries  
9 which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians  
10 Reservation by the U.S. Department of the Interior.  
11

12 **K.** "Secretary" means the United States, Department of Interior Secretary.  
13

14 **L.** "THPO" means the Tribal Historic Preservation Office composed of the Tribal Historic  
15 Preservation Officer and staff.  
16

17 **M.** "Tribal Citizen" means a person enrolled with the Tribe.  
18

19 **N.** "Tribal Culturally Significant Sites" means sites that are currently or in the past used by the  
20 Tribe or its Tribal Citizens for gathering of medicines, conducting ceremonies or other tribal  
21 activities; or the site is associated with the cultural practices or beliefs of a Tribal community; or the  
22 site is closely tied to the cultural identity of the community.  
23

24 **O.** "Tribal Historic Properties" means any prehistoric or historic sites, districts, structures, or  
25 objects that are significant to the prehistory, history, architecture, archeology, culture, or spiritual  
26 nature of the Tribe,  
27

28 **P.** "Tribal Sacred Site" means any specific, discrete, narrowly delineated location that is  
29 identified as sacred by virtue of its established religious significance or ceremonial use.  
30

31 **Q.** "Tribe" means the Little Traverse Bay Bands of Odawa Indians.  
32

33 **R.** "Undertaking" includes any project, activity, or program and any of its elements that may  
34 have potential to affect an historic property, burial site, human remains, sacred site or traditional  
35 cultural property and includes construction, rehabilitation, planning, repair projects, land clearing,

1 licenses, and permits for buildings, roads and development.

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3  
4 **SECTION V. TRIBAL HISTORIC RESERVATION OFFICE DUTIES AND**  
5 **AUTHORITY**

6  
7 **A.** A Tribal Historic Preservation Office (THPO) shall be established within the Legislative  
8 Branch to increase efforts in locating, documenting, and evaluating historic properties, ~~within the~~  
9 ~~exterior boundaries of the LTBB reservation.~~ This information shall provide a record of the past for  
10 future generations and a copy of the record shall be housed with the Department of Repatriation,  
11 Archives and Records. Information on historic properties recorded in the ceded territory shall also  
12 be collected, evaluated, and recorded, and the THPO shall have the following duties:

13  
14 1. In cooperation with Federal and State agencies, local governments, and private  
15 organizations and individuals, direct, conduct and maintain a comprehensive Tribal-wide  
16 survey of historic properties and maintain inventories of such properties within the exterior  
17 boundaries of the Tribe’s reservation and shall maintain the system for the survey and  
18 inventory of historic properties.

19  
20 2. With Tribal Council approval via the Land and Reservation Committee, the THPO  
21 shall identify and nominate eligible properties to the National Register, and otherwise submit  
22 applications for listing historic properties on the National Register;

23  
24 3. Establish and maintain the Odawa Historic and Cultural Site Registries in  
25 accordance with applicable laws.

26  
27 3.4. Prepare and implement a comprehensive Tribal-wide historic preservation plan;

28  
29 4.5. The THPO shall administer Federal assistance funds received by the Tribe for Historic  
30 Preservation activities;

31  
32 5.6. Advise and assist, as appropriate, Federal and State agencies and local governments  
33 in carrying out their historic preservation responsibilities;  
34

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1 ~~6.7.~~ Cooperate with the LTBB Tribe, Secretary, the Advisory Council on Historic  
2 Preservation, and other Tribal, Federal and State agencies, local governments, and  
3 organizations and individuals to ensure that historic properties are taken into consideration  
4 at all levels of planning and development;

5  
6 ~~7.8.~~ Provide public information, education, and training, and technical assistance in  
7 historic preservation;

8  
9 ~~8.9.~~ Consult with the appropriate Federal agencies in accordance with the National  
10 Historic Preservation Act on— (i) Federal undertakings that may affect historic properties;  
11 and (ii) the content and sufficiency of any plans developed to protect, manage, or to reduce  
12 or mitigate harm to such properties; and Advise and assist in the evaluation of proposals for  
13 rehabilitation projects that may qualify for Federal assistance;

14  
15 ~~9.10.~~ The THPO shall provide a report to the Tribal Council monthly or as requested by  
16 Tribal Council;

17  
18 ~~10.11.~~ The THPO will hold public hearings to gather information from the Tribal  
19 Community and Citizens; and provides for adequate public participation in the THPO  
20 program, including the process of recommending properties for nomination to the National  
21 Register; and

22  
23 ~~11.12.~~ The THPO may share information regarding repatriation of remains and protection  
24 of traditional cultural properties the Tribal Community and Citizens.

25  
26 ~~12.13.~~ The THPO shall assume responsibility under 16 U.S.C. 470a section 101 (d) 6 and  
27 in cooperation with the State Historic Preservation Officer, determine and recommend  
28 properties for inclusion on the National Register, properties that are of traditional,  
29 religious/spiritual and cultural importance to the Tribe.

30  
31 ~~13.14.~~ The THPO shall assume responsibility under Section 106 of the National Historic  
32 Preservation Act (NHPA), 54 U.S.C 306108.

33  
34 **B.** The Department of Repatriation, Archives and Record shall be the permanent repository for  
35 cultural materials discovered on Tribal and allotted lands. Access to the use of collections for

1 educational and research purposes, shall be controlled by the Department.

2  
3 C. The THPO Office may utilize consultants, as needed, who meet the Secretary's Standards.

4  
5 **SECTION VI. MACPRA and NAGPRA DUTIES.**

6  
7 **A.** The THPO shall be the Tribe's representative to ~~MACPRA as a voting member and may~~  
8 ~~include approval of such activities as testifying, authorizing law suits in the name of MACPRA,~~  
9 ~~negotiating with governments or institutions, protection of lands, and other such activities in~~  
10 ~~repatriating remains or protection of traditional cultural properties.~~ Inter-tribal organizations.

11  
12 **B.** The THPO shall be the designated NAGPRA representative of the Tribe.

13  
14 **C.** The THPO may provide advice to Tribal Council on repatriation and protection of  
15 traditional cultural properties.

16  
17  
18 **SECTION VII. STAFFING**

19  
20 Tribal Historic Preservation Office (THPO) shall continue operations with existing staff. -If a Tribal  
21 Historic Preservation Office position is designated or created, this position will be filled with a  
22 Tribal Citizen.

23  
24  
25 **SECTION VIII. BURIAL SITES AND TREATMENT OF HUMAN REMAINS**

26  
27 **A.** No individual shall knowingly excavate or damage a burial site, human remains or funerary  
28 objects. No individual shall intentionally cause or permit the disturbance of a burial site or  
29 established buffer zone surrounding a burial site. Further, an individual shall immediately notify  
30 the Tribal Historic Preservation Office if the person knows of or has reasonable grounds to believe  
31 that a burial site or established buffer zone is being disturbed contrary to this sub chapter.

32  
33 **B.** Only in the extreme cases of unavoidable destruction, natural exposure or accidental  
34 discovery shall burial sites, human remains or funerary objects be approved for intentional  
35 disturbance. When disturbance is found to be necessary, or has already occurred, the Tribal Historic

1 Preservation Office will agree to a procedure in writing by which the disturbance shall be  
2 mitigated.

3  
4 **C.** At all times during the process of disturbing any human remains, the Tribal Historic  
5 Preservation Office or his or her designee shall be on hand to assist and ensure that the parties  
6 employed to remove or expose any human remains or grave goods implement the written  
7 procedure as previously agreed upon.

8  
9 **D.** No Scientific Analysis or Reburial will occur unless agreed upon by the Tribal Historic  
10 Preservation Office.

11  
12  
13 **SECTION IX. PERMITS TO PROCEED WITH AN UNDERTAKING ON LAND**  
14 **WITHIN THE RESERVATION**

15  
16 **A.** The Tribal Historic Preservation Office is responsible for the issuance of "Permits to  
17 Proceed with an Undertaking on Lands within the Reservation" as delineated within this Statute.

18  
19 **B.** Prior to beginning any undertaking on land within the Reservation, all individuals shall  
20 have a signed Permit to Proceed from the Tribal Historic Preservation Office.

21  
22 **C.** Procedures for Obtaining a Permit to Proceed.

23  
24 **1.** Submission of Application for Permit to Proceed. During the planning stage of all  
25 undertakings on land within the Reservation, all individuals shall complete and submit an  
26 application for a Permit to Proceed. Permits to Proceed can only be issued by the THPO.  
27 The THPO shall review the application, and determine, following a review of the THPO  
28 files covering that area, if a field investigation will be required. The THPO shall notify the  
29 applicant in writing within thirty (30) days if a field investigation is required. If no field  
30 investigation is required, the THPO shall either issue the Permit to Proceed or notify the  
31 applicant in writing of the reason for Permit denial.

32  
33 **2.** Field Investigation. All areas within the Reservation boundaries that will undergo  
34 earth disturbing activities, not specifically excluded, and not previously subjected to a field  
35 investigation, shall be subject to a review process to determine the presence or absence of

1 historic properties, burial sites, sacred sites or traditional cultural properties. The review  
2 consists of the following:

3  
4 **a.** File Search and Pre-Field Investigation. THPO staff will check files and  
5 maps recording the locations of identified historic properties, burial sites, sacred site  
6 and traditional cultural properties, as well as the locations of areas previously  
7 investigated. Additional information may be sought from Tribal Elders and other  
8 individuals if deemed necessary in areas identified as highly sensitive.

9  
10 **b.** Field Archeology Investigation. The project area presented in the  
11 Permit application, if applicable, may be investigated by a qualified  
12 archaeologist to record and describe any historic properties.

13 **3.** Permit Contingencies. Based upon the results of the investigations, the THPO will  
14 determine whether or not a Permit to Proceed will be granted and shall make a  
15 recommendation to Tribal Council via the Land and Reservation Committee. Within  
16 twenty-one (21) days of the completion of the investigations and with Tribal Council  
17 approval, the THPO shall issue one of the following:

18  
19 **a.** A Permit to Proceed with no contingencies.

20  
21 **b.** A Permit to Proceed with contingencies.

22  
23 **c.** A letter denying the Permit to Proceed stating that the project may not  
24 proceed according to the plans presented by the applicant. The applicant may  
25 submit a new application based upon changes made in consultation with the THPO,  
26 which would remove or minimize any impacts to historic properties.

27  
28 **C.** Appeal of Denied Permits to Proceed. An applicant may appeal any denied Permits by  
29 requesting a hearing before Tribal Council. The request must be made in writing within fourteen  
30 (14) days of the Permit denial. A determination from Tribal Council shall be final.

31  
32 **D.** Lands within the Reservation, Excluded from Pre-Field and Field Archeology  
33 Investigations. The THPO may permit the following areas to be excluded from field archeology  
34 investigations:



- 1           **1.**     Activities that are excluded from pre-field and field investigations:
- 2
- 3           **a.**     Gardening, in general, in pre-existing gardens, or new garden construction;
- 4
- 5           **b.**     Projects less than one (1) square meter in size (i.e.) digging postholes,
- 6           planting trees, bushes, etc.);
- 7
- 8           **c.**     Maintenance activities including but not limited to: basic road maintenance,
- 9           grading, snowplowing;
- 10
- 11          **d.**     Any areas that have previously undergone an archaeological survey and has
- 12          been permitted with no contingencies;
- 13
- 14          **e.**     Projects that will not have ground disturbing affects; i.e. mowing lawn,
- 15          winter logging activity on frozen ground.
- 16
- 17          **2.**     Activities that, at the discretion of the THPO, may be excluded from field
- 18          archeology investigations, but may require a pre-field archaeological investigation:
- 19
- 20          **a.**     Swampy areas or areas with mucky soils;
- 21
- 22          **b.**     Locations directly on steep slopes which would prohibit construction of
- 23          historic or prehistoric dwellings or settlements;
- 24
- 25          **c.**     Areas already disturbed by a depth of greater than three (3) feet; i.e. Gravel
- 26          pits;
- 27
- 28          **d.**     Emergency situations (septic replacement, etc.);
- 29
- 30          **e.**     Hazardous conditions that jeopardize the safety of THPO staff or
- 31          individuals.
- 32

33 **E.**     Payment for Field Archaeological Surveys of Tribal Lands leased by Tribal Citizens. The

34 Tribe shall pay for required field archaeological surveys of Tribal Citizens. All other surveys,

35 including projects receiving funding from Federal agencies and other entities shall not be paid for

1 by the Tribe; unless, otherwise and previously approved by Tribal Council.  
2  
3

4 **SECTION X. PERMITS TO CONDUCT ACHAEOLOGICAL INVESTIGATIONS**  
5

6 **A.** Tribal Permit to Conduct Archaeological Investigations. All individuals intending to  
7 conduct archaeological investigations or engaging in the excavation or removal of archaeological  
8 materials from historic properties on lands within the reservation must have a "Permit to Conduct  
9 Archaeological Investigations" approved by Tribal Council via the Land and Reservation  
10 Committee, signed by the THPO and must satisfy the requirements of a qualified archaeologist.  
11

12 **B.** Permits for Non-Tribal Citizens. Any individual intending to conduct archaeological  
13 investigations or engaging in excavation or removal of archaeological materials form historic  
14 properties on Federal, Tribal or allotted lands, that is not an enrolled Tribal Citizen, must have a  
15 valid ARPA Permit approved by Tribal Council via the Land and Reservation Committee, signed  
16 by the Area Director of the BIA-MOA as required in 25 C.F.R. 262.4. This permit is in addition to  
17 the Permit required by the Tribe.  
18

19 **C.** Permits to Conduct Field Archeology on State Land within the Exterior Boundaries of the  
20 Reservation. Any individual wishing to conduct field archeology on State land within the exterior  
21 boundaries of the Reservation shall in addition to the requirements under this Statute, contact the  
22 Office of the State Archaeologist of Michigan to determine the need and process of applying for a  
23 State permit or license to conduct field archeology as encouraged in State Statute 1710.19. This  
24 permit is in addition to the Permit required by the Tribe.  
25

26 **D.** Requirements of Qualified Archaeologist. Archaeological surveys shall be conducted by an  
27 archaeologist meeting the Department of Interior's Standards for Archaeologists.  
28  
29

30 **SECTION XI. ENFORCEMENT OF PENALTIES**  
31

32 **A.** Enforcement by Duly Authorized Law Enforcement Officer.  
33

34 **1.** The duly authorized Law Enforcement Officer shall have the responsibility and  
35 authority to enforce and implement the provisions of this Statute, which includes the

1 issuance of citations.

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

9  
10 **3. Civil Penalties.** Any person violating the provisions of this chapter commits a civil  
11 infraction punishable by fine and/or exclusion from the Reservation. The infraction shall be  
12 punishable by a fine not to exceed \$1,000.00. The Tribal Court shall hear the trial of any  
13 such infraction and the prosecution shall have the burden of proving the alleged infraction  
14 by a preponderance of the evidence. Penalties cannot be suspended or waived.

15  
16 **4. Civil Damages.** Any person violating the provisions of this chapter shall be liable to  
17 the Tribe for civil damages to be assessed by the Tribal Court after the hearing. "Civil  
18 Damages" shall be interpreted liberally by the Tribal Court to include, but not limited to, the  
19 following:

- 20
- 21 **a.** Costs of restoration of the damaged site;
  - 22
  - 23 **b.** Costs associated with the enforcement of the provisions of this Chapter;
  - 24
  - 25 **c.** Costs associated with mitigation of protected historic properties, burial  
26 sites, sacred sites or traditional cultural properties, including reburial;
  - 27
  - 28 **d.** Costs associated with documentation, testing, and evaluating the damaged  
29 site in order to assess the character of the site.
  - 30

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

34  
35 **6. Seizure of Security.** At the discretion of the duly appointed Law Enforcement

1 Officer, the Officer shall seize such property in the possession of the defendant as the  
2 Officer deems reasonably necessary to secure payment of any fine or civil damage(s),  
3 which may be levied upon the defendant upon conviction of the infraction or crime. The  
4 Officer shall further advise the defendant of his/her right to post security.  
5  
6

7 **SECTION XII. SEVERABILITY**

8  
9 If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason,  
10 held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be  
11 deemed a separate, distinct and independent provision and such holding shall not affect the validity  
12 of the remaining portions thereof.  
13

14  
15 **SECTION XIII. EFFECTIVE DATE**

16  
17 Effective upon signature of the Executive or thirty (30) days from Tribal Council approval  
18 whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override  
19 of the veto.  
20

21  
22 **SECTION XIV. OTHER RELATED STATUTES**

23  
24 See Odawa Historic and Cultural Site Registry, as may be amended.  
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