

CHAPTER 7 – PRESERVATION OF TRIBAL HISTORY AND SIGNIFICANT LANDMARKS

7.1 THE PROTECTION AND MANAGEMENT OF ARCHAEOLOGICAL, HISTORICAL, AND CULTURAL RESOURCES AND LAND USE..... 1

- 7.1.1 General Provisions
- 7.1.2 Tribal Policy and Legislative Intent
- 7.1.3 Abrogation and Greater Restrictions
- 7.1.4 Interpretation
- 7.1.5 Severability and Non-Liability
- 7.1.6 Inconsistency
- 7.1.7 Relation to Other Laws

7.2 PROTECTION RULES AND REGULATIONS.....5

- 7.2.1 Prohibited Conduct
- 7.2.2 Enforcement by Citing Officer
- 7.2.3 Criminal Penalties
- 7.2.4 Civil Penalties
- 7.2.5 Civil Damages
- 7.2.6 Forfeiture of Contraband
- 7.2.7 Seizure of Security
- 7.2.8 Removal from Reservation
- 7.2.9 Fines, Fees, and Forfeitures

7.3 ARCHAEOLOGICAL, HISTORICAL, AND CULTURAL STUDIES.....7

- 7.3.1 Tribal Council Permission Required; No Exemptions
- 7.3.2 Violation of Permit Terms

7.4 AMERICAN INDIAN RELIGIOUS FREEDOM ACT7

- 7.4.1 Tribal Policy and Legislative Intent
- 7.4.2 Protection of Indian Religious Freedom
- 7.4.3 Protection of Sacred Sites and Recovery of Sacred Materials
- 7.4.4 Access to Sacred Sites

7.5 TRIBAL COUNCIL DESIGNATION8

- 7.5.1 Tribal Council Designation of Significant Historical, Cultural, and Archaeological Sites
- 7.5.2 Listing and Description of Designated Sites – Swamp Creek Watershed
- 7.5.3 State/Federal Coordination

CHAPTER 7
PRESERVATION OF TRIBAL HISTORY AND SIGNIFICANT LANDMARKS

7.1 THE PROTECTION AND MANAGEMENT OF ARCHAEOLOGICAL, HISTORICAL, AND CULTURAL RESOURCES AND LAND USE

7.1.1 General Provisions.

7.1.2 Tribal Policy and Legislative Intent. The Mole Lake Band of the Lake Superior Chippewa Indians does hereby affirm its authority and commitment to preserve, protect, and promote tribal culture and heritage. This trust includes the preservation of ancestral burial sites or sacred sites from contemporary cultural use sites and materials, which are fundamental in the recognition of traditional lifestyles, values and histories of the Tribe. In keeping with this intent, the following policies are established:

- A. A Tribal Historic Preservation Office shall be established to increase efforts in locating, documenting, and evaluating ancient, cultural and historic sites. This information will provide a record of the past for future generations and will be incorporated into Tribal Integrated Resource Management Planning. Information on sites recorded in the ceded territory will also be collected, evaluated and recorded.
- B. The Tribal Historic Preservation Officer will be designated by the Tribe to develop a file of known sites within the exterior boundaries of the Mole Lake Indian Reservation and ceded areas. This file will also contain a history of areas that have been surveyed and found not to comprise historical or cultural sites. The Tribal Historic Preservation Officer will be solely responsible for the active collection and cataloging of known sites, potential sites and surveyed sites.
- C. Tribal laws and policies are established by this code that will protect archaeological, cultural, and historical sites and materials. Other federal and state laws also impact this subject, which include, but are not limited to:
 - (1) Historical Sites, Buildings, and Antiquities, 16 U.S.C., sec. 461 (1988);
 - (2) Preservation of Historical and Archaeological Data Threatened by Dam Construction or Alteration of Terrain, 16 U.S.C., sec. 469a-469c-1 (1988);
 - (3) Archaeological and Historic Preservation, 16 U.S.C., sec. 469(a)(1);
 - (4) National Historic Preservation Act, 16 U.S.C. 470 (1988);
 - (5) Protection of Historic and Cultural Property, 36 C.F.R., part 800;
 - (6) National Environmental Policy Act, 42 U.S.C., sec. 4321 (1988);

- (7) American Indian Religious Freedom Act, 42 U.S.C., sec. 1996 (1988);
- (8) Historic Preservation Program, Wis. Stat. §§ 44.30-44.48;
- (9) Property Taxes, Wis. Stat. §§ 70.1 1;
- (10) Towns, Land Use and Planning, Wis. Stat. § 60.61;
- (11) Regulation of Historic Property in Floodplains, Wis. Stat. § 87.304;
- (12) Uniform Conservation Easement Act, Wis. Stat. § 700.40;
- (13) Burial Sites Preservation Act, Wis. Stat. § 157.7; and
- (14) Native American Graves Protection and Repatriation Act, PL 101 106.

D. All persons knowing the location of archaeological, historical or cultural sites are urged to report this information to the Mole Lake Tribal Cultural Committee or the Tribal Historic Preservation Officer.

E. The Tribe shall be provided the time needed to reasonably assess what effect an undertaking will have on archaeological, historical and cultural sites and materials, pertaining to all land use actions contemplated pursuant to the provisions of this Code. The Tribe shall make its assessment based on records held in the Tribal Historic Preservation Office and shall make one (1) of three (3) determinations.

(1) No Effect: The undertaking will not affect archaeological, historical, or cultural sites and materials;

(2) No Adverse Effect: The undertaking will affect one or more sites or materials but the effect will not be harmful;

(3) Adverse Effect: The undertaking will harm one or more sites or materials.

F. The Mole Lake Tribal Council and Tribal Cultural Committee shall be given all cultural and archaeological materials, upon request, and shall designate a repository for permanent placement. Access to the collections for educational and research purposes shall be controlled by the Tribal Cultural Committee and the Mole Lake Tribal Council.

G. All tribal members are required to abide by the above policies with reference to their own properties both allotted and fee patents.

H. The Tribe encourages all property owners, land managers, and developers on the reservation and in the ceded territory to adhere to Federal, State, and Tribal laws protecting archaeological, cultural and historical properties.

- I. The Tribe recognizes that activities to preserve and maintain the culture of its people is a legitimate and necessary tribal governmental function, and may require the expenditure of tribal funds.
- J. The cultural education of tribal members is of equal or greater importance to the long-term welfare of the Tribe and its members, as is traditional schoolroom education in that it provides the foundation for continuance of the Tribe as a distinct, political, and cultural entity perpetually.
- K. It is the policy of the Tribe to recognize, respect, and foster the wide range of cultural and traditional diversity present among reservation families and individual Indians. Therefore, anyone contracted or employed by the Tribe is required to report sites encountered while employed by the Tribe according to the policies set forth in Section 066.0(4) above.
- L. It is the policy of the Tribe to cooperate and urge mutual cooperation with the State Historical Society and the Bureau of Indian Affairs.

7.1.3 Abrogation and Greater Restrictions. Where this ordinance imposes greater restrictions than those contained in other, existing, Tribal Codes or Ordinances, the provisions of this ordinance shall govern.

7.1.4 Interpretation. In their interpretation and application, the provisions of this ordinance 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.

7.1.5 Severability and Non-Liability.

- A. 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 and shall remain in full force as if said section, provision or portion, as adjudged unconstitutional or invalid was non-existent.
- B. The Tribe asserts there is no liability on the part of the Sokaogon Chippewa Community, its agencies, enterprises, elected officials, officers, directors, or employees for damages that may occur as a result of reliance upon and conformance with any of the provisions of this ordinance.

7.1.6 Inconsistency. All other ordinances or parts of ordinances of the Tribe inconsistent or conflicting with this ordinance, to the extent of the inconsistency only, are hereby repealed.

7.1.7 Relation to Other Laws. All acts and transactions under this Ordinance shall be in conformity other laws of the Sokaogon Chippewa Community and applicable federal and state laws.

7.1.8 Definitions.

- A. “Adverse Effect” means any of the following:
 - (1) Physical destruction, damage or alteration of any part of a site, which would adversely affect the historic significance of that site;
 - (2) Isolation of a site from or alteration of the character of the site’s setting when that character contributes to the property’s qualification as a recorded site;
 - (3) Introduction of visual, audible, or atmospheric elements that are out of character with a site or alter its setting; and
 - (4) Neglect of a site resulting in its deterioration or destruction.
- B. “Archaeological Material” means material evidencing cultural activities of the past, at least fifty (50) years in age.
- C. “Archaeological Site” means a geographical locality, which contains archaeological materials or features in contextual association with each other and the surrounding environment.
- D. “Ceded Territory” means that area ceded to the United States in the Treaties of 1825, 1837, 1842, and 1854 by the Lake Superior Chippewa Tribes of Wisconsin.
- E. “Cultural Committee” means that committee established by the Tribal Council under Resolution No. 54(91) on February 25, 1991.
- F. “Cultural Site” means an area designated as such by the Tribal Council, said site having particular cultural religious, or traditional value to the Tribe and which requires the protection of this code to prevent damage, abuse, or deterioration.
- G. “Historic Site” means an area designated as such by the Tribal Council, said site having particular historical value to the Tribe and which requires the protection of this code to prevent damage, abuse, or deterioration.
- H. “Indian” means, unless otherwise specified, a member of the Mole Lake Band of Lake Superior Chippewa Indians or any other person of Indian blood who is a 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 an Alaskan or Hawaiian native.
- I. “Protected Lands” means all lands within the Reservation and all lands outside the Reservation which were ceded to the United States in the Treaties of 1825, 1837, 1842, and 1854 by the Lake Superior Chippewa Tribes of Wisconsin.

- J. “Protected Objects” means archaeological materials, objects, or artifacts related to or obtained from cultural and historic sites. This definition shall apply even where the cultural and historic site has not been cataloged in the National Register of Historic Places, and is not yet recorded with the Register of Deeds, Tribal Cultural Committee, or the Tribal Historic Preservation Office.
- K. “Protected Sites” means archaeological, cultural, and historical sites. This definition shall apply even where the protected site has not been cataloged in the National Register of Historic Places, and is not yet recorded with the Register of Deeds, Tribal Cultural Committee, or the Tribal Historic Preservation Office.
- L. “Reservation” means all lands within the exterior boundaries of the Mole Lake Chippewa Reservation.
- M. “Tribal Council” means the governing body of the Mole Lake Band of Lake Superior Chippewa Indians.
- N. “Tribe” means the Mole Lake Band of Lake Superior Chippewa Indians, Sokaogon Chippewa Community.
- O. “Citing Officer” means the Tribal Historic Preservation Officer, any Tribal Law Enforcement Officer and any Law Enforcement Officer empowered to enforce the laws of the Tribe.

7.2 PROTECTION RULES AND REGULATIONS

7.2.1 Prohibited Conduct.

- A. No person knowing or having reason to know that a protected site or protected object is involved shall excavate, injure, remove, damage, destroy, or alter a protected site, or systematically remove a protected object located on tribal lands unless that activity is authorized by a permit issued by the Tribal Historic Preservation Officer through the Tribal Cultural Committee.
- B. No person knowing or having reason to know that a protected object is involved, shall sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any protected object if such object was excavated or removed from tribal lands in violation of:
 - (1) The violation contained in S.C.C. § 14.2.1(A); or
 - (2) The provision, rule, regulation, ordinance, or permit in effect under any other provision of tribal, federal, or state law.
- C. The prohibitions contained in this Section shall take effect on the date of approval of this Chapter. Nothing in S.C.C. § 14.2.1 (B) shall be deemed applicable to and

person with respect to a protected object, which was in the lawful possession of such person prior to this ordinance.

- 7.2.2 Enforcement by Citing Officer.** The citing officer shall have the responsibility and authority to enforce and implement the provisions of this code, which includes issuing citations.
- 7.2.3 Criminal Penalties.** Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate any prohibition shall upon conviction, be fined up to \$5,000 per day the violation persists, or imprisoned for twelve (12) months, or both. Such person may also be subject to civil penalties provided for in this Chapter.
- 7.2.4 Civil Penalties.** Any person violating the provisions of this Chapter commits a civil infraction punishable by fine or exclusion from the Reservation, The infraction shall be punishable by a fine of up to \$5,000 per day the violation persists. The trial of any such infraction shall be by the Mole Lake Tribal Court and the prosecution shall have the burden of proving the alleged infraction by a preponderance of the evidence. Penalties cannot be suspended or waived.
- 7.2.5 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 a hearing. "Civil Damages" shall be interpreted liberally by the Tribal Court to include, but not limited to, the following:
- A. Costs of restoration of the protected site;
 - B. Enforcement costs associated with the enforcement of the provision of this Chapter;
 - C. Costs associated with disposition of protected objects, including rebunial; and
 - D. Costs associated with documentation, testing, and evaluating the protected site in order to assess the characteristics of the site.
- 7.2.6 Forfeiture of Contraband.** All protected objects obtained in violation of the provisions of this Chapter shall be deemed contraband and forfeited to the Tribe after a hearing in Tribal Court.
- 7.2.7 Seizure of Security.** In the discretion of the citing officer, the officer may seize such property in the possession of the defendant, as the officer deems reasonably necessary to secure payment of any fine or civil damages, which may be levied upon the defendant upon conviction of the infraction or crime. The officer shall at the time of seizure give to the defendant a receipt accurately describing the item seized. The officer shall further advise the defendant of his right to post security.

7.2.8 Removal from Reservation. The citing officer may remove or escort from the Reservation any person committing a violation of this Chapter, other than reservation residents, employees of the Tribe, or employees of the federal government assigned to the Reservation.

7.2.9 Fines, Fees and Forfeitures. All fines, fees, and/or forfeitures will be used to support the activities of the Tribal Historic Preservation Office.

7.3 ARCHAEOLOGICAL, HISTORICAL, AND CULTURAL STUDIES

7.3.1 Tribal Council Permission Required - No exemptions.

- A. A person knowing or having reason to know that a protected site or protected object is involved may not excavate or alter a protected site on Tribal lands, conduct a field investigation, or make an exploratory excavation on Tribal lands to determine the presence of a protected site, or systematically remove from Tribal lands any protected object, without first obtaining a permit issued by the Tribal Historic Preservation Officer through the Tribal Cultural Committee.
- B. Persons conducting historical or cultural studies on the Reservation shall first obtain a permit issued by the Tribal Historic Preservation Officer through the Tribal Cultural Committee.
- C. The Tribal Cultural Committee shall develop procedural rules for the issuance of such permits.

7.3.2 Violation of Permit Terms. Any person violating the terms of a permit issued shall be subject to the provisions of this ordinance in connection with such violations.

7.4 AMERICAN INDIAN RELIGIOUS FREEDOM ACT

7.4.1 Tribal Policy and Legislative Intent. On August 11, 1978, the Congress of the United States enacted the American Indian Religious Freedom Act, 42 U.S.C. sec. 1996 (1978), which provides on or after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use, and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites. It is the policy of the Tribe to support this Act.

7.4.2 Protection of Indian Religious Freedom. The Tribal Council shall upon the advice of traditional Indian religious leaders, take such actions as are necessary to implement the provisions of the American Indian Religious Freedom Act. Traditional Indian religious leaders shall be responsible for expression and definition of traditional Indian religious practices and sites on the Reservation. It

shall be the prerogative and the duty of the Tribal Council, only after consultation with traditional Indian religious leaders and the Cultural Committee, to define traditional Indian religious practices.

7.4.3 Protection of Sacred Sites and Recovery of Sacred Materials. The Tribal Council shall take such actions as are necessary to protect sacred sites identified as such by traditional Indian religious leaders. The Tribal Council shall disseminate information regarding the nature of tribal sacred objects as identified by traditional Indian religious leaders, and take such actions as are necessary to recover sacred objects that have been illegally obtained.

7.4.4 Access to Sacred Sites. The Tribal Council shall take such actions as it deems necessary to ensure that tribal members are granted access to sacred sites for traditional Indian religious and sacred practices.

7.5 TRIBAL COUNCIL DESIGNATION

7.5.1 Tribal Council Designation of Significant Historical, Cultural, and Archaeological Sites. The Tribal Council shall designate significant historic, cultural, and archaeological sites as those terms are defined in this Chapter, and shall prepare a report detailing such sites in appropriate form to be presented to state and local officials to aid in the implementation of this Ordinance.

7.5.2 Listing and Description of Designated Sites-Swamp Creek Watershed. The Swamp Creek watershed, upstream and downstream of the Mole Lake Indian Reservation, consisting of lands contained within the Mole Lake Indian Reservation and lands within ceded territory.

7.5.3. State/Federal Coordination. The Tribal Council shall have the responsibility for coordination with the Bureau of Indian Affairs and state and local governments in implementing this Code. The Tribal contact for such coordination shall be the Historic Preservation Office and the Cultural Committee.

History:

Enacted - unknown.

7/20/11 adopted, ratified and codified by Resolution # 720A2011 and as amended by Resolution # 825A2011 on August 25, 2011.