

WHITE EARTH BAND OF CHIPPEWA INDIANS

RESOLUTION NO. 001-97-019

WHEREAS, the White Earth Band of Chippewa Indians is one of the six constituent bands governed by the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe as approved on March 3, 1964, by the Assistant Secretary of the Interior; and

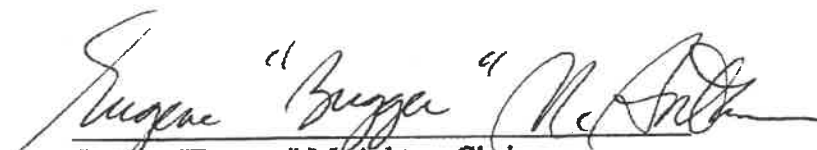
WHEREAS, the Minnesota Chippewa Tribe is organized under Section 16 of the act of June 18, 1934 (48 Stat. 984), as amended; and

WHEREAS, Article I of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe provides authority for the Reservation Business Committee to pass such ordinances as are necessary to promote the general welfare of the members of the Tribe; and

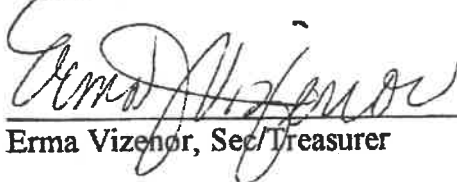
WHEREAS, the White Earth Band of Chippewa Indians, pursuant to constitutional authority deems it in the best interest of the Tribe to enact a Protection of Burial Grounds Code;

NOW, THEREFORE, pursuant to constitutional authority, the White Earth Band of Chippewa Indians hereby enacts the Protection of Burial Code.

We do hereby certify that the foregoing ordinance was duly presented and adopted by a vote of 4 for, 0 Against, and 0 silent, at a regular meeting of the White Earth Band of Chippewa Indians Tribal Council meeting, a quorum present, held on the 1 day of April, 1997, at Pine Point, Minnesota.


Eugene "Bugger" McArthur, Chairman

Attest:


Erma Vizenor, Sec/Treasurer

WHITE EARTH TRIBAL HISTORICAL PRESERVATION ACT
PROTECTION OF BURIAL GROUNDS CODE

BY

DOUGLAS "MICKEY" HODGES
DIRECTOR OF CULTURAL RESOURCES
WHITE EARTH RESERVATION

TITLE I - HISTORIC PRESERVATION

Section 1.	Title	1
Section 2.	Legislative Findings - Federal Laws Preemption	1
Section 3.	Definitions	2
Section 4.	Establishment of the Cultural Resources Alliance Board - Membership	4
Section 5.	Powers and Duties of the Board. Undertakings Off-Reservation	5
Section 5.01.	Undertakings On-Reservation	5
Section 5.02.	Disposition of Archaeological Resources	5
Section 5.03.	Governmental Rule Making	5
Section 5.04.	Annual Reports	5
Section 5.05.	Records	6
Section 5.06.	Cooperation with Agencies and Organizations	6
Section 5.07.	Comprehensive Plan	6
Section 5.08.	Tribal Register	6
Section 5.09.	National Register	6
Section 5.10.	Education	7
Section 6.	Powers and Duties of the Department	7
Section 6.01.	Nominations to the Tribe's Register	7
Section 6.02.	Nominations to National Register	7
Section 6.03.	Assistance to the Board	8
Section 6.04.	Records, Salvage	8
Section 6.05.	Tribally-Owned Properties	8

Section 6.06.	Transfer of Property on the Tribal Register	8
Section 6.07.	Promote Preservation Efforts	8
Section 6.08.	Annual Report	9
Section 7.	Damaging of Adverse Effect: Prohibited Acts	9
Section 8.	Permits, Applications, Contents	9
Section 8.01.	Application: Where Filed	10
Section 8.02.	Criteria	10
Section 8.03.	Board Action	10
Section 8.04.	Permit. Terms and Conditions	11
Section 8.05.	Duration of a Permit	11
Section 8.06..	Interim Permits	11
Section 9.	Duties of Permittees	12
Section 10.	Suspension and Revocation of Permits. Grounds	12
Section 10.01.	Hearing	12
Section 10.02.	Emergency Suspensions/Stop Work Orders	13
Section 11.	Tribal Register of Archaeological and Historic Properties. Nominations and Acceptance	13
Section 11.01.	Tribal Undertakings Upon Listed Property	13
Section 12.	National Register. Nomination of Reservation Properties	14
Section 12.01.	Tribal Undertakings Upon Properties Listed in National Register	14
Section 13.	Survey and Comprehensive Plan. Comprehensive Survey	14
Section 13.01.	Comprehensive Plan	15

Section 14.	Nondisclosure	15
Section 15.	Enforcement. Offense	15
Section 15.01.	Criminal	15
Section 15.02.	Civil	16
Section 16.	Regulation by Board	16
Section 17.	Review By	16
Section 18.	Cultural Items Presently Used	17
Section 19.	Severability	17
TITLE II - PROTECTION OF BURIAL GROUNDS		
Section 1.	Definitions	17
Section 2.	Permits	18
Section 3.	Violation Penalties	18
Section 4.	Force and Effect of Statute	19

TITLE I - HISTORIC PRESERVATION

- Section 1.** **Title.** This statute shall be known as the White Earth Band of Minnesota Chippewa Cultural Resources Protection Statute.
- Section 2.** **Legislative Findings - Federal Laws Preemption.** Under the Federal Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470cc(c), federal officials must notify the White Earth Band of Minnesota Chippewa whenever a permit application is being considered which might adversely affect any religious or cultural off-reservation site.
- Section 2.01.** Under the Federal Archaeological Resources Protection Act, 16 U.S.C. § 470cc(g) (2), no federal permit for excavation or removal of any archaeological resource located within the jurisdiction of the White Earth Band of Minnesota Chippewa will be issued without the consent of the Tribal Council.
- Section 2.02.** There can be no exchange or disposition of archaeological resources from the White Earth Band of Minnesota Chippewa without the consent of the Tribe, pursuant to the Federal Archaeological Resources Protection Act, 16 U.S.C. § 470dd.
- Section 2.03.** The National Historic Preservation Act, 16 U.S.C. § 470 et seq., declared a national policy to work in partnership with Indian tribal governments to protect cultural resources and provides a mechanism by which tribal governments may carry out the provisions of that Act (16 U.S.C. § 470-1, 470 a(c).)
- Section 2.04.** The Tribal Council finds that an orderly procedure must be established for considering the acting upon such notifications, request, and review functions.
- Section 2.05.** The National Historic Preservation Act does not confer upon state governments the power to nominate sites within Indian Reservations to the National Register.
- Section 2.06.** The Tribal Council finds that the power to make such nominations to the National Register must be exercised by the White Earth Band of

Minnesota Chippewa and that an effective procedure must be established to carry out this activity.

Section 2.07. The Tribal Council hereby declares its intent to preempt the field of nominations to the National Register of archaeological and historical sites located with the White Earth Band of Minnesota Chippewa.

Section 3. **Definitions.** As used in this statute, the following words and phrases shall each have the designated meaning, unless a different meaning is expressly provided for, or from the context a different meaning is clearly indicated.

Section 3.01. "Board" means the Cultural Resources Board.

Section 3.02. "Department" means the Cultural Resources Program.

Section 3.03. "Archaeological Resources" means any remains of past human life or activities which are of archaeological or historical interest. Such material remains shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures, or portions of structures, pit houses, rock paintings, rock carvings, intaglios, talus slide depressions, cairns, graves, human skeletal remains, or any portion or piece of any of the foregoing items. The material or remains may also include non-fossilized or fossilized paleontological specimens, or any portion or piece thereof, whether or not found in an archaeological context. No item shall be treated as an archaeological or historic resource unless such an item is at least fifty years of age.

Section 3.04. "Effect" means any condition of the undertaking that causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualify the property to meet the criteria of the Tribe's Register or the National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling or association of the property that contributes to its significance in accordance with the Tribal Register or the National Register

criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are foreseeable. Such effects may include changes in the pattern of land use, population, density or growth rate that may affect any properties of historical, architectural, archaeological or cultural significance.

Section 3.05. **"Historic property"** means any prehistoric or historic district, site, building, structure or object significant in tribal history, architecture, archaeology, culture or religion. The term includes all artifacts, records, remains and reburial sites designated by the Cultural Resources Board.

Section 3.06. **"Tribal Register or Historic and Archaeological Properties"** means the tribal register of districts, sites, buildings, structures and objects significant in tribal history, architecture, archaeology or culture, as determined by the Board and maintained by the Department.

Section 3.07. **"National Register"** means the National Register of Historic Places.

Section 3.08. **"Undertaking"** means any governmental, governmentally assisted or licensed action, activity or program or the approval, sanction, assistance, or support of any non-governmental action, activity or program. Undertakings include new and continuing projects and program activities that are [1] directly undertaken by government agencies; [2] supported in whole or in part through governmental contracts, grants, subsidies, loans, loan guarantees or other forms of direct or indirect funding assistance; [3] carried out pursuant to a governmental lease, permit, license, certificate, approval or other form of entitlement or permission; or, [4] proposed by a Federal, State or other governmental agency for legislative authorization or appropriation. Site-specific undertakings affect areas and properties that are capable of being identified at the time of approval by the governmental agency. Non-site-specific undertakings have effects that can be

anticipated on the Tribal Register or the National Register and eligible properties but cannot be identified in terms of specific geographical areas or properties at the time of approval. Non-site-specific undertakings include Federal or State approval of Federal or State plans pursuant to legislation, development of comprehensive or area wide plans, agency recommendations for legislation plans, and establishment or modification of regulations and planning guidelines.

Section 3.10. "ARPA" means the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa, et seq.

Section 3.11. "NHPA" means the National Historic Preservation Act of 1966, 16 U.S.C. § 470, et seq.

Section 4. **Establishment of the Cultural Resources Alliance Board - Membership.** The Board shall be composed of the Director of the Cultural Resources Department, the Chairperson of the Elderly Advisory Board, the Tribal Archaeologist, the Tribal Historian/Anthropologist, and the Tribal Staff Attorney, as designated by the Tribal Chairman.

Section 4.01. **Officers.** The Board shall elect from among its members a Chairperson, a Vice-Chairperson and a Secretary. In the absence of the Chairperson, the Vice-Chairperson shall preside, and in the absence of both the Chairperson and Vice-Chairperson, the Secretary shall preside.

Section 4.02. **Quorum.** Four members of the Board shall constitute a quorum. The Chairperson will vote only in the event of a tie.

Section 4.03. **Meetings.** Meetings of the Board shall be held at quarterly intervals. Emergency meetings may be held within twelve hours of actual notice, and business may be transacted provided that not less than a majority of the full Board concurs in the proposed action.

Section 4.04. **Principal Office.** The principal office of the Board shall be the White Earth Reservation Cultural Resources Office.

Section 4.05. **Oath of Office.** Each member of the Board shall take the following oath before beginning his/her

duties:

"I promise to faithfully execute all provisions of the Cultural Resources Protection Ordinance and any regulations promulgated in furtherance thereof, and to be bound by the White Earth Statutes, the jurisdiction of the White Earth Tribal courts, and to the White Earth Tribe and to otherwise faithfully perform my duties as outlined by the law."

Section 5. Powers and Duties of the Board. Undertakings Off-Reservation. The Board is empowered to participate in the review of the permitting process where a federal or state officer has or should notify the Tribe pursuant to ARPA, 16 U.S.C. § 470cc(c), the NHPA, or American Religious Freedom Act, 42 U.S.C. § 1996, that an undertaking is proposed or an application is being considered for a permit which might adversely affect any off-reservation archaeological resource or historical property.

Section 5.01. Undertakings On-Reservation. The Board is authorized and directed to review any proposed undertaking that might adversely affect any on-reservation archaeological resource of historic property included on or eligible for inclusion on the Tribe's Register or the National Register. The Board is also empowered to consider requests for consent to on-reservation excavation or removal of archaeological resources as an initial application or as referred by officials acting pursuant to ARPA, 16 U.S.C. § 470cc(g)(2), the NHPA, or the American Indian Religious Freedom Act.

Section 5.02. Disposition of Archaeological Resources. The Board is empowered to consider requests for exchange or dispositions of archaeological resources (see 16 U.S.C. § 470dd) and to determine what conditions, if any, should be attached if consent is given.

Section 5.03. Governmental Rule Making. As directed by the Tribal Chairman, the Board is empowered to initiate, comment and participate in federal, state or other governmental rule-making processes concerning matters pertaining to its expertise. See 16 U.S.C. § 470s, 470ii.

Section 5.04. Annual Reports. The Board shall prepare a

comprehensive annual report for submission to the Tribal Chairman, which shall report on the activities carried out under the provisions of this statute, and shall make such recommendations as the Board deems appropriate as to changes or improvements needed in the provisions of this statute. Such report shall include a summary of actions undertaken by the Board in reviewing proposed undertakings, applications for excavation or removal permits, and nominations for the Tribe's Register and the National Register.

Section 5.05. Records. The Board shall maintain records of its proceedings. All proceedings shall be documented in writing and distributed to the Tribal Council not more than five days following each meeting.

Section 5.06. Cooperation with Agencies and Organizations. The Board is authorized and directed to consult and cooperate to the extent feasible with other Tribal and non-Tribal governmental departments and agencies, and with private organizations involved in historical and archaeological protection activities, including the National Trust for Historic Preservation, the Inter-National Center for the Study of Preservation and Restoration of Cultural Property, museums and organizations of professionals. Cooperation activities shall include providing assistance to other agencies and organizations, and coordinating the planning and conduct of historic preservation programs.

Section 5.07. Comprehensive Plan. The Board is authorized and directed to review the comprehensive White Earth Integrated Resource Management Plan, 1993-2002, prepared by the White Earth Biology Department (Cultural Resources Plan). The Board is further authorized to approve the plan and submit it to the Tribal Chairman or to direct the Department to change the plan until it meets with approval.

Section 5.08. Tribal Register. The Board is authorized and directed to review nominations of properties to the Tribe's Register submitted by the Department, and to approve those that are significant in tribal history, architecture, archaeology, culture, or religion.

Section 5.09. National Register. The Board is authorized and

directed to review forms or reports proposing to nominate properties to the National Register, assure adequate public participation in the nomination process, and to recommend to the Tribal Chairman those properties it deems appropriate for nomination for listing on the National Register.

Section 5.10. Education. The Board is authorized to develop and operate a program of information and education for tribal members and/or the general public concerning cultural resources and protection of properties listed on the Tribe's Register.

Section 6. Powers and Duties of the Department. The Cultural Resources Department shall have the following duties and powers, which shall be in addition to such powers and duties provided by prior Statutes of the White Earth Band of Minnesota Chippewa as are not inconsistent with this Statute:

Section 6.01. Nominations to the Tribe's Register. The Department is directed to nominate to the Board all sites, buildings, districts and objects within the reservation that appear to qualify for listing on the Tribe's Register. The Department shall, in order to compile the information needed to make the nominations:

Section 6.01A. Conduct a comprehensive survey of all historic properties on the reservation pursuant to Section 13 of this Statute.

Section 6.01B. Compile an inventory that includes basic information about the location and history of each property.

Section 6.01C. Evaluate each property surveyed with regard to its historic, archaeological, anthropological, religious and cultural significance.

Section 6.01D. Based on the evaluation described in Section 6.01C., place each surveyed property into one of four categories of significance.

Section 6.02. Nominations to National Register. The Department shall prepare nomination forms for those properties that appear to be eligible for placement on the National Register and present them to the Board.

- Section 6.03. Assistance to the Board.** The Department shall assist and consult with the White Earth Tribal Council and the Board on issues relating to the conservation of historic and archaeological resources and on other matters within the scope of their duties.
- Section 6.04. Records, Salvage.** The Department shall initiate measures to ensure, at a minimum that when a property listed on the Tribe's Register is to be substantially altered or affected, timely steps be taken to make records, including measures drawings, photographs and maps of the property. A copy of the records must then be deposited in the tribal archives for future use and reference. The Department shall use its best efforts to assure adequate surveying, testing, salvage and analysis of artifacts, where such is feasible.
- Section 6.05. Tribally-Owned Properties.** The Department shall initiate measures and procedures to provide for the maintenance, preservation, rehabilitation, or restoration of tribally-owned and registered sites at professional standards prescribed by the Director of the Department.
- Section 6.06. Transfer of Property on the Tribal Register.** The Department shall cooperate with purchasers and transferors of any property listed on the Tribe's Register in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in a unreasonable burden to the landholder.
- Section 6.07. Promote Preservation Efforts.** The Department is authorized to take the following actions for the purpose of promoting historic preservation efforts:
- Section 6.07A.** Develop and make available to Tribal Agencies information concerning professional methods and techniques for identifying, preserving, stabilizing, improving, restoring and maintaining archaeological and historic properties.
- Section 6.07B.** Advise Tribal Agencies in the evaluation, identification, preservation, stabilization, improvement, restoration and maintenance of historic and archaeological properties.

- Section 6.07C.** Encourage public interest and participation in archaeological and historic preservation.
- Section 6.07D.** Conduct studies in such areas as the adequacy of federal, state and tribal laws pertaining to archaeological and historic preservation activities.
- Section 6.07E.** Encourage training and education in the field of archaeological and historic preservation.
- Section 6.08.** **Annual Report.** The Department shall submit a comprehensive annual report of its activities and the results of its studies to the White Earth Tribal Chairman and the Board, and from time to time shall submit such additional and special reports as the Department deems advisable. These report may propose such legislative enactments and other actions as the Department deems necessary and appropriate to carry out its recommendations.
- Section 7.** **Damaging of Adverse Effect: Prohibited Acts.** No person shall excavate, remove, damage or otherwise alter, deface or adversely affect any archaeological resource or historic property unless such activity is pursuant to a permit duly issued under this statute.
- Section 7.01.** No person shall sell, purchase, exchange, transfer, transport, receive, possess or offer to sell, purchase or exchange any archaeological resource or historic property if such resource is excavated or removed from reservations lands in violation of the prohibition contained in Section 7 above.
- Section 8.** **Permits, Applications, Contents.** An application for a permit to excavate, remove, alter, damage, or otherwise adversely affect archaeological resources or historic properties from reservation land shall include information concerning the time, scope, location and specific purpose of the proposed work, together with such information as the Board deems necessary. Each application must be accompanied by a definite outline of the proposed work, indicating the name of the individuals or group making the request, the date proposed for beginning the work, the length of time proposed to be devoted to it and the person who will have immediate charge of the work. The application

must also contain an exact statement of the character of the work, whether examination, excavation or gathering, the museum in which the collections made under the permit are to permanently preserved, and where such museum if off-reservation, the length of time proposed by the application before such collections are to be returned to the reservation. The application must be accompanied by a sketch plan and a legal description of the particular site or area to be affected, so definite that it can be located on a map with accuracy. Each application shall contain the promise of the applicant to abide and be bound by all of the provisions of this statute and by all other Tribal laws.

Section 8.01. Application: Where Filed. Each application for a permit must be filed with the Board and the Director of the Cultural Resources Department.

Section 8.02. Criteria. A permit may be issued pursuant to an application submitted in strict accordance with Section 8 and 8.01. above, if the Board determines that:

Section 8.02A. The applicant has demonstrated its qualifications to carry out the proposed activity by submitting to the Board references and a resume showing prior successful experience in archaeological field work, site surveying, excavation techniques and reporting;

Section 8.02B. Adequate mitigation efforts are guaranteed that will avoid any adverse effect on properties included on or eligible for inclusion on the Tribe's Register or the National Register, or that acceptance of an adverse effect on such properties is clearly in the Tribe's best interest;

Section 8.02C. The archaeological resources or historic properties which are excavated or removed will remain the property of the Tribe; and,

Section 8.02D. The activity pursuant to such permit is not inconsistent with any management plan applicable to the lands concerned.

Section 8.03. Board Action. The Board shall allow the Department a reasonable opportunity to comment on each application for a permit. The Board shall make its decision to issue or deny a

permit within six months after the date the application was filed, provided, however, that the Board may make an unlimited number of three-month extensions of such review period upon providing the applicant with a written explanation of the factors requiring such an extension. Applicants shall be notified of Board action by certified mail.

Section 8.04. Permit. Terms and Conditions. Any permit may contain such terms and conditions that the Board deems necessary to carry out the purposes of this statute. Each permit shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this statute and other laws applicable to the permitted activities. The permit may contain provisions requiring restoration of the site to its former condition. Every permit shall be issued in the name of the applicant therefore, and no permit shall be transferable; nor shall the holder of any permit allow any other person to use the permit. The Board may require that a bond be posted as a prerequisite to issuance of a permit.

Section 8.05. Duration of a Permit. Each permit shall be effective for three years from the date of its issuance or for such shorter period as may be specified therein. The terms of each permit may be extended by order of the Board for proper cause upon finding that the work has been diligently completed under the permit. Failure to begin work under a permit within six weeks after it is granted, or failure to diligently prosecute such work after it has begun, shall make the permit void without any order or proceeding by the Board.

Section 8.06. Interim Permits. Persons who received approval from the Board to excavate or adversely affect any archaeological resource or historic property prior to the date of the enactment of this statute may receive an interim permit to continue work during the period that their application for a permit is pending before the Board, under the following procedure;

Section 8.06A. Within thirty days after the date of the enactment of this statute, such person shall file with the Board a declaration, stating the

time approval was received, the location of the property, the purpose of the work, and the work done. The declaration shall be accompanied by an application for a permit.

Section 8.06B. Upon filing of the declaration and the application, the Board shall issue an interim permit. If the Department determines that the permit to affect the property was improperly obtained, the Board shall revoke the interim permit.

Section 8.06C. Such interim permit shall be in effect until the Board approves or denies the application for the permit.

Section 9. **Duties of Permittees.** During the course of the undertaking, each permittee shall report monthly and quarterly to the Board. Monthly reports shall contain a brief summary statement of the work performed during the month. Quarterly reports shall contain a catalog of collections and photographs made during the quarter. Each permittee shall cooperate fully with any and all inspections conducted by the Department or the Board. No part of any collections shall leave the Reservation unless the express written consent of the Board has been given in the form of a Temporary Removal License. Such license shall at all times accompany the artifacts while off the Reservation.

Section 10. **Suspension and Revocation of Permits. Grounds.** Any permit issued under this statute may be suspended or revoked by the Board in accordance with the procedures set forth below, upon determination that the permittee has violated any provision of the permit, this statute, or other applicable law; that relevant circumstances have changed since the granting of the permit so that the application would no longer meet the criteria of Section 8.02 above; that material misrepresentations were contained in the application; or that the permit was improperly granted.

Section 10.01. **Hearing.** Upon written notice specifying the alleged grounds for revocation or suspension, filed with the Board by the Chairperson or the Director of the Cultural Resources Department, the Board shall schedule a hearing to determine the matter, which hearing shall not be less than

five days nor more than thirty days after the service of such notice upon the permittee. The permittee shall be entitled to an opportunity to appear at such hearing and controvert the allegations in support of revocation or suspension.

Section 10.02. Emergency Suspensions/Stop Work Orders. Upon finding that a delay in suspending or revoking a permit for the period required by a hearing would be contrary to the Tribe's interest in preserving archaeological or historic properties, the Board may issue a written stop work order, directing the permittee to immediately cease and desist all excavation, removal or other activity pursuant to the permit. It shall be unlawful for any person to disobey a stop work order. In all cases where a stop order has been issued, the Board shall immediately schedule a hearing to determine the matter, which hearing shall not be less than two days nor more than ten days after the date of the stop work order, unless continued by the Board upon motion of the permittee.

Section 11. Tribal Register of Archaeological and Historic Properties. Nominations and Acceptance. There is hereby established a Tribal Register of Cultural Resources Properties, which shall be a register of prehistoric or historic districts, sites, buildings, structures and objects significant in tribal history, architecture, archaeology, culture or religion. Nominations to the Tribal Register may be made by any person. Acceptance or rejection of any nomination shall be made by the Board.

Section 11.01. Tribal Undertakings Upon Listed Property. Whenever the White Earth Tribe has direct or indirect jurisdiction over a proposed Tribal or Tribal assisted undertaking, or has authority to license or permit any undertaking, the Board shall, prior to the approval of the expenditure of any Tribal funds on the undertaking or prior to the issuance of any license or permit, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object that is included or eligible for inclusion in the Tribes Register. The Board and the Director shall be afforded a reasonable opportunity to comment with regard to such undertaking.

Section 12. National Register. Nomination of Reservation Properties. Nomination of any district, site, building, structure, or object located within the Reservation for inclusion in the National Register shall be made by the White Earth Tribal Council.

Section 12.01. Tribal Undertakings Upon Properties Listed in National Register. Whenever the Chairman of the White Earth Tribal Council has direct or indirect jurisdiction over a proposed Tribal or Tribal assisted undertaking or has authority to license any undertaking, the Board shall, prior to the approval of the expenditure of Tribal funds on the undertaking, or prior to the issuance of any license or permit, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object within the Reservation that is included in or eligible for inclusion in the National Register. The Board and the Director of Cultural Resources shall be afforded a reasonable opportunity to comment with regard to such undertakings.

Section 13. Survey and Comprehensive Plan. Comprehensive Survey. A comprehensive Reservation-wide survey of archaeological and historical properties shall be conducted by the Director of Cultural Resources and submitted to the Board. The long-range objective of the comprehensive survey shall be the identification, protection and preservation of all archaeological resources, districts, sites, buildings, structures and objects within the Reservation that are potentially significant to Tribal history, architecture, archaeology, culture or religion. The survey shall be conducted in as timely a manner as possible and shall encompass all historic properties and archaeological resources, regardless of title ownership. Survey data shall be maintained by the Department in an accessible location and shall be kept up to date so that information is readily available to Tribal Programs during the decision making process. The survey data need not be published but shall be physically organized and indexed in a manner to provide for easy access. Availability of survey data to the general public shall be limited if, in the opinion of the Department, such availability might result in damage to archaeological

resources or historic properties.

Section 13.01. Comprehensive Plan. A comprehensive Reservation-wide archaeological and historic preservation plan shall be prepared by the Department and submitted to the Board. The plan shall consist of a report or series of reports on the Reservation archaeological and historic preservation program. These reports shall describe, analyze and make future projections about the program. The archaeological and historic preservation plan shall include an explanation of philosophy or rationale behind the program components, a report on the current status of each component, an evaluation of the effect of each component, and the projection of future plans.

Section 14. Nondisclosure. Information concerning the nature and location of any archaeological resource or historic property may not be made available to any person unless the Director of Cultural Resources determines that such disclosure would further the purpose of the statute and would not create an undue risk of harm to such resources or the site at which such resources are located. The Department and the Board are authorized to withhold from disclosure information relating to the location of sites or objects listed on the Tribal Register or the National Register upon a determination that the disclosure of specific information would create a risk of destruction or harm to such sites or objects.

Section 15. Enforcement. Offense. It shall be unlawful for any person to do any act, the performing of which is prohibited under this statute or fail to do any act, the performance of which is required under this statute.

Section 15.01. Criminal. The procedure established for criminal offenses pursuant to the White Earth Rules of Criminal Procedure shall be utilized for violations of this statute. In the event that the defendant pleads guilty or is found guilty of committing an offense, the court may impose all or any of the following penalties: 1) applicable fines pursuant to the White Earth Criminal Code; 2) applicable jail sentences pursuant to the White Earth Criminal Code; 3) forfeiture of all articles seized by reason of

illegal activities prohibited by this statute, and; 4) restitution for lost or destroyed articles or artifacts.

Section 15.02.

Civil. The White Earth Tribe may bring a civil action against any person who is alleged to have engaged in an activity which is in violation of this statute, including any person who is not subject to Tribal criminal jurisdiction. The Tribe may also bring an action for forfeiture of any articles possessed in violation of this statute. Such civil penalty and forfeiture actions shall be brought pursuant to the procedures established in the White Earth Rules and Civil Procedure. Such relief as may be granted by the Court shall be intended to be remedial in nature and not punitive and should compensate the Tribe for the damage done to the archaeological or historic resources of the Reservation and its archaeological and historic resources. Such relief shall also be intended to coerce the individuals into obeying this Statute and regulations promulgated hereto. The Court may order search, seizure and forfeiture of articles possessed in violation of this Statute. The Court may also order the forfeiture of any bond, the revocation of any permits, the return of any property which has been removed from the Reservation or the restoration of any archaeological resources or historic property to its former or customary condition. In assessing civil penalties, the court may consider as factors the archaeological or commercial value of the resources involved, or the cost of restoration and repair of the resource and the archaeological or historic site involved.

Section 16.

Regulation by Board. For the purpose of carrying into effect the provisions of this statute or of supplying any deficiency therein, the Board may make such regulations not inconsistent with the spirit and intent of this Statute as are deemed necessary or advisable. All such regulations shall have the same force and effect as if incorporated in this Statute.

Section 17.

Review By. the Director of Cultural Resources or any applicant or permittee aggrieved by an decision of the Board may petition the Tribal Court for a hearing to review such decision. A written notice of appeal must be filed with the

Clerk of Courts within twenty days of such adverse decision; provided, however, that such limitation period shall not apply to ban the petition of the Director of the Cultural Resources Department where such would be contrary to the Tribe's interest in preservation of archaeological resources or historic properties.

Section 18. Cultural Items Presently Used. In relationship to the protection or conservation of historical or archaeological resources, there is no authority granted by this Statute that would allow the Tribe or the Department to take, regulate or preserve any item of traditional Ojibwe religion or culture that is presently being used or has been used by members of the White Earth Band of Chippewa Indians without the written approval of the present owner, keeper or the appropriate religious leaders which are concerned with the article.

Section 19. Severability. If any provision of this Statute or its application to any person or circumstance is held to be invalid, the remainder of this Statute or the application of the provision to other persons or circumstances shall not be affected.

TITLE II - PROTECTION OF BURIAL GROUNDS

Section 1. Definitions. The White Earth Band of Minnesota Chippewa hereby establishes that the following definition of terms be utilized when interpreting this statute.

Section 1.01. A cemetery is defined as "burial place; a burial ground".

Section 1.02. A burial ground is defined as "the site or location whereupon there has been performed the act or process of burying".

Section 1.03. An artifact is defined as "(a) a usually simple object (as a tool or ornament) showing human workmanship or modification; (b) a product of civilization; (c) a product of artistic endeavor".

Section 1.04. A monument is defined as a "burial vault; a

memorial stone or a building erected in remembrance of a individual or event".

- Section 1.05.** A ruin is defined as "the remains of a man-made structure which has been destroyed".
- Section 1.06.** Historic is defined as "of or relating to times or events of recorded history".
- Section 1.07.** Prehistoric is defined as "of or relating to times or events before recorded history".
- Section 1.08.** Indian is defined as {Native American} "a member of any of the indigenous peoples of North America".
- Section 2.** **Permits.** Permits for the examination of ruins, burial grounds, cemeteries, the excavation of archaeological sites and the gathering of objects of antiquity upon the lands under the jurisdiction of the White Earth Band of Minnesota Chippewa may be granted by the Director of Cultural Resources of the White Earth Reservation to institutions or persons which they may deem properly qualified to conduct such research, examinations, excavations or gatherings, subject to such rules and regulations as they may prescribe.
- Section 3.** **Violation Penalties.** Any person who shall appropriate, excavate, injure or destroy any Indian cemetery, Indian burial mound or Indian burial ground, historic or prehistoric ruin or monument, or any object of antiquity situated on lands within the White Earth Indian Reservation or under lands under their jurisdiction without the express written permission of the White Earth Tribal Council or the White Earth Cultural Resources Department, shall upon conviction be fined in the sum of not more than five hundred dollars {\$500.00} or imprisonment for a period not to exceed six {6} months or shall suffer both fine and imprisonment, in the discretion of the Court.
- Section 3.01.** In addition to the above penalty, whosoever shall violate this Statute may be subject to civil suit for both actual damages plus punitive damages in the amount of five hundred dollars {\$500.00} by any aggrieved party. The White Earth Tribal Council shall be considered an aggrieved party and may sue any violator in the

name of the White Earth Band of Minnesota
Chippewa.

Section 4.

Force and Effect of Statute. Pursuant to the provisions of P.L. 280, 28 U.S.C. § 1360, this Statute shall be given full force and effect in the determination of any civil cause of action brought in the Courts of the State of Minnesota.