

Fort Peck Tribal Court
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Poplar, MT 59255



Title 32 – Cultural Resource Protection Ordinance

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Chapter 1. General Provisions

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Sec. 101. Declaration of Policy and Intent.

The purpose of this Ordinance is to protect, preserve and promote the Fort Peck Assiniboine and Sioux Tribes (Tribes) cultural resources by establishing a governmental agency to identify, evaluate and protect cultural, historic, and archaeological resources. The Tribes are determined to protect, preserve and promote its cultural resources by regulating undertakings upon lands within its jurisdiction that may potentially affect cultural resources. No person may initiate any undertaking on protected lands without a permit from the Cultural Preservation office.

Sec. 102. Findings.

The Fort Peck Tribal Executive Board (TEB) finds that:

(a) The spirit and direction of the Fort Peck Assiniboine and Sioux Tribes is founded upon and reflected in its cultural heritage;

(b) The cultural foundation of the Tribes should be preserved and protected as a living part of our community life and development in order to give a sense of orientation to the Dakota and Nakoda people;

(c) Cultural resources, archeological resources and burial items of the Tribes are being lost, substantially altered or destroyed, with increasing frequency;

(d) In the face of ever increasing economic, residential, highway, sanitation, agricultural, energy and public health developments, and the influx of non-Indian people with interest in obtaining cultural resources, archeological resources and burial items located within the jurisdiction of the Tribes, the Tribes must ensure that such resources

are preserved and protected for future generations;

(e) Tribal laws are necessary to foster conditions under which our modern society and our cultural resources, archeological resources and burial items can exist in productive harmony and fulfill the social, economic and other requirements of present and future generations;

(f) The Tribes self-governing capability, political integrity, health, welfare and economic security will be enhanced and protected by the Tribes control, regulation and preservation of irreplaceable cultural resources, which are essential to the continued well-being of the Tribes and will be maintained and enriched for the Tribes future generations.

Sec. 103. Legal Authority

The Tribes possesses the inherent sovereign authority to enact this Ordinance. The Ordinance is intended to be consistent with the minimum federal requirements provided by federal law to include, but not be limited to, the Historic Sites, Buildings and Antiquities Act, the National Historic Preservation Act, the Archeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Reservoir Salvage Act, and the National Environmental Policy Act. The Preservation Officer and the Cultural Preservation Board are the tribal officials that ensure the Tribes rights are protected under such federal laws, including representing the Tribes whenever possible under such federal laws.

Sec. 104. Name and Short Title.

This Ordinance shall be referred to as the Cultural Resource Protection Ordinance. The short title of this Ordinance may be referred to as the CRPO.

Sec. 105. Severability.

Should any provision set forth in this Ordinance or application thereof to any person or circumstance be held invalid by the Tribal Court of the Fort Peck Assiniboine and Sioux Tribes, this

will not affect the full remainder of the provisions or the application of the provisions to another person or circumstance. This Ordinance will supersede any conflicting laws found in the Fort Peck Tribes Comprehensive Code of Justice (CCOJ).

Sec. 106. Applicability.

This Ordinance shall be applicable to areas within the jurisdiction of the Fort Peck Indian Reservation.

Sec. 107. Effective Date.

This Ordinance shall be in full force and effect on the date of formal approval and adoption by the Fort Peck Assiniboine and Sioux Tribal Council.

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Sec. 201. Archaeological Resource.

Means any material remains of past human life or activities that are of archaeological interest. Archeological resources shall include, but are not

limited to: cultural resources, burial items, pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, stone circles, rock paintings, rock carvings, winter counts, intaglios, or any such item, piece, or portion that may potentially record or provide evidence of any aspect of the Tribes culture or a previous culture.

Sec. 202. Archaeological Site.

Means a geographical locality containing archaeological resources or features where the remnants of the past survive in a physical context that allow for the interpretation of these remnants.

Sec. 203. Burial Item.

Means any funerary item, human remain, or burial site.

Sec. 204. Burial Site.

Means a natural or prepared physical location, whether originally below, on, or above the surface of the earth, onto which human remains or cultural items were intentionally deposited as a part of the death rites or ceremonies of a culture. This definition shall be construed to be more broad than those marked cemeteries and graveyards protected under existing State law.

Sec. 205. Community Register.

Means the Tribal Register of cultural resources, archeological resources, sacred items, spiritual sites or burial items within the jurisdiction of the Fort Peck Indian Reservation.

Sec. 206. Tribes.

Means the Fort Peck Assiniboine and Sioux Tribes.

Sec. 207. Tribal Executive Board (TEB).

Means the governing body of the Fort Peck Assiniboine and Sioux Tribes.

Sec. 208. Cultural Resource.

Means materials or objects designated by the Cultural Preservation Office as having cultural significance that are obtained from

(1) Protected lands or

(2) If outside the jurisdiction, associated with the Tribes culture or history. Cultural materials may include such items as eagle feathers, sweat lodge rocks, pipestone, game, roots, berries, native medicines, water having special significance, sacred items, spiritual sites, archeological resources and burial items.

Sec. 209. Duly authorized Law Enforcement Official.

Means any law enforcement personnel of the Tribes or any law enforcement officer delegated authority to enforce the laws of the Fort Peck Indian Reservation pursuant to a cooperative agreement with the Tribes.

Sec. 210. Funerary Item.

Means items or objects that are found at the burial site, or with the human remains, as part of a death rite or ceremony of our culture that are reasonably believed to have been placed with human remains either at the time of death or later. Such an object may still be deemed a funerary object whether or not the human remains and the funerary object are currently together. Items made exclusively for burial purposes or to contain human remains shall be considered associated funerary objects.

Sec. 211. Human Remains.

Means a deceased person or any part of the human body in any state of decomposition.

Sec. 212. Indian.

Means any member of an Indian tribe, Band, or other organized group or community, including any Alaska native village or unit defined or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), and any other Indian persons who are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Sec. 213. Ordinance or CRPO.

Means the Cultural Resource Protection Ordinance.

Sec. 214. Person.

Means and includes both natural and artificial persons. Artificial persons include, but are not limited to any individual, partnership, association, corporation, and any other entity composed of individuals. Person shall also include Federal, Tribal, and State governments and their entities or agencies.

Sec. 215. Preservation Officer.

Means the Tribes Cultural Preservation Officer.

Sec. 216. Protected Lands.

Means land that may contain cultural resources, spiritual sites, sacred objects, human remains, burial items, archaeological resources, burial sites, or those lands, places or items listed on the Tribes register and is located either:

(a) Within the jurisdiction of the Fort Peck Indian Reservation, whether in fee or trust status if owned by the Tribes or tribal members;

(b) Outside the jurisdiction of the Fort Peck Indian Reservation, which are owned by the Tribes or held by the United States in trust for the Tribes or its members.

Sec. 217. Reoccurring Violation.

Means a violation that the Preservation Board may penalize on a cumulative daily basis if the responsible person receives written notice of a potential or alleged violation and does not take the steps required by the Preservation office to minimize or cure the potential or alleged violation. If a responsible person does not receive written notice of a potential or alleged violation, the violation may still be deemed a reoccurring violation subject to a cumulative daily penalty if a reasonable person would have known that its conduct violated this Ordinance or the rules or regulations of the Preservation Board.

Sec. 218. Sacred Items.

Means specific ceremonial objects which are needed by traditional Native American religions by their present day adherents, or were used by traditional adherents.

Sec. 219. Spiritual Site.

Means any place or area, including, but not limited to, any geophysical or geographical area or feature:

(a) Where Tribal practitioners are required by their religion to gather, harvest or maintain natural substances or natural products for use in spiritual ceremonies or for spiritual purposes, including all places or areas where such natural substances or products are located; or

(b) That is utilized by spiritual practitioners for ceremonies or spiritual practices.

Sec. 220. Responsible Person.

Means any person who has decision-making authority over a particular undertaking on protected lands.

Sec. 221. Tribal Member.

Means any person who is an enrolled member of the Fort Peck Indian Reservation as provided by the Revised Constitution and Bylaws.

Sec. 222. Undertaking.

Means any project, activity or program located on protected lands that may potentially cause effects to cultural resources, archeological resources, burial items, sacred items or spiritual sites, and it is presumed that such resources, items and sites exist.

Chapter 3. Cultural Preservation Officer

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Sec. 301. Tribal Cultural Preservation Office.

There is hereby established a Tribal Cultural Preservation Office that will be directed by a Preservation Officer appointed by the Tribal Council to administer the Cultural Preservation Program.

Sec. 302. Preservation Officer.

The Preservation Officer shall have substantial experience in the administration of a preservation program and experience in at least one (1) of the following disciplines: traditional cultural properties, archaeology, history, cultural resources, geography or anthropology.

Sec. 303. Responsibilities of the Preservation Officer.

In order to execute this Ordinance, the Preservation Officer shall have the following authority, duties and responsibilities:

(a) Maintain the Tribal Register;

(b) As funds and staff are available, and in cooperation with Tribal traditionalists, direct and conduct a comprehensive a survey of cultural resources, archeological resources, burial items, sacred items and spiritual sites. Maintain an inventory of such resources that is documented in such a manner that the data collected can be utilized in the Tribes priorities and planning decisions;

(c) Identify and nominate eligible properties or resources to the Tribal Register and administer applications for the Tribal Register;

(d) Prepare and implement a comprehensive cultural preservation planning process which includes the identification, evaluation, registration, and treatment of cultural properties so that effective decisions concerning preservation can be made;

(e) Advise and assist, as appropriate, Tribal, Federal, and State agencies in carrying out their obligations and responsibilities as provide in this Ordinance;

(f) Consult with appropriate Tribal, Federal, and State agencies in accordance to this Ordinance and regulations on:

(1) Undertakings that may affect cultural resources; and

(2) The content and sufficiency of any plans developed to protect, manage, avoid or mitigate harm to such cultural resources;

(g) Maintain a cultural, historical, and archaeological database in a manner that protects the Tribal customs regarding the disclosures of personal, private or Spiritual information;

(h) Cooperate with the Advisory Council on History Preservation, the State Historic Preservation Office and other Tribal, Federal, and State agencies to ensure that cultural resources are taken into consideration at all levels of planning and development;

(i) Provide public information, education and training, and technical assistance relating to the Tribes Cultural Resource Protection Ordinance;

(j) Inspect any undertaking for the purpose of determining compliance with this Ordinance, its implementing regulations, or permit terms and conditions;

(k) Review and process permit applications.

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Sec. 401. Establishment and Selection of a Cultural Preservation Board.

There is hereby established a Cultural Preservation Board, to be composed of 6 Elder members. The Preservation Officer shall serve as an ex-officio member of the Preservation Board. The Board shall select 1 of its members to serve as meeting chair of each session of the Preservation Board.

Sec. 402. Board Member Qualifications.

All Board members shall demonstrate special knowledge of Assiniboine (Nakoda) and Sioux (Dakota) custom, belief and practice, which includes experience or knowledge in traditional cultural properties, historic, prehistoric and cultural resources or related disciplines.

Sec. 403. Term.

Members of the Board shall each hold office for a term of 3 years, with a reappointment consideration at the discretion of the TEB.

Sec. 404. Vacancy and Interim Appointment.

If a Board member dies, resigns, becomes incapacitated or is removed from office, the vacancy may be temporarily filled by a list of alternate Board members designated by the TEB. The alternate Board member shall serve until the vacancy is permanently filled by the TEB.

Sec. 405. Compensation.

Board members may receive a stipend, as the budget permits, and may be reimbursed for any reasonable and documented expenses actually incurred in connection with his or her performance of duties and responsibilities. The Board may establish a proposed budget for TEB approval that delineates the Boards compensation and training.

Sec. 406. Duties of the Preservation Board.

The Cultural Preservation Board shall develop and maintain a Tribal Ordinance including, but not limited to, the following authority, duties and responsibilities:

(a) Permit appeals, the issuance of orders, the levying of penalties, holding hearings and the making of any and all related decisions;

(b) The Board shall recommend rules, regulations and standards that are necessary to carry out the purposes of the Ordinance. If the TEB approves the Boards rules, regulations or standards, then such rules shall have the force and effect of tribal law;

(c) Assist the Preservation office in reviewing any proposed undertaking that might affect any cultural item or cultural resource, including

but not limited to: Spiritual sites, archaeological resources, burial sites, human remains, traditional cultural properties, historic resources, cultural items, food, medicinal plants and water located upon protected lands;

(d) Review requests for ethnographic work, studies or surveys;

(e) Identify and nominate traditional cultural properties to the Tribal Register, apprise the TEB of its recommendations and otherwise administer applications for listing traditional cultural properties on the Register;

(f) Provide general advice and guidance to the Tribal Historic Preservation Officer;

(g) To accept on behalf of the Fort Peck Tribes, gifts, grants and fees to administer this Ordinance. Such money may be expended to hire staff or consultants for the purpose of carrying out the powers and duties of the Board or for performing other appropriate functions;

(h) To call upon Tribal staff or other elders having technical expertise for advice;

(i) The Preservation Board, with the consent of the TEB, may issue rules regarding the proper treatment and handling of burial items and procedures for the re-burial of burial items; and

(j) Perform other duties as may be appropriate and necessary to implement the Ordinance.

Sec. 407. Duties of the Preservation Board Off the Reservation.

To the maximum extent possible, the Board and the Preservation Officer are authorized and required to participate in the identification, evaluation, review or permitting process of any undertaking or project that may affect any cultural resource outside the jurisdiction of the Fort Peck Indian Reservation. The Board and Preservation Officer shall provide an annual report and summary of such consultation to the TEB on a date to be established by the TEB.

Chapter 5. Confidentiality and Disclosure Sections:

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Sec. 501. Confidentiality.

A determination regarding the nature and cultural significance of cultural resources may involve the use of sensitive and confidential information regarding Community customs, beliefs, practices and traditions. Such information may be of a highly specialized and personal nature and may sometimes be held by only a few individuals within the Fort Peck Indian Reservation. According to traditional beliefs and customs, such information is not readily shared and is considered proprietary and confidential. Public disclosure of this type of information could cause severe harm and loss to Tribal culture and cultural resources. In developing the Register, the required database and record system required under this Ordinance, and in identifying and documenting cultural resources, the Preservation Officer and the Preservation office will use methods that require only minimal disclosure of sensitive cultural and spiritual information necessary to meet the purposes and needs of this Ordinance. Release of sensitive data will be restricted and access to this data will be made on a case-by-case basis. The Preservation Board and the Preservation office shall withhold from disclosure to the public, information about the location, character or ownership of a cultural resource if the Preservation Officer or the Preservation Board determine that disclosure may:

(a) Cause a significant invasion of privacy;

(b) Risk harm to cultural resources; or

(c) Impede the use of a spiritual site by practitioners.

Chapter 6. Presumption of Cultural Resources

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Sec. 601. Presumption.

No person shall begin an undertaking on protected lands without first obtaining the requisite permit from the Cultural Preservation office. To adequately preserve and protect the Tribes cultural resources, the presence of cultural resources are presumed to be affected by an undertaking on

protected lands. Only the Cultural Preservation office may determine that no cultural resources will be affected by an undertaking on protected lands upon completion of the identification and evaluation process. Until the Cultural Preservation office determines that no cultural resources will be affected by an undertaking on protected lands, every person must presume that cultural resources do exist and that any undertaking will affect such cultural resources.

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Sec. 701. Permits required.

Due to the presumption regarding cultural resources provided in Chapter 6 of this Ordinance, no undertaking on protected lands is allowed without a permit. No historical or ethnographic work or studies relating to the Community or its cultural resources may be conducted on protected lands without a permit. This application process should be completed prior to the approval of the expenditure of any funds on the undertaking or prior to the issuance of any license or permit. This does not bar any expenditure of funds on or any non-destructive planning activities preparatory to an undertaking before complying with the application process. The responsible person should ensure that the application process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. Proceeding with an undertaking without a permit is prohibited and shall result in the penalties provided by this Ordinance.

Sec. 702. Permit Application and Permit Fee.

An application for a permit shall be accompanied by payment of a non-refundable fee to cover the costs associated with evaluation, identification, permit issuance and administration. The amount of the fee shall be fixed from time to time by the Board.

Sec. 703. Application for Permit.

Any person who intends to conduct an undertaking on protected lands shall submit a written application to the Cultural Preservation Office. The application shall be on a form provided by the Preservation Office. The application shall include, but is not limited to:

- (a) Location map, including a legal description;
- (b) A specific description of the proposed undertaking;
- (c) The purpose and need for the proposed undertaking;
- (d) Practical alternative methods of implementing the undertaking;
- (e) The project dates and length of time necessary to complete the proposed undertaking;
- (f) The name, address, and telephone number of the responsible person;
- (g) The name, address, and telephone number of the creditor(s) of the undertaking, if applicable;
- (h) Any other information the Board may deem necessary.

Chapter 8. Identification and Evaluation

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Sec. 801. Determining whether the Application is an Undertaking.

The Preservation Officer shall review a permit application for adequacy and shall determine if the proposal constitutes an undertaking. The Preservation Officer may make such on-site investigations as are necessary to perform these duties. If the Preservation Officer determines that the proposal is not an undertaking, the Preservation Officer shall so state in a written notice to the responsible person within 14 days of receipt of the application. If the Cultural Preservation Officer determines that the proposal is an undertaking, the Cultural Preservation Officer shall transmit the proposal to the Preservation office who is responsible for conducting a review.

Sec. 802. Evaluating the Undertaking.

The Preservation office shall identify what cultural resources may be affected by the undertaking. This Ordinance seeks to protect cultural resources even if such resources have not been identified prior to the proposed undertaking. As part of the identification process, the Preservation office will conduct a background research, literature review, oral history interviews, sample field investigation and a field survey, when necessary, and will notify the Preservation Officer of its findings. The Preservation office may consult with Federal, State or local officials, if the Preservation office has reason to believe that such authorities possess information pertaining to the presence of cultural resources that may be affected by an undertaking.

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Sec. 901. Determination Based upon Permit Application and Identification and Evaluation Information.

The Preservation Officer shall issue its findings and recommendations based on the investigation and evaluation. The Preservation Officer shall approve, approve with modifications or alternatives, or disapprove a permit application and shall state its decision in writing to the responsible person. The Preservation Officer's decision on the permit application shall be forwarded to the responsible person. The Preservation Officer's decision may include provisions for avoidance or mitigation of adverse impacts associated with the undertaking. All work on an undertaking shall be conducted pursuant to the terms and conditions of the permit.

Sec. 902. Appealing the Preservation Officer's Decision.

The Preservation Officer's decision on a permit application may be appealed to the Preservation Board for a hearing under Chapter 10.

Sec. 903. Post-Permit Discoveries.

Any person who has obtained a permit but discovers an archeological resource or a burial item must stop all work or activity and immediately contact the Preservation office. Any person who continues an undertaking after discovering an archeological resource or burial item shall be subject to the penalties provided in this Ordinance and, if possible, prosecution under federal law. The undertaking may resume only after receiving approval from the Preservation Officer.

Sec. 904. Reacting to Emergencies without a Permit.

In rare circumstances, all or part of a person's responsibilities under this Ordinance may be temporarily exempt from compliance if the responsible person determines that emergency action is necessary to prevent imminent harm to preserve human life or to avoid irreparable damage. To be effective, the Preservation Officer must concur in this determination after receiving notice of the alleged emergency action. An emergency exemption is temporary and shall not exceed the period of time during which the emergency circumstance(s) exist. The responsible person shall notify the Preservation Officer in writing of the emergency undertaking within 4 business days of commencement of such undertaking. The notice shall include:

- (a) The natural disaster or event necessitating emergency action; and
- (b) The date and nature of the emergency action; and
- (c) A description of the measure(s) taken to avoid or minimize harm to cultural resources or reasons why such measures were not taken;
- (d) The responsible person shall provide for the restoration of the destroyed or disturbed cul-

tural resource resulting from the emergency situation to the extent considered reasonable by the Preservation Board. If the Preservation Officer does not concur in the emergency determination, then the Preservation Officer shall notify the Board. The Board shall set the matter for a hearing to determine whether an emergency existed and, if not, whether penalties should be imposed.

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Sec. 1001. Filing a Complaint.

The Preservation office or any person who has reason to believe that an undertaking is proceeding without a permit or that the terms of a permit may have been violated may file a written complaint with the Preservation office. Upon receipt of the written complaint, the Preservation Officer shall provide the complaint to the responsible person and attach any supporting documents with the notice. The Preservation office shall conduct an investigation of the complaint. The responsible person and other associated persons are required to cooperate with the investigation. The responsible person shall provide its official response within 15 business days of receipt of the complaint. The official response must include any and all defenses and arguments that the responsible person intends to assert. The Preservation office shall complete an investigation of a complaint and issue a decision within 30 business days upon receipt of the complaint.

Sec. 1002. Informal Settlement Efforts and Hearing.

If the Preservation Officer determines there is probable cause to believe the allegation(s) in the complaint have merit, then the Officer shall first attempt to achieve a voluntary, informal solution to the complaint through negotiation. The Preservation Officer must make the probable cause determination and finalize all attempts for an informal settlement within 45 business days of receipt of the written complaint. Depending upon the nature of the complaint the Preservation Officer may determine to order any combination of the following:

- (1) Petition the Preservation Board to enjoy the undertaking;
- (2) Issue a permit if one does not exist and/or impose penalties; or
- (3) Modify, suspend, or revoke an existing permit. If the parties do not reach an informal settlement, then the Preservation Officer shall issue its decision and request the Board to set a hearing date.

Sec. 1003. Serving Notice of a Hearing.

The Preservation Board shall serve written notice of the hearing, including the date, time and location to:

- (a) The responsible person against whom the allegation has been made;
- (b) The complainant;
- (c) The Preservation Officer; and
- (d) Any other identified interested person(s).

Sec. 1004. Contents of the Notice of a Hearing.

The notice of a hearing shall advise each party of:

- (a) The nature of the hearing;
- (b) The right to be present and participate in the hearing;
- (c) The right to present witness testimony and documentary evidence and the right to cross-examine witnesses;
- (d) The right to be represented by counsel at his or her own expense;

(e) The right of the complainant to request assistance, not including legal assistance, at the hearing that will be provided by the Preservation office.

Sec 1005. Conflict of Interest.

If at any hearing before the Preservation Board, the Board determines that an actual or potential conflict of interest exists between any member of the Board and a hearing participant, the conflict shall disqualify such member or members of the Board from participation in such hearing.

Sec.1006. Rules of Procedure.

The Preservation Board on its own initiative or at the request of any person notified of a Board hearing, may call identified witnesses to appear, and subpoena documents and/or records necessary for the hearing. The following Rules of Procedure shall be followed at all hearings conducted by the Preservation Board:

- (a) Each notified party shall have the right to be present and participate in the hearing;
- (b) Each notified party shall have the right to present relevant sworn testimony and documentary evidence;
- (c) Each notified party shall have the right to call witnesses on his or her own behalf and to cross examine witnesses called by any other hearing participant;
- (d) Each notified party shall have the right to be represented by counsel at his or her own expense;
- (e) The Chairperson of the Preservation Board shall preside over the proceedings;
- (f) Formal rules of evidence need not be observed, but the Preservation Board shall act to ascertain the facts in a reasonable and orderly fashion. Any evidence submitted to the Preservation Board for consideration shall exclude hearsay, innuendo and personal attacks;
- (g) The Preservation Board shall record the hearing by utilizing a reliable audiotape recorder;
- (h) The proceedings may be recessed and continued at the discretion of the Preservation Board;

(i) At the conclusion of the proceedings, the Preservation Board may either render an immediate decision or take the matter under advisement and issue its decision and order no later than seven (7) days from the conclusion of the hearing; and

(j) The written decision and order, setting forth specific findings, shall be sent to the complainant and respondent. Should the Preservation Board determine that the person or entity against whom charges were brought violated this Ordinance, the Board may impose one or more penalties set forth in Chapter 11 of this Ordinance, and may order that the responsible person take corrective action to remedy any harm caused by the non-compliance issue.

Chapter 11. Penalties

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Sec. 1101. Possible Penalties for a Person's Violations.

The Preservation Board, in its discretion, may impose any of the following penalties, or a combination thereof, provided that the severity of the penalty correlates to the severity of the offense.

- (a) Imposition of a civil monetary fine of \$0 to \$5,000.00 per violation. The Preservation Board possesses the discretion to impose cumulative daily penalties if the violation is a reoccurring violation. The amount of a penalty shall take into account the following factors:
 - (1) The damages suffered, both economic and non-economic by Tribal members; and
 - (2) Costs of restoring or replacing a traditional cultural property burial site, archaeological or cultural resource or its equivalent if possible; and
 - (3) Enforcement costs associated with the enforcement of this Ordinance; and
 - (4) Costs associated with the disposition of human remains or cultural items; and

(5) Costs associated with documentation, surveying, and evaluation of the Spiritual site, burial site, traditional cultural property or human remains or archaeological site to assess the characteristics of the site.

(b) Suspension or termination of the responsible person's current privilege of conducting business within the jurisdiction of the Fort Peck Indian Reservation, provided that a reasonable time period be allowed to remove equipment and personal property from the Fort Peck Indian Reservation's jurisdiction.

(c) Prohibition from conducting future business within the jurisdiction of the Fort Peck Indian Reservation for a period of time.

Sec. 1102. Collection and Deposit of Fines.

The Preservation Officer shall be responsible for the collection of all fines in a timely manner. The Preservation Officer shall deposit all fines with the Tribes in accordance with the Tribal financial management system, identified as a separate line item of the appropriate Preservation office account. The Preservation office may only utilize the fines in accordance with the budgets approved by the Preservation Board and the TEB.

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Sec. 1201. Tribal Court Jurisdiction.

The Tribal Court of the Fort Peck Assiniboine and Sioux Tribes shall have jurisdiction over appeals taken from decisions and orders issued by the Preservation Board. An appeal to the Tribal Court may be taken from any final order of the Preservation Board by any party adversely affected thereby. The appeal must be filed no later

than 15 business days after the party receives a copy of the Preservation Board's decision. The Tribal Court shall require all parties to exhaust the proceedings and remedies available before the Preservation Board. The Tribal Court shall also have jurisdiction to grant such orders as are necessary and appropriate to enforce the orders of the Preservation Board and the penalties imposed by it.

Sec. 1202. Standard of Review.

The Tribal Court shall uphold the decision of the Preservation Board unless it finds that the decision of the Board is arbitrary, capricious or in excess of the authority of the Board. The appealing party bears the burden of proving that the Preservation Board's decision is arbitrary, capricious or in excess of the Board's authority.

Sec. 1203. Notice of Appeal.

The appeal shall be taken by filing a written notice of appeal with the Tribal Court, serving a copy on the Preservation Officer within 15 business days after the date of the entry of the order. The notice of appeal shall:

- (a) Provide the Preservation Board's decision and order which is the subject of the appeal;
- (b) Specify the grounds justifying reversal or modification of the order; and
- (c) Be signed by appellant.

Sec. 1204. Petition for Bond.

The Preservation Officer may petition and, for good cause shown, the Court may order the party requesting a hearing to post a bond sufficient to cover monetary damages that the Preservation Board assessed against the party or to assure the party's compliance with other penalties or remedial actions imposed by the Board's order if that order is upheld by the court.

Sec. 1205. Petition for Court Order to Enforce a Preservation Board Order.

The Preservation Board may petition the Tribal Court and the Court may issue such orders as are necessary and appropriate to enforce the orders

and/or penalties of the Board and/or the Court. The Preservation Board may petition and the Tribal Court may order the confiscation and/or sale of a responsible person's property. If the Court determines that a responsible person is not complying with an order and/or penalty of the Preservation Board and/or the Court, then the Court may order Tribal Police to confiscate and hold the specifically-described property. The Tribal Police shall deliver in person or by certified mail, a notice to the responsible person. The notice shall inform the responsible person of the pending confiscation and of the right to prevent such confiscation by coming into compliance with the order and/or penalty being enforced. The responsible person shall have 15 business days to initiate compliance and execute a schedule setting forth how the responsible person will achieve complete compliance. If the responsible person has not come into compliance within 15 business days, the Court shall order the police to confiscate and sell said property and use the proceeds to pay any outstanding fines imposed by the Preservation Board and all costs incurred by the Board, the Court and the police in filing, maintaining and enforcing the confiscation and sale. Any excess proceeds shall be returned to the party.

Sec. 1206. Final Decision of the Preservation Board or the Tribal Court.

The Court's order on appeal shall be final, or if no appeal is filed within 15 business days from the date of party's receipt of the Preservation Board's order, the Board's order shall be final. If the Tribal Court reverses or modifies an order of the Preservation Board, the Court shall specifically direct the Board to comply with such reversal or modification.

Chapter 13. Implementation of the Native American Graves Protection and Repatriation Act and Other Federal Laws

Sections:

Sec. 1301. Policy12
 Sec. 1302. Implementation.12

Sec. 1301. Policy.

It is the policy of the Tribes that ancestors' burial items, as that phrase is defined in this Ordinance, are sacred and we desire that they not be disturbed. In the event that our ancestors are disturbed or excavated, the remains shall be re-buried together with all funerary items as soon as possible. The remains of the Tribe's ancestors and funerary items that have been disturbed and are now in possession of museums, universities, federal agencies or other institutions or persons, should be returned to the Tribes for reburial.

Sec. 1302. Implementation.

To effectively prevent any further disturbance of any burial item, archeological resource or cultural resource, the Tribes will assert its inherent sovereign rights and those federal rights provided in various federal laws. The Preservation office shall represent the Tribe's interests when providing consent to federal agencies or consulting with federal agencies on federal undertakings on tribal lands and aboriginal lands in accordance with the National Historic Preservation Act, the Archeological Resources Protect Act, the Native American Graves Protection and Repatriation Act and other federal laws.

Chapter 14. Sovereign Immunity

Sections:

Sec. 1401 12

Sec. 1401.

As a tribal agency providing critical government services, the Cultural Preservation office, including the Preservation Officer and the Preservation Board (collectively referred to as Preservation office in this paragraph), shall share in the Tribe's sovereign immunity from suit. Only the TEB may expressly authorize a limited waiver of the Preservation office's sovereign immunity from suit, provided, however, that such waiver must be express and unequivocal and evidenced by a duly enacted resolution by the TEB for that purpose only. A resolution of the TEB which expressly and unequivocally authorizes a limited

waiver for an explicit purpose shall not be deemed a waiver for any other purpose. Any limited waiver enacted by the TEB pursuant to the authorization granted by this provision shall not extend to the Tribes or any of its departments, agencies or entities. The Tribes shall not be liable for the debts or obligations of the Preservation office, except in so far as it may hereafter expressly obligate itself in writing.

(AS PER RESOLUTION NO. 26-1304-2012-08; DATED 8/27/2012.)