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SISSETON-WAHPETON OYATE
OF THE
LAKE TRAVERSE RESERVATION

CHAPTER 73

CULTURAL RESOURCE PROTECTION ACT

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TITLE 1: GENERAL PROVISIONS

73-01-01 *Name and Short Title*

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

73-01-02 *Declaration of Policy and Intent*

The purpose of this Act is to protect, preserve and promote the Sisseton-Wahpeton Oyate's cultural resources on the Lake Traverse Reservation by establishing a government agency to identify, evaluate and protect cultural, historic, and archaeological resources. The Tribe is determined to protect, preserve and promote its cultural resources by regulating Undertakings upon Reservation lands that may potentially affect cultural resources. No person may initiate any Undertaking on protected lands without a permit from the Cultural Preservation office.

73-01-03 *Findings*

The Tribal Council finds that:

- A. The spirit and direction of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation (Sisseton-Wahpeton Oyate) is founded upon and reflected in its cultural heritage;
- B. The cultural foundation of the Sisseton-Wahpeton Oyate 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 Sisseton-Wahpeton Oyate;
- C. Cultural resources, archeological resources and burial items of the Sisseton-Wahpeton Oyate 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 original exterior boundaries of the Reservation, and other aboriginal Sisseton-Wahpeton Oyate land areas, the Sisseton-Wahpeton Oyate 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;

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- F. The Sisseton-Wahpeton Oyate is the exclusive owner of indigenous traditional knowledge, cultural resources, biogenetic resources, and intellectual property rights on protected lands. Research has been conducted in ways that do not respect the safety and human dignity of tribal members and that do not recognize the legal rights and legitimate interests of the Tribe in the integrity and preservation of its cultural resources.
- G. The Sisseton-Wahpeton Oyate's self-governing capability, political integrity, health, welfare and economic security will be enhanced and protected by the Sisseton-Wahpeton Oyate's control, regulation and preservation of irreplaceable cultural resources, which are essential to the continued well-being of the Sisseton-Wahpeton Oyate and will be maintained and enriched for the Sisseton-Wahpeton Oyate's future generations.

73-01-04 *Legal Authority*

The Sisseton-Wahpeton Oyate possesses the inherent sovereign authority to enact this Act. The Act 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 Board are the tribal officials that ensure the Sisseton-Wahpeton Oyate's rights are protected under such federal laws, including representing the Sisseton-Wahpeton Oyate whenever possible under such federal laws.

73-01-05 *Applicability*

This Act shall be applicable to areas within the original exterior boundaries of the Lake Traverse Reservation and any other areas that are subject to the jurisdiction of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

73-01-06 *Severability*

Should any provision set forth in this Act or application thereof to any person or circumstance be held invalid by the Tribal Court of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, this will not affect the full remainder of the provisions or the application of the provisions to another person or circumstance. This Act will supersede any conflicting laws found in the Tribe's Code of Laws.

73-01-07 *Effective Date*

This Act shall be in full force and effect on the date of formal approval and adoption by the Tribal Council.

TITLE 2: DEFINITIONS

Act or CRPA means the Cultural Resource Protection Act.

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, teepee rings, 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 Tribe's culture or a previous culture.

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.

Burial item means any funerary item, human remain or burial site.

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 broader than those marked cemeteries and graveyards protected under existing State law.

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 exterior Reservation boundaries is associated with the Sisseton-Wahpeton Oyate's 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.

Duly authorized law enforcement official means any law enforcement personnel of the Sisseton-Wahpeton Oyate or any law enforcement officer delegated authority to enforce the laws of the Tribe pursuant to a cooperative agreement with the Sisseton-Wahpeton Oyate.

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.

Human remains mean a deceased person or any part of the human body in any state of decomposition.

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.

Indigenous intellectual property means the indigenous cultural information, knowledge, uses, and practices unique to the Tribe's ways of life maintained and established over protected lands and aboriginal areas. This knowledge is based upon observation, habitation, and experience, and is often a communal right held by the Tribe, but in some instances by individuals. This property includes, but is not limited to, the following:

- A. Knowledge of remembered histories and traditions;
- B. Details of cultural landscapes and particularly sites of cultural significance;
- C. Records of contemporary events of historical and cultural significance;
- D. Sacred property (images, sounds, knowledge, material, culture or anything that is deemed sacred by the community);
- E. Knowledge of current use, previous use, and/or potential use of plant and animal species, soils, minerals, objects;
- F. Knowledge of preparation, processing, or storage of useful species;
- G. Knowledge of formulations involving more than one ingredient;
- H. Knowledge of individual species (planting methods, care for, selection criteria, etc.);
- I. Knowledge of ecosystem conservation (methods of protecting or preserving a resource);
- J. Biogenetic resources that originate (or originated) on indigenous lands and territories;
- K. Tissues, cells, biogenetic molecules including DNA, RNA, and proteins, and all other substances originating in the bodies of Tribal members, in addition to genetic and other information derived there from;
- L. Cultural property (images, sounds, crafts, art, symbols, motifs, names, performances); and
- M. Knowledge of systems of taxonomy of plants, animals, and insects.

Lake Traverse Reservation or Reservation means all land within the external boundaries of the Lake Traverse Reservation.

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.

Preservation Officer means the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation Cultural Preservation Officer.

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 Sisseton-Wahpeton Oyate register and is located either:

- A. Within the exterior boundaries of the Lake Traverse Reservation, whether in fee or Trust status if owned by the Sisseton-Wahpeton Oyate or tribal members;
- B. Outside the exterior boundaries of the Lake Traverse Reservation, which are owned by the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation or held by the United States in trust for the Sisseton-Wahpeton Oyate or its members.

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. 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 Act or the rules or regulations of the Preservation Board even if the person does not receive notice.

Research means the use of systematic methods to gather and analyze information for the purpose of proving or disproving a hypothesis, evaluating concepts or practices, or otherwise adding knowledge and insight in a particular discipline or field of knowledge or to investigate, demonstrate or experiment theories, techniques or practices. For the purpose of this code, research includes any academic research, cultural research, and scientific research. Cultural research includes any endeavor, by means of investigation and study of a subject, whether to discover new or collate old facts or hypotheses on a cultural subject, an ethnographic or anthropological study, including but not limited to basic data collection, studies of or incorporating traditional knowledge or classifications systems (e.g. studies of medicinal properties of plants), documentary films, archaeology, linguistics and ethno-historical accounts.

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

Spiritual site means any place or area, including, but not limited to, any geophysical or geographical area or feature:

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- A. Where Sisseton-Wahpeton 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 Sisseton-Wahpeton spiritual practitioners for ceremonies or spiritual practices.

Responsible person means any person who has decision-making authority over a particular Undertaking on protected lands.

Sisseton-Wahpeton Oyate means the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

Sisseton-Wahpeton Oyate Register means the Sisseton-Wahpeton Oyate Tribal Register of cultural resources, archeological resources, sacred items, spiritual sites or burial items within the Lake Traverse Reservation.

Tribal Council means the Tribal Council, the governing body, of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

Tribal Member means any person who is an enrolled member of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation as provided by the Tribe's Revised Constitution and Bylaws.

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.

TITLE 3: CULTURAL PRESERVATION OFFICER

73-03-01 *Sisseton-Wahpeton Oyate Cultural Preservation Office*

The Sisseton-Wahpeton Oyate establishes a Cultural Preservation Office that will be directed by a Preservation Officer appointed by the Tribal Council to administer the Cultural Preservation Program.

73-03-02 *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.

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73-03-03 *Responsibilities of the Preservation Officer*

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

- A. **Maintain the Sisseton-Wahpeton Oyate Register;**

- B. **As funds and staff are available, and in cooperation with the Sisseton-Wahpeton Oyate Culture Committee and Tribal members direct and conduct a comprehensive Reservation-wide 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 Sisseton-Wahpeton Oyate's priorities and planning decisions;**

- C. **Identify and nominate eligible properties or resources to the Sisseton-Wahpeton Oyate Register and administer applications for the Sisseton-Wahpeton Oyate Register;**

- D. **Prepare and implement a comprehensive Reservation-wide 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, Sisseton-Wahpeton Oyate, Federal, and State agencies in carrying out their respective obligations and responsibilities.**

- F. **Consult with appropriate Sisseton-Wahpeton Oyate, Federal, and State agencies in accordance to this Act 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 the Register in a manner that protects the Sisseton-Wahpeton Oyate 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 Sisseton-Wahpeton Oyate, 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 Sisseton-Wahpeton Oyate Cultural Resource Protection Act;**

- J. Inspect any Undertaking for the purpose of determining compliance with this Act its implementing regulations, or permit terms and conditions;
- K. Review and process permit applications;
- L. Review and process research proposals before the research are started.

TITLE 4: THE CULTURAL PRESERVATION BOARD

73-04-01 *Establishment and Selection of Cultural Preservation Board*

There is hereby established a Cultural Preservation Board, to be composed of ten (10) members. One (1) representative shall be nominated from each Sisseton-Wahpeton Oyate district for appointment to the Board. The Districts may also appoint or elect an alternative Board member. The Tribal Council shall choose the remaining two (2) board members from a list of nominees provided by the Sisseton-Wahpeton Oyate Elder Advisory Group. The Preservation Officer shall serve as an ex-officio member of the Preservation Board. The Tribal Council shall appoint one (1) of its Council members to serve as Chairman of the Preservation Board.

73-04-02 *Board Member Qualifications*

All Board members shall demonstrate special knowledge of Sisseton-Wahpeton Oyate custom, belief and practice, which includes experience or knowledge in traditional cultural properties, historic, prehistoric and cultural resources or related disciplines.

73-04-03 *Term*

Except for the Chairman, members of the Board shall each hold office for a term of three (3) years. In the initial year, five (5) District members shall be appointed for three (3) years, two (2) District members appointed for two (2) years, and the two (2) at-large members appointed for one (1) year.

73-04-04 *Vacancy and Interim Appointment*

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

73-04-05 *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 Tribal Council approval that delineates the Board's compensation and training.

73-04-06 *Duties of the Preservation Board*

The Cultural Preservation Board shall maintain and enforce this Act 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 this Act. If Tribal Council approves the Board's 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 on the Sisseton-Wahpeton Oyate;
- E. Identify and nominate traditional cultural properties to the Sisseton-Wahpeton Oyate Register, apprise the Tribal Council of its recommendations and otherwise administer applications for listing traditional cultural properties on the Register;
- F. Provide general advice and guidance to the Cultural Preservation Officer;
- G. To accept on behalf of the Sisseton-Wahpeton Oyate, gifts, grants and fees to Administer this Act. 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 Sisseton-Wahpeton Oyate staff or elders having technical expertise for advice;
- I. The Preservation Board, with the consent of Tribal Council, 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 this Act.

73-04-07 *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 off-reservation cultural resource. The Board and Preservation Officer shall provide an annual report and summary of such consultation to the Tribal Council on a date to be established by Tribal Council.

TITLE 5: CONFIDENTIALITY AND DISCLOSURE

73-05-01 *Confidentiality*

A determination regarding the nature and cultural significance of cultural resources may involve the use of sensitive and confidential information regarding Sisseton-Wahpeton Oyate 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 Sisseton-Wahpeton Oyate. 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 Sisseton-Wahpeton Oyate culture and cultural resources.

In developing the Register, the required database and record system required under this Act, 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 Act. 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.

TITLE 6: PRESUMPTION OF CULTURAL RESOURCES

73-06-01 *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 Sisseton-Wahpeton Oyate's cultural resources, the presence of cultural resources is 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.

TITLE 7: APPLICATION FOR A PERMIT

73-07-01 *Permits Required*

Due to the presumption regarding cultural resources provided in Title 6 of this Act, no Undertaking on protected lands is allowed without a permit. No historical or ethnographic work or studies relating to Sisseton-Wahpeton Oyate 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 Act.

73-07-02 *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.

73-07-03 *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.

73-07-04 *Additional Application Requirements Applicable to Research*

Researchers must receive a permit from the Preservation Officer prior to undertaking any research on protected lands. Depending on the nature of the proposed research, researchers are advised to allow sufficient time, a minimum of 60 days, for the Preservation Officer to thoroughly review and understand all aspects of the study, ask questions, and resolve any concerns. The researcher shall provide the Preservation Officer with a written application that addresses the following information:

- A. **Statement of the Issue/Research Question.** Briefly describe the issue/problem the applicant is addressing by the proposed research, including the theoretical rationale behind the question(s) and the type of information sought. If the applicant has a specific hypothesis it should also be put forward in this section.
- B. **Intent and Benefit to the Tribe.** Clearly outline and discuss the intent and goals of the research project and the benefit(s) that the project will have on the Tribal community, both short-term and long-term. Include the type of expected product to be produced by the research, such as publishable paper, videotape, and/or dissertation. Describe how the Tribal community and Tribal members will be empowered by the research process through employment, training, or outreach efforts.
- C. **Risks.** Describe any potential legal, financial, social, physical, or psychological risks associated with the research. Risk assessment should also address the steps that will be taken to minimize or repair actual or potential harm to the individual and/or Tribal community by the research. Description shall include how any potential risks will be explained to participants and how the risks are justified by the potential benefits of the research.
- D. **Methods.** Describe the procedures to be employed for the collection of all data to be used in the project, including a description of subjects, setting, and the nature of the data to be collected. Description shall include a schedule with anticipated start date, completion date, and any other project dates that may be of importance.
- E. **Funding/Budget.** Describe any public or private sources of funding, whether the researcher is still seeking approval or whether funding is secured, including a full reference of the funding source and explanation of any limitations or stipulations associated with that funding.
- F. **Participation and Compensation.** Describe how participants will be selected and how the Tribe and individual Tribal members will receive a fair and appropriate return for cooperating in the project. Such compensation may include but is not limited to: obtaining copies of research findings, co-authorship, royalties, training and education, or monetary compensation.

- G. **Consent.** Describe the mechanisms for informed consent, which may be required from individual participants, families, or the Tribal Council, how consent will be obtained, including how language and cultural difference will be accommodated in communicating and obtaining consent.
- H. **Confidentiality.** Describe how confidentiality will be protected and the circumstances under which the obligations of the researcher may constitute a breach of confidentiality. Describe how the individual participants will be informed of the degree of confidentiality that will be maintained throughout the study. The Tribe maintains that unless otherwise specified, only aggregate data (not individual data) shall be published or released to the general public. All individual identities, such as names and contact information, must be kept confidential unless an individual elects to be recognized by name. No sale or transfer of databases outside the specific research project shall be allowed unless approved by the Tribe.
- I. **Intellectual Property Rights.** Describe any plans (before, during, and after) for publication, commercialization, or release of the research findings. Description should include how the Tribal community will have access to the project, research data, or finding for the Tribe's own use. Researchers must obtain the Board's approval prior to submission for publication.
- J. **Data Ownership/Archive.** Description and explanation of the intended use of data, samples, and records to be collected during the project addressing how the data will be stored during and post-project. The Tribe reserves the right to require the deposit of raw materials or data, working papers, or product in a designated repository, with specific safeguards to preserve confidentiality. Duplicates of data or split samples may be required to be stored in such a local archive.

73-07-05 *Written Agreement and Progress Report*

The Preservation Officer shall enter into a written agreement with the researcher ensuring that the representations included in the researcher's application can be maintained and enforced by the Tribe during and after the research project. The Preservation Office shall also prescribe the number and manner of progress reports to be made by the researcher. The Tribe reserves the right to deny research opportunities and withdraw consent, including seeking injunctive relief from the Tribal Court. The Tribal Court shall issue any and all protective orders consistent with this Act.

73-07-06 *Exemptions*

The following persons and entities are exempt from the research permits required by Section 73-07-04: the Sisseton-Wahpeton College, the Enemy Swim Day School, and Tiospa Zina Tribal School and their faculty and students.

TITLE 8: IDENTIFICATION AND EVALUATION

73-08-01 *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 fourteen (14) days of receipt of the application. If the Preservation Officer determines that the proposal is an Undertaking, the Preservation Officer shall transmit the proposal to the Preservation office that is responsible for conducting a review.

73-08-02 *Evaluating the Undertaking*

The Preservation office shall identify what cultural resources may be affected by the Undertaking. It is not the case that the Preservation office already knows what cultural resources exist on a given parcel of land prior to an Undertaking. This Act 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.

TITLE 9: PERMIT DETERMINATION

73-09-01 *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.

73-09-02 *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 Title 10.

73-09-03 *Post-Permit Discoveries*

Any person who has obtained a permit but discovers an archeological resource or a burial item must

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Council Adopted
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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 Act and, if possible, prosecution under federal law. The Undertaking may resume only after receiving approval from the Sisseton-Wahpeton Oyate Preservation Officer.

73-09-04 *Reacting to Emergencies without a Permit*

In rare circumstances, all or part of a person's responsibilities under this Act 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 four (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 cultural 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.

TITLE 10: COMPLAINT AND HEARING PROCEDURE

73-10-01 *Filing a Complaint*

The Preservation Officer 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 Officer 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 fifteen (15) 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 Officer shall complete an investigation of a complaint and issue a probable cause decision within thirty (30) days upon receipt of the complaint.

73-10-02 *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 *finalize* all attempts for an informal settlement within forty-five (45) 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 enjoin 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*.

73-10-03 *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).

73-10-04 *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.

73-10-05 *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.

73-10-06 *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 Chairman 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 which charges were brought violated this Act, the Board may impose one or more penalties set forth in Title 11 of this Act, and may order that the responsible person take corrective action to remedy any harm caused by the non-compliance issue.

TITLE 11: PENALTIES

73-11-01 *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 the Sisseton-Wahpeton Oyate and its 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 Act; 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 on the Lake Traverse Reservation, provided that a reasonable time period be allowed to remove equipment and personal property from the Lake Traverse Reservation.
- C. Prohibition from conducting future business on the Lake Traverse Reservation for a period of time.

73-11-02 *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 Tribe 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 Tribal Council.

TITLE 12: APPEALS PROCEDURE

73-12-01 *Tribal Court Jurisdiction*

The Tribal Court of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation 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 twenty (20) 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.

73-12-02 *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.

73-12-03 *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 twenty (20) 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.

73-12-04 *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.

73-12-05 *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 fifteen (15) 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 fifteen (15) 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.

73-12-06 *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 twenty (20) 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.

**TITLE 13: IMPLEMENTATION OF THE NATIVE AMERICAN
GRAVES PROTECTION AND REPATRIATION ACT
AND OTHER FEDERAL LAWS**

73-13-01 *Policy*

It is the policy of the Sisseton-Wahpeton Oyate that ancestors' burial items, as that phrase is defined in this Act, 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 Sisseton-Wahpeton Oyate 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 Sisseton-Wahpeton Oyate for reburial.

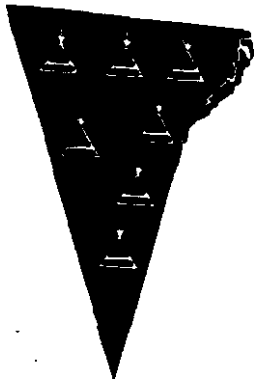
73-13-02 *Implementation*

To effectively prevent any further disturbance of any burial item, archeological resource or cultural resource, the Sisseton-Wahpeton Oyate will assert its inherent sovereign rights and those federal rights provided in various federal laws. The Preservation office shall represent the Sisseton-Wahpeton Oyate'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.

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TITLE 14: SOVEREIGN IMMUNITY

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 Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation 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 Tribal Council for that purpose only. A resolution of the Tribal Council 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 Tribal Council pursuant to the authorization granted by this provision shall not extend to the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation or any of its departments, agencies or entities. The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation 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.



Sisseton-Wahpeton Oyate

LAKE TRAVERSE RESERVATION
P.O. Box 509
100 Veterans Memorial Drive
Agency Village, South Dakota 57262-0509
Phone: (605) 698-3911

TRIBAL COUNCIL RESOLUTION NO. SWO-05-095

Enactment of Cultural Resource Protection Act

WHEREAS, The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation is organized under a Constitution and By-laws by the members of the Tribe on August 1-2, 1966 and approved by the Commissioner of Indian Affairs on August 25, 1966; and,

WHEREAS, The said Constitution and By-laws mandates at ARTICLE II, Section 1, that the Tribal Council shall have the power: (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Tribe; and, (i) to adopt resolutions regulating the procedures of the Council, its officials and committees in the conduct of tribal affairs; and (k) to promulgate and enforce ordinances governing the conduct or persons under the jurisdiction of the Sisseton-Wahpeton Oyate; and, (l) to enact resolutions or ordinances not inconsistent with Article II of this Revised Constitution and By-laws concerning membership in the Sisseton-Wahpeton Oyate; and,

WHEREAS, The Tribal Council finds that:

- A. The spirit and direction of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation is founded upon and reflected in its cultural heritage;
- B. The cultural foundation of the Sisseton-Wahpeton Oyate should be preserved and protected as a living part of our community life and development in order to give a sense of orientation of the Sisseton-Wahpeton Oyate;
- C. Cultural resources, archeological resources and burial items of the Sisseton-Wahpeton Oyate are being lost, substantially altered or destroyed, with increasing frequency;

In the face of ever increasing economic, residential, highway, sanitation, agricultural, energy and public health developments, as well as the influx of non-Indian people with interest in obtaining cultural resources, archeological resources and burial items located within the original exterior boundaries of the Reservation, and other aboriginal Sisseton-Wahpeton Oyate land areas, the Sisseton-Wahpeton Oyate must ensure that such resources are preserved and protected for future generations.

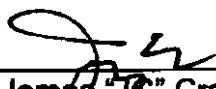
NOW, THEREFORE, BE IT RESOLVED, That the Sisseton-Wahpeton Oyate Tribal Council of the Lake Traverse Reservation hereby declares this Act shall be in full force and effective on the date of formal approval and adoption by the Tribal Council on October 6, 2005.

C E R T I F I C A T I O N


We, the undersigned, duly elected Chairman and Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above Resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members (representing a total of 15 Tribal Council weighted votes and two Executive Committee votes for a total of 17 votes) of whom 9 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at TiWakan Tio Tipi, Agency Village, South Dakota on October 6, 2005, by a vote of 14 for, 0 opposed, 1 abstained, 1 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 11th day of October, 2005.

ATTEST:



James "JC" Crawford, Tribal Chairman
Sisseton-Wahpeton Oyate



Michael Peters, Tribal Secretary
Sisseton-Wahpeton Oyate

Original Copy to Tribal Court

cc: Legal Counsel
Planning: Historic Preservation
Judicial Committee

