

**CHAPTER 20-- HISTORIC PRESERVATION, PROTECTION AND MANAGEMENT OF
ARCHAEOLOGICAL, HISTORICAL, AND CULTURAL PROPERTIES AND RESOURCES**

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**CHAPTER 20-- HISTORIC PRESERVATION, PROTECTION AND MANAGEMENT OF
ARCHAEOLOGICAL, HISTORICAL, AND CULTURAL PROPERTIES AND RESOURCES**

20.1 **SECTION 1: GENERAL PROVISIONS**

20.1.1 Title. Protection and Management of Archaeological, Historical, and Cultural Properties and Resources.

20.1.2 Purpose. The purpose of this code is to engage in a comprehensive program of historic preservation to promote the protection and conservation of archaeological, historical and cultural properties and resources located within the exterior boundaries of the Red Cliff Reservation for the preservation, education, and enrichment of the members of the Red Cliff Band of Lake Superior Chippewas (hereinafter "Tribe").

20.1.3 Effective Date. This code shall take effect on the day following adoption by the Red Cliff Tribal Council.

20.1.4 Abrogation and Greater Restrictions. Where this code imposes greater restrictions than those contained in other Tribal Ordinances, Codes, or Resolutions, this code shall govern. Other Federal laws and regulations that apply to Tribal Lands administered by the BIA, but may be superseded by this code include: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.

20.1.5 Interpretation. In the interpretation and application of the provisions of this code, said provisions shall be held

to be minimum requirements, and shall be liberally construed in favor of the Tribe and shall not be deemed a limitation or repeal of any other Tribal power or authority.

20.1.6 Severability. If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

20.1.7 Sovereign Immunity. This code shall not be construed as a waiver, limited or otherwise, of the Tribe's sovereign immunity.

20.1.8 Applicability. This code shall apply to all individuals, activities, and property within the exterior boundaries of the Red Cliff Reservation.

20.2 **SECTION 2: DEFINITIONS**

20.2.1 "Allotted Lands" means land owned by an individual Indian(s) which is either held in trust by the United States or is subject to a statutory restriction on alienation.

20.2.2 "ARPA Permit" means the Archaeological Resources Protection Act permit required for the purposes of conducting archaeological work upon Indian land held in trust or subject to restrictions against alienation by the United States.

20.2.3 "BIA-GLA" means the Bureau of Indian Affairs-Great Lakes Agency.

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

20.2.5 "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 or ceremonies of a culture.

20.2.6 "Ceded Territories" means aboriginal lands identified in treaties where it is determined that the Tribe maintains

a cultural and historical affiliation to human remains, artifacts and funerary objects.

- 20.2.7 "Cultural Advisory Committee" means tribal/community members designated to provide advice and recommendation on activities contained within the code.
- 20.2.8 "Duly Authorized Law Enforcement Official" means any Tribal Law Enforcement Personnel.
- 20.2.9 "Field Archaeology" means the study of the traces of human culture by means of controlled, systematic, surveying, digging, sampling, excavating, or removing objects.
- 20.2.10 "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.
- 20.2.11 "Historic Preservation" means the research, protection, conservation, restoration, mitigation and rehabilitation of historic properties.
- 20.2.12 "Historic Properties" means any prehistoric or historic site, landscape, district, structure, object, or remains, significant to the prehistory, history, architecture, archaeology, culture, or religions of the Tribe, the State, and the Nation. Historic properties are generally greater than 50 years in age.
- 20.2.13 "Human Remains" includes any part of a deceased human being in any stage of decomposition.
- 20.2.14 "Indian" means, unless otherwise specified, an enrolled member of an Indian Tribe or any other person on the Reservation who is recognized by the community as an Indian, including a Canadian Indian or Alaskan or Hawaiian native.
- 20.2.15 "Individual" means any individual person, either a Tribal or non-Tribal member. As used in this Chapter, "individual" shall also apply to a firm, company, corporation, partnership, association, tribe, state, municipality, commission, political subdivision of a state or Tribe, or any interstate body and shall also include each department agency and instrumentality of the United States.

- 20.2.16 "PAC form" means the "Project Application and Compliance" form required by tribal law and further defined in RCCL Chapter 37 (Land Use).
- 20.2.17 "Qualified Archeologist" means any person who meets the Secretary of Interior's standards for archeologist in 36 C.F.R. Part 61 (as amended).
- 20.2.18 "Reservation" means the area within the external boundaries of the Red Cliff Reservation as defined in the Treaty of 1854 and subsequent congressional actions.
- 20.2.19 "Sacred Site" means any specific, discrete, delineated or non-delineated location that is identified as sacred by virtue of its established religious significance, cultural relevance or ceremonial use.
- 20.2.20 "THPO" means the Tribal Historic Preservation Officer appointed by the Tribal Council or his or her representative.
- 20.2.21 "Traditional Cultural Landscapes" as identified in the National Register of Historic Places (NRHP) are considered to be a type of significance rather than a type of property as specified in NHPA. Traditional Cultural Landscapes can and often do embrace one or more of these property types. Traditional Cultural Landscape size is not a consideration in evaluation of their consideration.
- 20.2.22 "Traditional Cultural Property" means a place eligible for inclusion in the Tribal, State or National Register because of its association with cultural practices or beliefs of a community that is rooted in that community's history and important in maintain the continuing cultural identity of the community.
- 20.2.23 "Tribal Archaeology Para-Professional" means a Tribal Member that has undergone formal 40-hour training certification in basic archaeological field methods and has maintained the minimum annual requirements of 24 hours of continuing education.
- 20.2.24 "Tribal Council" means the governing body of the Red Cliff Band of Lake Superior Chippewa Indians.
- 20.2.25 "Tribal Court" means the Red Cliff Tribal Court.

- 20.2.26 "Tribal Historical and Cultural Repository" means the designated repository for historical artifacts, relics or funerary objects.
- 20.2.27 "Tribal Land" means all land which is held in trust by the United States for the benefit of the Tribe or a member of the Tribe as well as any parcels titled to the Red Cliff Band of Lake Superior Chippewa Indians.
- 20.2.28 "Tribal Member" means a person enrolled in the Red Cliff Tribe.
- 20.2.29 "Tribe" means the Red Cliff Band of Lake Superior Indians.

20.3 **SECTION 3: TRIBAL HISTORIC PRESERVATION OFFICE.**

20.3.1 Tribal Historic Preservation Office. The THPO shall develop a file of identified historic properties within the exterior boundaries of the Red Cliff Reservation. This file shall also contain an inventory of areas that have been investigated and found not to contain historic properties, burial sites, sacred sites or traditional cultural properties. The Tribal Historic Preservation Officer shall be solely responsible for the active collection and cataloging of known historic properties, surveyed areas, and the locations of potential archaeological sites.

20.3.2 Repository for Cultural or Historical Materials Removed and Recovered from Tribal Lands, Allotted Lands or from the Ceded Territories. Any cultural or historical items found on Tribal Lands during any development belonging to the Tribe shall be returned to the Red Cliff Tribal Historic Preservation Officer responsible for the handling and disposition of cultural and historical materials recovered, donated or repatriated to the Tribe.

20.4 **SECTION 4: BURIAL SITES AND TREATMENT OF HUMAN REMAINS.**

20.4.1 Non-Disturbance of Burial Sites, Human Remains, and Funerary Objects. No individual shall knowingly excavate or damage a burial site, human remains or funerary objects. No individual may

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 Officer if the individual knows of or has reasonable grounds to believe that a burial site or established buffer zone is being disturbed or may be disturbed.

20.4.2 Permitted Removal and Disturbance to Burial Sites, Human Remains, and Funerary Objects.

- a. Only in the extreme cases of unavoidable destruction, natural exposure or accidental discovery may burial sites, human remains, or funerary objects be approved for intentional disturbance. When a burial disturbance is found to be necessary, or has already occurred, Tribal spiritual advisors, the Tribal Historic Preservation Officer, the Cultural Advisory Committee, the Tribal Council and the individuals approved to conduct the excavation or exposure must agree to a procedure in writing by which the disturbance shall be mitigated.
- b. At all times during the process of disturbing any human remains, the Tribal Historic Preservation Officer or designee shall monitor, assist, and ensure that the parties employed to remove or expose any human remains or funerary objects implement the written procedure as required in section 20.4.2(a) of this Chapter.

20.5 **SECTION 5: PAC PERMITS TO PROCEED WITH AN UNDERTAKING ON RESERVATION LANDS.**

- 20.5.1 Requirements. Prior to beginning any undertaking involving a ground disturbance or a change in land use on lands within the jurisdiction of the Tribe, all individuals shall first comply with the provisions of Chapter 37 of the Red Cliff Code of Laws and obtain an approved Land Use Permit. A Field Archeology Investigation may be required in order to comply with the requirements of the PAC Application or Land Use Permit in accordance with

this Chapter and Chapter 37.

20.5.2 Certain Lands within the Reservation Excluded from Pre-Field and Field Archaeology Investigations. The Tribal Historic Preservation Officer shall have the discretion to exempt a project from Pre-Field and Field Archeological Investigations for the following types of projects:

- a. Projects located entirely in swampy areas or areas with mucky soils as determined by the THPO;
- b. Projects located entirely on steep slopes which would prohibit construction of historic or prehistoric dwellings or settlements;
- c. Projects located entirely in land areas already disturbed to a depth greater than three (3) feet (i.e. gravel pits);
- d. Emergency projects (septic replacement, etc.)
- e. Projects which may involve hazardous conditions or that may jeopardize the safety of Tribal Community, staff or individuals.

20.5.3 Payment for Field Archaeology Surveys of Tribal Lands. Required field investigations and archaeology surveys of proposed projects shall be paid for by the individual applicant or by the Tribal Department initiating the project. The applicant is responsible for all other surveys and all associated survey costs unless otherwise and previously approved by the Tribal Council. This includes projects receiving funding from federal agencies and other entities.

20.6 **SECTION 6: PERMITS TO CONDUCT ARCHAEOLOGICAL INVESTIGATIONS.**

20.6.1 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 an "ARPA Permit to Conduct Archaeological Investigations" signed by the THPO and approved by the BIA staff archaeologist. In additions to requesting and acquiring an ARPA Permit to Conduct Archaeological Investigations, the individual(s) must follow the process outlined in Section 5 of this Chapter. Agencies applying for a tribal permit must have at least one individual in the field that satisfies the requirements for a qualified archaeologist as defined in Section 20.6.4 of this Chapter.

20.6.2 ARPA Permits for Non-Tribal Members. 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 a tribal member, must have a valid ARPA Permit as defined in 20.2.2 of this Chapter, signed by the Area Director of the BIA-MAO as defined in 20.2.4 and required in accordance with 25 C.F.R. 262.4. This permit is in addition to the permit required in Section 20.6.1 of this Chapter.

20.6.3 Permits to Conduct Field Archaeology on State Land Within the Exterior Boundaries of the Reservation. Any individual wishing to conduct field archaeology on state land within the exterior boundaries of the reservation shall contact the Sate Archaeologist of Wisconsin Office to determine the need and process of applying for a state permit or license to conduct field archaeology as encouraged in WI Statute §44.47(4)(b). This permit is in addition to the permits required in Section 20.6.1 and 20.6.2 of this Chapter.

20.6.4 Requirements of Qualified Archaeologist. Archeological surveys shall be completed by an archaeologist meeting the Department of the Interior's Standards for Archeologists, as defined in 36 C.F.R. Part 61; or by a Tribal Archaeology Para-Professional performing under the supervision of a qualified archaeologist.

20.7 **SECTION 7: ENFORCEMENT AND PENALTIES.**

20.7.1 Enforcement by Duly Authorized Law Enforcement Officer. Duly authorized law enforcement officer(s) shall have the responsibility and authority to enforce and implement the provisions of this code, which includes issuing citations.

20.7.2 Civil Penalties. Any person violating the provisions of this Chapter commits a civil infraction punishable by a fine not to exceed \$5,000.00. The trial of any such infraction shall be by the Red Cliff Tribal Court and the prosecution shall have the burden of proving the alleged infraction by a preponderance of the evidence.

20.7.3 Civil Damages. Any person violating the provisions of this Chapter shall be liable to the Tribe for civil damages, in addition to civil penalties, to be assessed by the Tribal Court after a hearing. "Civil Damages" shall be interpreted liberally by the Tribal Court to include, but not limited to the following costs;

- a. Restoration of the damaged site; with the enforcement of the provisions of this Chapter.
- b. Mitigation of protected historic properties, burial sites, sacred sites or traditional cultural properties, including reburial; and/or
- c. Documentation, testing, and evaluation of the damaged site in order to assess the character of the site.

20.7.4 Forfeiture of Contraband. All documents, artifacts and 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 Tribal Court.