

**WAGANAKISING ODAWAK STATUTE #2024-\_\_\_\_**  
**TRIBAL HISTORIC PRESERVATION OFFICE STATUTE**

**SECTION I. PURPOSE**

The purpose of this Statute is to establish the Tribal Historic Preservation Office to preserve and protect historic and cultural resources of significance to the Little Traverse Bay Bands of Odawa Indians. This Statute repeals and replaces Waganakising Odawak Statute 2019-006.

**SECTION II. DEFINITIONS**

**A.** “Ancestral Remains” means Tribal ancestral remains or Native American remains along with any funerary objects.

**B.** “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.

**C.** “Consultant” means an individual or entity with qualifications that meet or exceed applicable United States Department of the Interior standards.

**D.** “Cultural Resources” means objects and sites with historical, traditional, religious, ceremonial or cultural importance.

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

**F.** “Historic Resources” means any prehistoric or historic sites, districts, structures or objects that are significant to the Tribe’s past, architecture, archeology, culture or spiritual nature.

**G.** “Human Remains” means any part of a deceased human being in any state of decomposition, including the surrounding soil immediately within and adjacent to the burial.

**H.** “Preservation” means the research, protection, restoration and rehabilitation of historic and/or cultural resources.

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**I.** “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.

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

**K.** “Territorial Jurisdiction” means all land that is held in trust by the United States government for the benefit of the Tribe

**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.** “Tribe” means the Little Traverse Bay Bands of Odawa Indians.

**O.** “Undertaking” means any project, activity or program and any of its elements that may have the 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.

**SECTION III. TRIBAL HISTORIC PRESERVATION OFFICE DUTIES**

**A.** A Tribal Historic Preservation Office shall be established as an Executive Branch department to further the Tribe’s sovereign interests in the protection of its historic and cultural resources.

**B.** The THPO shall have the following duties:

- 1.** Hire the Tribal Historic Preservation Officer, who shall serve as the designated

1 preservation official for the Little Traverse Bay Bands of Odawa Indians under, and fulfill all  
2 duties required by or authorized pursuant to, the National Historic Preservation Act. In the  
3 event of absence or unavailability of the Tribal Historic Preservation Officer, the Chairperson  
4 may designate an interim Tribal Historic Preservation Officer.  
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6 **2.** Serve as the Tribe’s representative for purposes of the Native American Graves  
7 Protection and Repatriation Act, Michigan Anishinabek Cultural Preservation & Repatriation  
8 Alliance, intergovernmental consultations regarding the Tribe’s historic and/or cultural  
9 resources, and in all other related capacities.  
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11 **3.** Monitor all activities that have the potential to impact historic and cultural resources  
12 of importance to the Tribe within the Tribe’s territorial jurisdiction, Reservation and ceded  
13 lands, and use all authorities, rights and consultation opportunities conferred by law to  
14 maximize the protection of those resources.  
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16 **4.** Maintain a comprehensive inventory of the Tribe’s historical and cultural properties,  
17 regardless of ownership and location.  
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19 **5.** Identify and, with Tribal Council approval, nominate eligible properties for listing on  
20 the National Register.  
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22 **6.** Establish and maintain the Odawa Historic and Cultural Site Registries in accordance  
23 with applicable laws.  
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25 **7.** Provide public information, education, training, and technical assistance in historic  
26 preservation.  
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28 **8.** Advise the Tribal Chairperson and the Tribal Council on repatriation and the  
29 protection of cultural resources, historic resources, and sacred sites.  
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31 **9.** Share information as appropriate regarding repatriation of ancestral remains and  
32 protection of traditional cultural properties with the Tribal Community and Citizens.  
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34 **10.** Retain staff necessary to fulfill the duties above, provided all THPO staff shall be  
35 Citizens of the Little Traverse Bay Bands of Odawa Indians.

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C. The Department of Repatriation, Archives and Records shall retain copies of all THPO records in perpetuity, be the permanent repository for cultural materials in the Tribe’s possession and control access to the use of collections for educational and research purposes.

D. The THPO may utilize consultants, as needed, who have the requisite qualifications under federal law.

**SECTION IV. BURIAL SITES AND TREATMENT OF HUMAN REMAINS**

The graves of Odawa people and their ancestors are sacred and shall not be excavated or disturbed. Within the Tribe’s territorial jurisdiction:

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 THPO 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 section.

B. Only in an extreme case 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 THPO 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 THPO 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 the THPO provides prior written consent.

**SECTION V. PERMITS TO PROCEED WITH AN UNDERTAKING**

Within the Tribe’s territorial jurisdiction:

A. The THPO is responsible for the issuance of "Permits to Proceed with an Undertaking" as

1 delineated within this Statute.

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3 **B.** Prior to beginning any undertaking, all participating individuals shall have a signed Permit to  
4 Proceed from the THPO.

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6 **C.** Procedures for Obtaining a Permit to Proceed.

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8 **1.** Submission of Application for Permit to Proceed. During the planning stage of all  
9 undertakings, all participating individuals shall complete and submit an application for a  
10 Permit to Proceed. Permits to Proceed can only be issued by the THPO. The THPO shall review  
11 the application, and determine, following a review of the THPO files covering that area, if a  
12 field investigation will be required. The THPO shall notify the applicant in writing within thirty  
13 (30) days if a field investigation is required. If no field investigation is required, the THPO shall  
14 either issue the Permit to Proceed or notify the applicant in writing of the reason for Permit  
15 denial.

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17 **2.** Field Investigation. All areas that will undergo earth disturbing activities, not  
18 specifically excluded, and not previously subjected to a field investigation, shall be subject to a  
19 review process to determine the presence or absence of historic properties, burial sites,  
20 sacred sites or traditional cultural properties. The review consists of the following:

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

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

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32 **3.** Permit Contingencies. Based upon the results of the investigations, the THPO shall  
33 issue one of the following:

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35 **a.** A Permit to Proceed with no contingencies.

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**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 that would eliminate or minimize any impacts to historic properties.

**D.** Activities Excluded from Investigations.

**1.** The THPO may exclude the following activities from pre-field and field investigations:

**a.** Gardening in pre-existing gardens and new garden construction.

**b.** Projects less than one (1) square meter in size, *e.g.* digging postholes, planting trees, etc.

**c.** Maintenance activities, *e.g.* basic road maintenance, grading, etc.

**d.** Activities in areas that have previously undergone an archaeological survey and that were permitted with no contingencies.

**e.** Projects that will not have ground-disturbing affects, *e.g.* lawn mowing, winter logging activity on frozen ground, etc.

**2.** The THPO may exclude activities in the following areas 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 that would prohibit construction of historic or prehistoric dwellings or settlements.

**c.** Areas already disturbed by a depth of greater than three (3) feet, *e.g.* gravel

1 pits.

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3 **d.** Areas that must be disturbed in response to emergency situations, *e.g.* septic  
4 contamination, oil spill, etc.

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6 **e.** Hazardous areas that jeopardize the safety of THPO staff or individuals.  
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8 **E.** Payment for Field Archaeological Surveys. The Tribe shall pay for required field  
9 archaeological surveys required to be performed by Tribal Citizens in their individual capacity. All  
10 other surveys, including projects receiving funding from Federal agencies and other entities shall not  
11 be paid for by the Tribe without the prior written approval of the Tribal Chair.  
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13 **SECTION VI. PERMITS TO CONDUCT ARCHAEOLOGICAL INVESTIGATIONS**

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15 Within the Tribe’s territorial jurisdiction:  
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17 **A.** Qualified Archaeologist Requirement. No person may conduct archaeological investigations or  
18 excavate and/or remove archaeological materials from historic properties unless that individual  
19 meets the Secretary of the Interior’s professional qualification standards for an archaeologist.  
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21 **B.** Tribal Permit to Conduct Archaeological Investigations. Any qualified archaeologist wishing to  
22 conduct archaeological investigations or to excavate or remove archaeological materials from historic  
23 properties must obtain a "Permit to Conduct Archaeological Investigations" issued by the THPO  
24 before commencing work.  
25

26 **C.** Federal Permit for Non-Tribal Citizens. In addition to obtaining a Permit to Conduct  
27 Archaeological Investigations from the THPO pursuant to the preceding subsection, any qualified  
28 archaeologist who is not an enrolled Tribal Citizen must also obtain a federal permit as required by 25  
29 C.F.R. 262 before commencing an archaeological investigation or the excavation or removal of  
30 archaeological materials from historic properties.  
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32 **SECTION VII. ENFORCEMENT OF PENALTIES**

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34 **A.** Any duly authorized Law Enforcement Officer shall have the responsibility and authority to  
35 issue citations for violations and otherwise enforce the terms of this Statute.

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**B. 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.

**C. 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.

**D. 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 be limited to, the following:

1. Costs of restoration of the damaged site.
2. Enforcement costs.
3. Costs associated with mitigation of protected historic properties, burial sites, sacred sites or traditional cultural properties, including reburial.
4. Costs associated with documentation, testing and evaluating the damaged site in order to assess the character of the site.

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

**F. 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 damages that 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



1 post security.

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3 **SECTION VIII. SEVERABILITY**

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

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10 **SECTION IX. EFFECTIVE DATE**

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12 Effective upon signature of the Executive or thirty (30) days from Tribal Council approval, whichever  
13 comes first, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

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