

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL  
OF THE OGLALA SIOUX TRIBE  
(An Unincorporated Tribe)

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL ADOPTING THE ATTACHED OGLALA SIOUX TRIBE PRESERVATION OF PALEONTOLOGICAL, ARCHEOLOGICAL, CULTURAL AND HISTORIC RESOURCES CODE, TO BE CODIFIED AT LAW AND ORDER CODE CHAPTER 49.

WHEREAS, the Oglala Sioux Tribe adopted its Constitution and By-Laws by referendum vote on December 10, 1935, in accordance with Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476), and under Article III of the Oglala Sioux Tribe Constitution, the Oglala Sioux Tribal Council is the governing body of the Oglala Sioux Tribe, and

WHEREAS, the Constitution of the Oglala Sioux Tribe authorizes the Tribal Council, in Article IV, Section 1(m) "to protect and preserve . . . the natural resources of the tribe, and to regulate . . . the use and disposition of property upon the reservation," and in Article IV, Section 1(n) "to protect the health and general welfare of the Tribe"; and

WHEREAS, the Tribe possesses world-class paleontological resources, as well as significant archeological, cultural, and historical resources within its jurisdiction and landholdings, and

WHEREAS, the Land and Natural Resources Committee met on the 17th of May, 2010, and voted to recommend adoption of the attached Preservation of Paleontological, Archeological, Cultural and Historic Resources Code, to be inserted at Chapter 49 of the Law and Order Code, and

WHEREAS, the Oglala Sioux Tribal Council has determined that effective management, regulation and protection of its paleontological, archeological, cultural and historic resources is of the utmost importance, and

WHEREAS, the Oglala Sioux Tribal Council has determined that the Oglala Sioux Tribe Natural Resources Regulatory Agency, the Oglala Sioux Tribe Parks and Recreation Authority, the Oglala Sioux Tribe Department of Public Safety should all have authority to enforce the attached Code, now

THEREFORE BE IT ORDAINED that the Tribal Council of the Oglala Sioux Tribe does hereby adopt the attached Preservation of Paleontological, Archeological, Cultural and Historic Resources Code, and

BE IT FURTHER ORDAINED that the attached Code, hereby adopted, is to be inserted at Chapter 49 of the Law and Order Code, and

BE IT FURTHER ORDAINED that the Tribal Council hereby rescinds any other tribal law inconsistent with the Code hereby adopted.

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

I, as the undersigned Secretary of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe, hereby certify that this Ordinance was adopted by a vote of: 14 For; 1 Against; 0 Abstain; and 2 Not Voting; during a REGULAR SESSION held on the 25TH day of MAY, 2010.

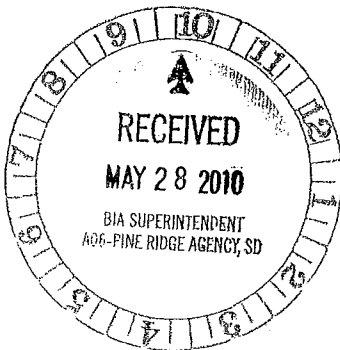


RHONDA J. TWO EAGLE  
Secretary  
Oglala Sioux Tribe

A-T-T-E-S-T:



WILLIAM BREWER  
Vice-President  
Oglala Sioux Tribe



OGLALA SIOUX TRIBE  
PRESERVATION OF PALEONTOLOGICAL, ARCHEOLOGICAL,  
CULTURAL AND HISTORIC RESOURCES CODE  
CHAPTER 49

ARTICLE ONE  
Introduction

§ 49.1.101 Lakota philosophy

The Oglala Lakota people have a special relationship with unci maka and the many nations of plants and animals that coexist and subsist with unci maka. The Oglala Lakota people consider what are commonly referred to as fossils and artifacts as relatives. This Code has been drafted to provide a process to maintain the balance of the relationship while preserving and protecting the resources that provide our people and future generations with portions of our history and our past.

From time immemorial we have preserved our history while carrying on our traditions. While we rely on oral history as a tool to carry on our language and our way of life, we rely on the paleontological, archeological, cultural, and historical resources and sites to pass the knowledge on to our future generations of how to preserve and protect unci maka and our environment.

Through recognition of our Treaties with the United States Government and our Inherent Sovereignty, we as the Oglala Lakota people desire to protect and preserve our paleontological, archeological, cultural and historical resources for many generations to come.

ARTICLE TWO  
Title, Authority, Findings, and Purpose

§ 49.2.101 Title

The title of this Code shall be known as "Chapter 49 - "Preservation of Paleontological, Archeological, Cultural and Historic Resources Code."

§ 49.2.102 Sovereign Power to Regulate Preservation of Paleontological, Archeological, Cultural, and Historic Resources

The power to regulate the preservation and collection of paleontological, archeological, cultural, and historic resources within the exterior boundaries of the Pine Ridge Indian Reservation is an inherent and essential part of the authority of any tribal government. This power is an aspect of the retained sovereignty of Indian Tribes, except where it has been limited or withdrawn by federal law.

The Oglala Sioux Tribe is a sovereign Indian tribe pursuant to Section 16 of the Indian Reorganization Act (25 U.S.C. 476) of 1934, approved by the Secretary of the Interior on December 14, 1935, by adopting a federally approved Constitution and By-laws.

Article I – Territory, provides as follows:

The jurisdiction of the Oglala Sioux Tribe of Indians shall extend to the territory within the original confines of the Pine Ridge Indian Reservation boundaries, as defined hereafter added thereto under any law of the United States except as may be otherwise provided by law for unrestricted lands. To regulate the inheritance of property, real and personal, other than allotted lands, within the territory of the Pine Ridge Indian Reservation.

Article IV – Powers of the Council, provides as follows:

Section 1. Enumerated Powers. The Oglala Sioux Tribal Council shall exercise the following powers; subject to any limitations imposed by the statutes or the Constitution of the United States and subject further to all express restrictions upon such powers contained in this Constitution and the attached Bylaws:

(k) To promulgate and enforce ordinances, governing the conduct of persons on the Pine Ridge Indian Reservation, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers....

(m) To protect and preserve the property, wild life, and natural resources – gases, oil, and other materials, etc., - of the tribe, and to regulate the conduct of trade and the use and disposition of property upon the reservation.

(n) To regulate, preserve, and strengthen native arts, crafts, culture, and the Lakota Language....

(v) To adopt laws protecting and promoting the health and general welfare of the Oglala Sioux Tribe and its membership.

ARTICLE X – Land, provides as follows:

Section 2. Tribal Lands. The unallotted land of the Pine Ridge Indian Reservation and all lands which may hereafter be acquired by the Oglala Sioux Tribe or by the United States in trust for the Oglala Sioux Tribe, shall be held as tribal lands, and no part of such land shall be managed or sold.

#### § 49.2.103 Findings

The Oglala Sioux Tribe finds that:

- 1) Maintaining a traditional lifestyle, the Oglala Lakota people have used their aboriginal lands to maintain villages and communities in and around the established Pine Ridge Indian Reservation freely, continuously, and uninterrupted since time immemorial. Such a lifestyle sustained the ancestors and the Tribe's language, resources, tradition, culture, and spiritual values. Our unique heritage has been inherited from our ancestors, still exists in the present, and is evident in our way of life (belief system and practices).

- 2) The integrity of the Lakota traditions, cultural heritage, and values, are threatened due to unregulated activities relating to paleontological, archeological, cultural, and historic resources, which interferes with our inherent rights and leads to the destruction of our sacred lands, sites, and ancient communities associated with our history.
- 3) Existing tribal and federal laws do not provide adequate protection or uniform regulations to prevent the loss and destruction of the paleontological, archeological, cultural, and historical resources and sites resulting from uncontrolled excavation and pillage. By enacting this Code the Oglala Sioux Tribe is excising its regulatory authority recognized in federal laws.
- 4) Archeological resources are regulated by the Archeological Resources Protection Act of 1979 (ARPA), Pub. L. No. 96-95, 93 Stat. 721, 16 U.S.C. §§ 470aa-470mm, a federal law. Paleontological resources are minimally regulated by The Omnibus Lands Act of 2009, Paleontological Resources Protection, Pub. L. No 111-11, 16 U.S.C. §470aa, a federal law. Currently no tribal law exists for the regulation of the paleontological, archeological, cultural, or historic resources.
- 5) Paleontology, as distinct from archeology, is the study of prehistoric, nonhuman life and is most closely associated with geology and biology and is best served by unimpeded access to fossils and fossil-bearing rocks in the field.
- 6) Archeology is the systematic, scientific study of human history through the recovery of remains and relics from early life and culture.
- 7) Paleontological, archeological, cultural, and historic resources and sites found on Oglala Sioux Tribal land are an accessible and irreplaceable part of the Oglala Lakota people and America's heritage.
- 8) The aboriginal territory of the Oglala Sioux Tribe contains fossils dating back 40,000 years. Too often, fossil treasure chests, and other paleontological, archeological, cultural, and historical resources have been robbed, damaged or neglected because there was no consistent guidance or support provided in tribal or federal law. This Code is needed to protect the best information we have about our deepest past.
- 9) Fossils are non-renewable and relatively rare resources that are elements of human environments, with significant scientific, educational, commercial, and recreational values.
- 10) Most vertebrate fossils are rare, and some invertebrate and plant fossils are rare making paleontological and archeological resources increasingly endangered because of their commercial attractiveness.
- 11) Tribal fossil collections should be preserved and available for research and education and emphasize opportunities for tribal members and public involvement.
- 12) Access to fossils on Tribal lands can be provided to research scientists, educators, amateur collectors, and commercial entities under proper tribal guidelines, however collecting these resources decreases the benefit of Indian lands for the people of the Oglala Lakota Nation if collecting:

- a) separates scientifically significant fossils from their geological and paleontological contexts; and
- b) removes scientifically unique fossils from the realm of tribal history and public education or scientific study.

#### § 49.2.104 Purpose

The purposes of this Code are to:

- 1) Protect the paleontological, archeological, cultural, and historical resources found on lands within the exterior boundaries of the Pine Ridge Indian Reservation and to promote study and evaluation of these resources within the Tribe.
- 2) Establish application and review procedures for the issuance of paleontological and archeological excavation and removal permits.
- 3) Secure, for the present and future benefits of the Oglala Lakota people, the protection of paleontological, archeological, cultural, and historical resources, which are on Tribal lands, and to foster increased cooperation and exchange of information between Tribal and governmental authorities, the professional archeological and paleontological communities, and private individuals having collections of archeological and paleontological resources and data which were obtained before the enactment of this Code.
- 4) Provide regulation of activities that could negatively impact the traditional culture of the Tribe; regulation is both necessary and desirable for the protection of inherent tribal rights and benefits of the Oglala Sioux Tribe and Tribal members of past, present, and future generations.
- 5) Provide a framework to ensure these resources are preserved and protected through well-informed decisions that involve sound decision-making principles.

#### § 49.2.105 Policy

- A) The Oglala Sioux Tribe is a sovereign, living culture and way of life with rich traditional heritage and primary responsibility for preserving, protecting and extending its own culture. As a sovereign entity, it shall be a policy of the Oglala Sioux Tribe to:
  - 1) Affirm its commitment to preserve, protect and promote tribal cultural heritage, paleontological, archeological, cultural or historical resources. This includes the management of ancient and contemporary cultural use sites and materials, which are fundamental in the recognition of traditional way of life, values and history of the tribe.
  - 2) Preserve and manage paleontological, archeological, cultural, and historical resources in a spirit of stewardship and in ways that contribute to meeting the social, environmental, spiritual, economic and other needs of present and future generations.

- 3) Provide leadership and technical assistance in the preservation, protection, and conservation of paleontological, archeological, cultural, and historical resources by developing a culturally appropriate permit program, and by sponsoring educational and training programs for tribal members and employees.
- 4) With the permission of the Tribal Council, allow scientifically unique fossils found on Tribal lands to be deposited in institutions where there are established research, educational, and training programs in paleontology.

B) Further, it shall be a policy of the Oglala Sioux Tribe that:

- 1) Fossils with commercial value managed on Indian lands are managed as trust resources for the economic benefit of the Tribe or Indian landowner.
- 2) Nothing in this Code shall be interpreted to encourage excavation, removal or unsanctioned studies. The purpose of this Code, and policy of the Tribe, is to protect the privacy and nondisturbance of paleontological, archeological, cultural, or historic resources. The intent of this Code is to assure that any activity affecting paleontological, archeological, cultural, or historic resources is done in a manner which provides, to the maximum extent possible, protection for these resources.
- 3) Except as otherwise provided by law, all paleontological, archeological, cultural, and historic resources now or hereafter found on Oglala Sioux land are hereby declared to be the property of the Oglala Sioux Tribe in perpetuity and no right, title, interest, or property therein can be acquired or transferred, or possession thereof had or maintained, except as directed by the Oglala Sioux Tribal Council in consultation with appropriate tribal cultural authorities.
- 4) Permission to remove any resource defined under this Code shall not imply the transfer of ownership from the Oglala Sioux Tribe.
- 5) Oral history and traditions of the Lakota people are hereby acknowledged as a valid form of reference for research and validation of resources found.

### ARTICLE THREE Definitions

#### § 49.3.101 Definitions

- A) Activity – “Activity” or “Activities” means any action, certificate, construction, development, easement, lease, license, permit, policy, program, project, transaction, or undertaking that can have an adverse effect on Paleontological, Archeological, Cultural, and Historical items and sites..
- B) Adverse Effect – “Adverse effect” or “Adverse effects” means any direct, indirect, or cumulative abuse, alteration, appropriation, change, collection, curtailment, cutting, damage, defacement, degradation, demolition, disinterment, disruption, disturbance, encroachment, excavation, exposing, gathering, harm, harvest, impairment, injury, interference, jeopardizing, loss, misuse, modification, molestation, mutilation, neglect, neglect, removal, taking, transporting, or waste.

- C) Antiquity(ies) – “Antiquity or antiquities” means ancient times, great age, relics of ancient times, or matter relating to ancient culture.
- D) Archeological Resource – “Archeological Resource” or “Archeological Resources” means any material remains of past human life or activities which are of archeological interest. This shall include, but not be limited to: locations of prehistoric or archeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, pestles, mauls, grinding stones, knives, scrapers, and other implements and artifacts of any material including sites, objects, structures, artifacts, implements, pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archeological resources, unless found in an archeological context. No item shall be treated as an archaeological resource under this paragraph unless such item is at least 100 years of age.
- E) Archeology – “Archeology” means the systemic, scientific study of history through the recovery of remains and relics from early life and culture.
- F) ARPA – “ARPA” means the Archeological Resources Protection Act, Pub. L. No. 96-95, 93 Stat. 721, 16 U.S.C. §§ 470aa-470mm, and all amendments thereto.
- G) Burial Site or Area – “Burial site” or “Burial area” means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the human death rite or ceremony of culture, individual human remains are deposited.
- H) Code – “Code” means this Oglala Sioux Tribe Preservation of Paleontological, Archaeological, Cultural and Historic Resources Code.
- I) Consultation – “Consultation” means formal, direct, face-to-face contact with the Tribal President or his/her designee, Tribal Council, Land Committee, and/or Natural Resources Regulatory Agency (NRRA) by any governmental agency or private entity. Such consultation shall be for the specific purpose of seeking Tribal participation in and approval of activities related to the affected paleontological, archeological, cultural, or historical resource as required by Tribal, Federal or State statutes.
- J) Cultural Resource – “Cultural Resource” in a traditional view of the Oglala Sioux Tribe includes, but is not limited to: language, oral history, traditional cultural properties, historic sites, and archeological resources, any material remains of past, present, or future human life, or activities which are of historic significance, and/or cultural or archeological interest. Such materials include, but shall not be limited to those defined in archeological resources.
- K) Cultural Site – “Cultural site” means a geographic locality containing tribal cultural resource properties and archeological resources.
- L) Curation – “Curation” means the management, preservation and use of museum objects/specimens, which includes acquisition and disposal, documentation, cataloging,



- Y) Indian Tribe – “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community.
- Z) Invertebrates – “Invertebrates” are animals lacking a backbone or spinal column.
- AA) Lakota Language – “Lakota language” is the foundation of our cultural and spiritual way of life. From time immemorial, we have used this language to encompass our collective history, traditions, culture, values, beliefs, and spirituality; this is used within our ancient customs and practices.
- BB) Land Committee – “Land Committee” is the Land and Natural Resources committee of the Oglala Sioux Tribal Council, charged with responsibilities for the overall review of implementation of this Code and approval of the excavation and removal permits.
- CC) Law Enforcement Officer – “Law Enforcement Officer” means any law enforcement personnel duly authorized by the Tribal Government to enforce the laws of the Tribe, and may include, but is not limited to, OST Public Safety Officers and Oglala Sioux Parks and Recreation (OSPRA) Rangers.
- DD) Mitigation – “Mitigation” means 1) avoiding the impact altogether by not taking a certain action or parts of an action; 2) minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts; 3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; 4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; 5) compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or 6) monitoring the impact and taking appropriate corrective measures.
- EE) NAGPRA – “NAGRPA” means the Native American Graves Protection and Repatriation Act of 1990 Pub. L. 101-601, 104 Stat. 3048, 25 U.S.C. §§ 3001-3013, and 18 U.S.C. § 1170, and all amendments thereto.
- FF) NHPA – “NHPA” means The National Historic Preservation Act of 1966, Pub. L. No. 89-665, 80 Stat. 915, 16 U.S.C. §§ 470 *et seq.*
- GG) Natural Resources Regulatory Agency – “Natural Resources Regulatory Agency” or “NRRA” means the tribal agency charged with the responsibility to administer permits and enforcement of this Code.
- HH) Non-renewable – “Non-renewable” means not capable of being replaced or replenished.
- II) Oral History – “Oral history” is a basic form of communication that embraces our Lakota language, culture, thoughts, and beliefs, and should be treated with respect.
- JJ) Paleontological Resource – “Paleontological resource” means any fossilized remains, traces, or imprints of organisms, preserved in or on the earth’s crust, that are of paleontological interest and that provide information about the history of life on earth, except that the term does not include: 1) any materials associated with an archaeological resource (as defined in section 3(1) of the ARPA 16 USC 470bb(1)); and 2) any cultural item (as defined in section 2 of the NAGPRA 25 USC. 3001).

preventive conservation, storage, access, interpretation and exhibition, and research and publication.

- M) Department – “Department” means the Natural Resources Regulatory Agency (NRRA).
- N) Department of Revenue – “Department of Revenue” means the department that issues tribal business licenses.
- O) Director – “Director” means the NRRA Director.
- P) Discovery – “Discovery” means any encounter, exhumation, finding, or unearthing, whether intentional or not.
- Q) District – “District” means any Tribal districts as defined in Article III Section 2., of the Oglala Sioux Tribe Constitution and Article VI.
- R) Effect – “Effect” means any condition or undertaking that causes, or may cause, any change, beneficial or adverse, in the quality of paleontological, archeological, cultural, or historical resources. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling, or association of the resource. An effect may be direct or indirect. Direct effects are directly caused by the undertaking, and indirect effects occur later in time and are still reasonably foreseeable. Such effects may include changes in patterns of land use, population density or growth rate that may have an effect on paleontological, archeological, cultural, and historical resources.
- S) Ethnology – “Ethnology” means a science dealing with the races of human beings, their origins, distribution, characteristics, and relations.
- T) Fossils – “Fossils” are remains, traces or imprints of organisms preserved in the earth’s crust. Fossils are dead organisms that are quickly buried in the sand, mud, or ooze so that it will not disintegrate. There must be no or very little decomposition, with gradual replacement of organic matter by mineral substances.
- U) Funerary object – “Funerary object” or “Funerary objects” are objects that, as a part of the death rite or ceremony, are reasonably believed to have been placed with individual human remains either at the time of death or burial.
- V) Historic Property – “Historic property” means any prehistoric or historic district, site, building, structure or object significant in tribal language or oral history, architecture, archeology, culture or religion.
- W) Indian – “Indian” means a member of the Oglala Sioux Tribe or any other person of Indian who is member of a federally recognized Indian tribe.
- X) Indian Lands – “Indian lands” are lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interest in lands not owned or controlled by an Indian tribe or an Indian individual. “Indian lands” also includes fee lands owned by the Tribe.

- KK) Paleontology – “Paleontology” is a science dealing with the life of past geological periods as known from fossil remains.
- LL) Person – “Person” means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.
- MM) Protected Site – “Protected site” is a site which has been the subject of measures designed to defend or guard a property or site from deterioration, loss or attack, danger or injury. In the case of buildings and structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment; in the case of cultural resource or archeological sites, the protective measure may be temporary or permanent.
- NN) Record – “Record” means all tangible materials including, but not limited to: treaties, laws, rules, regulations, reports, studies, articles, theses, documents, papers, books, volumes, periodicals, pamphlets, newspapers, newspaper clippings, manuscripts, diaries, letters, administrative records, inventories, catalogs, maps, surveys, plats, deeds, permits, receipts, contracts, photographs, slides, negatives, portraits, sketches, drawings, models, films, sound or video recordings, audio tapes, microforms, micrographics, mp3 reproductions, electronic data, computer data bases, computer discs, digital recordings, printouts, research, field notes, inventories, and intangible things such as oral histories and interviews.
- OO) Reservation – “Reservation” means the Pine Ridge Indian Reservation, which includes any and all lands within the exterior boundaries of the Pine Ridge Indian Reservation as originally defined and any Dependent Indian Communities formally recognized as such by the Department of the Interior.
- PP) Resources – “Resources” means any paleontological, archeological, cultural, and/or historical resources, referenced in this Code. This includes “sites” as defined in this Code.
- QQ) Revocation – “Revocation” means the termination of a permit under this Code.
- RR) Research - “Research” means any academic, agricultural, agronomical, anthropological, archeological, behavioral, biogenetic, botanical, clinical, cultural, demographic, ecological, educational, environmental, ethnographical, genetic, historical, linguistic, medical, paleontological, sociological, theological, toxicological, or videographical study, investigation, analysis, or recordation that is not conducted by the Tribe, whether involving human subjects or not.
- SS) Site – “Site” means 1) a natural, physical, geographic area, place, or location, whether on, below, or above the surface of the earth; or 2) a building, structure, facility, or landscape made, prepared, or produced by humans. Is considered a resource under this Code.
- TT) Site Restoration – “Site restoration” means to repair the archeological property to its pre-excavation vegetational and topographic state.
- UU) Suspension – “Suspend” or “suspension” means to suspend or put a permit on hold.

- VV) Treble Damages – “Treble damages” are damages, that by statute, are three (3) times the amount that the fact-finder determines is owed.
- WW) Tribe – “Tribe” or “tribal” means the Oglala Sioux Tribe, also known as the Oglala Lakota Nation or Oglala Lakota people.
- XX) Tribal Business License – “Tribal Business License” is a license to do business with the Oglala Sioux Tribe.
- YY) Tribal Council – “Tribal Council” means the Oglala Sioux Tribal Council.
- ZZ) Tribal Historic Preservation Office or THPO – “Tribal Historic Preservation Office” or “THPO” is the office charged with carrying out the responsibilities assumed by the Tribe under the National Historic Preservation Act (NHPA).
- AAA) Tribal Lands – “Tribal Lands” are lands of the Oglala Sioux Tribe which are:
- a. All lands within the exterior boundaries of the Pine Ridge Indian Reservation as originally established and all dependent Indian communities;
    - i. Either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interest in lands not owned or controlled by an Indian tribe or an Indian individual;
    - ii. Owned by Tribe in fee status; and
    - iii. All lands so designated by federal law or regulation.
- BBB) Quarrying – “Quarrying” means fossil collection by means other than reconnaissance collecting

#### ARTICLE FOUR Administration of Code

##### § 49.4.101 Responsibility of all Land Use programs

All persons responsible for land uses and activities shall monitor their activities for the discovery of paleontological, archeological, cultural and historical resources. Upon discovery of signs of possible resources, person conducting land use activities shall halt work, inform the NRRA, and abide by any requirements issued by the NRRA.

##### § 49.4.102 Oglala Sioux Tribal Council

The Oglala Sioux Tribal Council (“Tribal Council”) has the ultimate authority to administer this Code. The Tribal Council delegates the powers expressed within to departments and officers of the Tribe as expressly stated herein. The Tribal Council shall review and approve the NRRA and Land Committee findings and recommendations prepared in performing:

- A) The Tribe’s consulting functions as set forth in Section 106 of the National Historic Preservation Act;

- B) The functions assumed by the NRRRA and the THPO pursuant to a plan approved under the National Historic Preservation Act;
- C) Consulting functions as provided in any other federal, tribal, state, or local consultation or permit process; and
- D) The Tribal Council is empowered to consider requests for exchanges or dispositions of any paleontological, archeological, cultural, and historical resources made pursuant to tribal, federal, state, or local law and to determine what conditions if any, should be attached if consent is given including whether an individual Indian, Tribal entity or program, or religious group retains authority or ownership over any fossil, paleontological, archaeological, cultural, or historical resource, regalia, or artifact unearthed within the exterior boundaries of the Pine Ridge Indian Reservation, repatriated to the Tribe, or within the possession of the Tribe, pursuant to a permit issued under this Code; and
- E) The Tribal Council is empowered to loan to an accredited Educational institution or a museum any collections owned by the Tribe.

§ 49.4.103 Oglala Sioux Tribe Land Committee

- A) The Oglala Sioux Tribe Land Committee ("Land Committee") shall have the power and responsibility to oversee the administration and resolve any issues or questions that require an informal hearing that arise under this Code. Any recommendations or actions by the NRRRA requiring Tribal Council approval in this Code will be transmitted through the Land Committee then to the Tribal Council for final approval.
- B) As directed by the Tribal Council, the Land Committee is empowered to assist the NRRRA to initiate, comment, and participate in federal, state, or other governmental rulemaking processes concerning matters pertaining to its expertise, particularly when entering into consultation with a federal agency acting pursuant to ARPA, 16 USC §47011. The Land Committee may participate in any consultation or testimony process when requested by a federal agency.
- C) The Land Committee, in consultation with the NRRRA, OSPRA, OST Land Office, OST Department of Public Safety, is authorized and directed to consult and cooperate, whenever feasible, with other Tribal and non-Tribal governments, departments, and agencies, and with private organizations involved in paleontological, archeological, cultural, and historical resource protection activities, including the National Trust for Historic Preservation, museums, and organizations of professionals. Cooperation shall include providing assistance to other agencies and organizations and planning and coordinating the planning and conducting of historic preservation programs.
- D) The Land Committee shall review nominations of tribal paleontological, archeological, historical, and cultural resources or properties for the Oglala Lakota Cultural Resources Register and the National Register of Historic Places and may approve nominations for those fossils, artifacts or resources that qualify as significant in tribal history, culture, value, architecture, or archeology. The Land Committee shall assure adequate public participation in the nomination process.

§ 49.4.104 Natural Resources Regulatory Agency

- A) The Oglala Sioux Tribe Natural Resources Regulatory Agency ("NRRRA") shall have the power to administer the permits issued under this Code. The NRRRA shall accept and review all permit applications for excavation or removal of paleontological, archeological, cultural or historical Resources on the Pine Ridge Indian Reservation. The NRRRA will recommend to the Land Committee approval or disapproval of a permit.
- B) The NRRRA shall provide education and training to the OST Department of Public Safety, the Oglala Sioux Parks and Recreation Authority, Land Office, Land Committee, Tribal Council, and the OST Judiciary System regarding the value of paleontological, archeological, cultural and historical resources and the technique for the appropriate protection of paleontological, archeological, cultural and historical resources.
- C) The NRRRA will prepare an annual budget for submission to the Tribal Council to provide for the administration and enforcement of this Code.
- D) The NRRRA and THPO shall update and maintain a comprehensive Reservation-wide Oglala Lakota Paleontological, Archeological, Cultural and Historical Resources plan. Final approval of the plan shall be with the Tribal Council.
- E) The NRRRA shall work with the Land Committee to develop a comprehensive Zoning plan for the Pine Ridge Indian Reservation that will allow for designation of paleontological, archeological, cultural and historical resource sites.

§ 49.4.105 Tribal Historic Preservation Office

The Tribal Historic Preservation Office ("THPO") administers the Tribe's Historic Preservation Program pursuant to Tribal Council Ordinance 08-09 and Ordinance No. 09-29. The THPO shall administer and execute the Oglala Sioux Tribe's Historic Preservation Plan and the Memorandum of Agreement with the National Park Service and shall be the point of contact on all of the Tribe's cultural resource and historic preservation issues and concerns. The THPO will work cooperatively with the NRRRA to provide historic research and data to use in determination and approval/disapproval of a permit.

§ 49.4.106 Oglala Sioux Parks and Recreation Authority

The Oglala Sioux Parks and Recreation Authority ("OSPRA") shall provide enforcement of the Code pursuant to their authority to enforce the Law and Order Code of the Oglala Sioux Tribe. The Oglala Sioux Parks and Recreation Authority shall work in cooperation with the Department of Public Safety in investigation and enforcement of this Code.

§ 49.4.107 Oglala Sioux Tribe Land Office

The Oglala Sioux Tribe Land Office shall provide support to the NRRRA by providing research and background information on Tribal land and land ownership.

§ 49.4.108 Oglala Sioux Tribe Department of Public Safety

The Oglala Sioux Tribe Department of Public Safety shall provide investigation support and enforcement of the Code as part of their duties to enforce the Law and Order Code of the Oglala Sioux Tribe. The Department of Public Safety shall work in cooperation with the OSPRA Rangers in investigation and enforcement of this Code.

§ 49.4.109 Oglala Sioux Tribe Department of Revenue

The Oglala Sioux Tribe Department of Revenue shall issue a business license to anyone conducting business with the Tribe under this Code.

ARTICLE FIVE  
Applicability of Code

§ 49.5.101

A) This code is applicable to:

- 1) Any enrolled member of the Oglala Sioux Tribe;
- 2) Any tribal, state, or local government or unit or subdivision thereof;
- 3) Any individual, partnership, corporation, association, trust, educational institution entity, whether private, public, tribal, or governmental agency operating on the Reservation for scientific or educational purposes;
- 4) Any subordinate agency, subsidiary, representative, officer or agent or any of the foregoing, and any combination of the foregoing; and
- 5) Any person, Indian or non-Indian, conducting activities relating to cultural, historic, paleontological, archaeological or geological resources on the Reservation

B) This Code is applicable to the alteration, digging, excavation, or removal of paleontological, archeological, cultural and historical resources from Reservation lands, to the extent permitted by tribal and federal law, and the removal of fossilized, nonfossilized, petroglyphs or pictographs of prehistoric animals, people or paleontological or archeological resources.

ARTICLE SIX  
Jurisdiction

§ 49.6.101 Tribal Court

The Oglala Sioux Tribal Court shall have original criminal and civil jurisdiction to hear all cases arising under this Code.

§ 49.6.102 Lands

The Oglala Sioux Tribal Court shall have original jurisdiction over all tribally owned lands.

§ 49.6.103 People

The Oglala Sioux Tribe shall have personal and original jurisdiction over all tribal members, nonmember Indians and non-Indians conducting any activities defined in this Code.

ARTICLE SEVEN  
Financial Support

§ 49.7.101 Budget to administer the code

Administration efforts of this Code will be funded through the various programs charged with the responsibility to administer and enforce this Code along with the fees collected through enforcement of this Code.

ARTICLE EIGHT  
Plan

§ 49.8.101 Reservation-wide plan

- A) ~~[Is there a present plan? If so, reference here.]~~
- B) It shall be the responsibility of the NRRA, the THPO, and the Land Committee to collaborate with all programs, charters, and entities of the Tribe, as well as, Oglala Lakota College to establish a reservation wide plan to provide for the management, preservation, and restoration of paleontological, archeological, cultural, and historical resources of the Tribe found within the exterior boundaries of the Pine Ridge Indian Reservation.

ARTICLE NINE  
Permits

§ 49.9.101 Purpose

The purpose of this Article is to establish an application and review procedure for the issuance of excavation and removal permits for paleontological, archeological, cultural and historical resources.

§ 49.9.102 Permits under Federal Laws or Acts

The Archeological Resources Protection Act of 1979, Pub. L. No. 96-95, 16 USC §470cc(a) of Section 4., provides a permit process for those individuals who desire to "excavate or remove any archaeological resource located on public or Indian lands and to carry out activities associated with such excavation or removal." The Native American Graves Protection and Repatriation Act of 1990 Pub. L. 101-601, 104 Stat. 3048, 25 U.S.C. §§ 3001-3013, and 18 U.S.C. § 1170, and all amendments thereto, is consistent with ARPA.

Any individual who is given a permit for excavation or removal of an paleontological, archeological, cultural and historical resource through ARPA or NAGPRA under a federal agency must also apply for a permit under this Code, or be deemed in violation of this Code.



§ 49.9.103 Who can apply for a Permit

Individuals who can apply for a permit:

- A) Tribal Members;
- B) Non-member Indians;
- C) Non-Indians conducting science or research, as specified in Article 5;
- D) Hobby hunters who provide specific items they are looking for and understand the ownership of resources discovered remains with the Tribe.

§ 49.9.104 Application for a Permit for Excavation and Removal of Paleontological, Archeological, Cultural and Historical Resources on the Pine Ridge Indian Reservation

- A) Any person or entity covered by this Chapter proposing to excavate and/or remove paleontological, archeological, cultural, and historical resources from reservation lands, or proposing to remove or photograph petroglyphs or pictographs apparently or know to have been created by prehistoric tribes or people, or archeological resources shall apply to the Oglala Sioux Tribe Natural Resources Regulatory Authority (NRRA) for a permit for the proposed work and shall not begin the proposed work until a permit has been issued.
- B) Each application for a permit shall be submitted on the paleontological, archeological, cultural and historical resources excavation and removal permit application form approved by the Oglala Sioux Tribe Land Committee.

§ 49.9.105 Information Required on Application

- A) Each application for a permit shall include:
  - 1) Nature and extent of work. The nature and extent of the work proposed, including how and why it is proposed to be conducted and the proposed methods for excavation and recovery, proposed time of performance, locational maps, and a completed site inventory form acceptable to the Oglala Sioux Tribe Land Committee.
  - 2) Inventory plan. A fossil and/or artifact inventory plan detailing the character of the expected data categories to be recovered including the proposed methods of inventorying the recovered data and proposed methods of cleaning, stabilizing, and curating fossils, species, and recovered data. The Secretary of the Interior's standards for archaeological curation can be used as a guidance to help develop such a plan.
  - 3) Scientific research design. A professional, scientific research design demonstrating that the work will be performed in a scientific and technically acceptable manner taking into account current scientific research issues and cultural resource management.
  - 4) Principal Investigator. The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimum qualifications listed in §\_\_\_.9.106.

- 5) Site Security. A site security plan to assure the protection of the site and its contents during the public permit review and excavations process.
  - 6) Public Participation. A public participation plan detailing the extent of public involvement for Tribal members and dissemination of project results.
  - 7) Environmental checklist. A completed environmental checklist as required by the Oglala Sioux Tribe Land Committee to assist in making a threshold determination and to initiate compliance.
  - 8) BIA Approval on Trust Lands. Evidence of approval of the proposed work from the Bureau of Indian Affairs (BIA), if the work is to take place on land held in trust by the BIA for the benefit of the Tribe or individual Tribal members.
- B) Although all resources recovered will remain in the ownership of the Oglala Sioux Tribe, the Tribe understands the benefit of storing the resources in a secure location, while promoting an educational interest. Each applicant shall provide the name of the museum, repository or other tribal, scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific access to these materials, which shall remain the property of the Oglala Sioux Tribe.
- C) Specialized knowledge and understanding of the Lakota history, culture, and traditions. Willingness to attend a workshop arranged by the OST Land Committee on Lakota history and culture at the applicant's cost.
- D) After review of the application, but prior to its submission to the Land Committee, the NRRRA may require additional information to properly evaluate the proposed work and shall so inform the applicant. Field investigation or research may be required of the applicant or conducted by the NRRRA at the applicant's cost.
- E) A bond in an amount specified by the OST Land Committee may be required of the applicant to ensure payment of the professional expenses incurred by the NRRRA in administering the permit or in case of intentional or unintentional degradation of any resource associated with the applicant's activities. Advance notice of any anticipated cost shall be given to the applicant.

#### § 49.9.106 Issuance of Permit

- A) The NRRRA will normally process a permit application within thirty (30) days of receipt of a complete permit application. Upon completion of its review, the NRRRA will make a recommendation to the Land Committee regarding the issuance of the permit. The Land Committee shall either reject or accept the NRRRA's recommendations and instruct the Agency to either issue the permit or reject the application. A permit may be issued for a specified period of time appropriate to the work to be conducted, upon determining that:

- 1) Appropriate qualifications. The applicant, or in the case of a group or organization, the individual proposed to be responsible for conducting the work, is appropriately qualified, as evidenced by training, education, and/or experience, and possess demonstrable competence in paleontological or archeological methods and theory, and in collecting, handling, analyzing, evaluating, and reporting paleontological or archeological data, relative to the type and scope of the work proposed, and also meets the minimum qualifications of a professional paleontologist or archaeologist.
  - 2) Purpose to further knowledge. The proposed work is to be undertaken for the purpose of furthering paleontological and archeological knowledge in the tribal and public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of paleontological and archeological data.
  - 3) Consistent with Reservation Management Plan. The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the Pine Ridge Indian Reservation lands concerned.
  - 4) Storage/Curation. Evidence is submitted that the university, museum or other institution proposed in the application or other institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving archeological resources and all associated records, and that such university, museum, or institution acknowledges the Tribe's ownership of the paleontological, archeological, cultural and historical resources and associated records.
  - 5) Mitigation of damages. Evidence that the applicant agrees to mitigate any paleontological and archaeological damage that occurs during the excavations and recovery and all associated records.
  - 6) Access for tribe and tribal community to site. Evidence that the applicant agrees to allow the Oglala Lakota Tribal Community access to, and ownership of, all artifacts and data recovered from paleontological and archeological sites.
  - 7) Changes in information on permit application. After the granting of a permit and, when information filed with the NRRRA becomes inaccurate in any way, or additions or deletions are necessary the applicant or permittee shall submit full details of any such changes and/or correct any inaccuracy, together with copies of any additional required documents, with the NRRRA within fifteen (15) days following the change.
  - 8) Temporary Permit. The Land Committee Chairperson, after a recommendation from the NRRRA Director, may issue a temporary permit immediately where delay could cause damage to a paleontological or archeological resource or site. Said permit shall be valid only for thirty (30) days.
  - 9) The NRRRA reserves the right to suspend or revoke a permit under this Code upon recommendation from the Land Committee or officials charged with enforcing the code.
- B) Once a permit is issued the permittee must obtain a tribal business license with the OST Department of Revenue. Failure to do so could result in suspension, revocation or termination of a permit.

§ 49.9.107 Terms and Conditions of Permits

A) In all permits issued, the NRRRA shall specify:

- 1) Nature and extent of work. The nature and extent of work allowed and required under the permit, including the duration, scope, location, and purpose of the work and list the type of items expected to be unearthed.
- 2) Principal investigator. The name of the individual(s) responsible for conducting the work and, if different the name of the individuals(s) responsible for carrying out the terms and conditions of the permit and their qualifications.
- 3) Storage and curation. The name of any museum, repository, or other tribal, scientific or educational institutions in which any collected materials and data shall be deposited.
- 4) Reporting. Reporting documentation, requirements, site restoration, and mitigation requirements.
- 5) Time Period. Permits shall only be issued for a period of one (1) year, but permits may be renewed.

B) Other terms and conditions. The NRRRA may specify other such terms and conditions as deemed necessary, consistent with this Code, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under the permit. This may include sufficient bonding to cover the cost of site restoration.

C) Acceptance of terms and conditions. Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

D) Satisfy obligations. The permittee shall not be released from requirements of a permit until outstanding obligations have been satisfied, whether or not the term of the permit has expired.

E) Extension of permit. The permittee may request that the NRRRA extend or modify a permit. Such a request will require compliance with all the provisions of this Code and approval by the Land Committee.

F) Annual review. The permittee's performance under any permit issued for a period greater than one (1) year shall be subject to review by the NRRRA at least annually with an update to the Land Committee.

G) Removal of resource. Prior to the removal of any resource defined in this Code from the Reservation, the permittee shall allow a tribal representative delegated by the NRRRA to inspect all paleontological, archeological, cultural, or historical resources.

§ 49.9.108 Permit Denial

If a permit is denied, a written statement of the reasons for the denial will accompany the notice of permit denial to the applicant.

§ 49.9.109 Interim Permit

An interim permit may be issued for any person conducting work that was approved prior to the enactment of this Code.

§ 49.9.110 Permit Exceptions. The following are exempt from this Code's permit requirements:

- A) Employees and agents of the Tribe carrying out their official duties associated with the management of paleontological, archeological, cultural and historical resources.
- B) Employees and agents of the Federal Government carrying out their official duties associated with the management of paleontological, archeological, cultural and historical resources.

§ 49.9.111 Fees and Royalties Collected for Commercial Collecting.

- A) The cost of a permit will be established on a yearly basis by the NRRA. Factors used to determine the cost will include but not be limited to the review, issuance, administration, monitoring, and enforcement of a permit.
- B) A permit for commercial collecting shall require payment of a royalty on the fair market value of the each fossil removed under the permit. The amount of royalty shall be determined by the Tribal Council as a percentage of the value of the fossil on the basis of what a willing buyer would pay a willing seller.
- C) Amounts collected by the NRRA Director under this Article shall be retained in [name the account reference in this Code] and generated for the purpose of carrying out the administration and enforcement of this Code.

ARTICLE TEN

Custody and Ownership of Resources

§ 49.10.101 Ownership

Paleontological, archeological, cultural, and historical resources, excavated or removed from the Pine Ridge Indian Reservation remain the property of the Oglala Sioux Tribe, and permission to perform these activities shall not imply transfer of ownership.

§ 49.10.102 Regulation

The Tribal Council may promulgate regulations establishing procedures and guidelines for the exchange of paleontological and archaeological resources among suitable universities, museums, or other scientific or education institutions, for the ultimate disposition of paleontological, archeological, cultural and historical resources, and for standards by which these resources shall be preserved and maintained.

## ARTICLE ELEVEN Appeals

### § 49.11.101 Appeals

Any person may appeal permit issuance, denial of permit issuance, suspension and revocation, and terms and conditions of permits by written petition addressed to the NRRRA which shall be heard by the Land Committee within ninety (90) days of service thereof upon the Director.

## ARTICLE Historic Register

### § 49.12.101 Oglala Lakota Cultural Resources Register

- A) The NRRRA shall work with the THPO to create a Oglala Lakota Cultural Resources Register for all fossils, sites, buildings, districts objects, and artifacts found within the Pine Ridge Indian Reservation that qualify for listing on the register.
- B) Based on information gathered by the NRRRA through the issuance of permits under § \_\_.9.106, the NRRRA shall provide to the THPO the following information:
  - 1) Comprehensive survey of all historical and cultural resource properties on the Reservation.
  - 2) Inventory information, including basis information about the location and history of such property.
  - 3) Evaluation of properties having tribal cultural resources or significance and any potential paleontological, archaeological, cultural or historical significance.
- C) Based on the evaluation of the information provided above, the NRRRA will make appropriate recommendations to the THPO to modify or limit actions affecting a cultural and/or historic property according to its category of significance.
- D) Any person may make nominations to the Oglala Sioux Tribe Cultural Resources Register by submitting their nominations to the THPO. The THPO shall prepare a comprehensive review of the nomination for presentation to the Land Committee which shall make the final decision whether the nomination is accepted to be included on the Oglala Sioux Tribal Cultural Resources Register.
- E) The THPO shall ensure that proper identification markers are placed at all sites, where deemed necessary, unless the identification of a particular site would allow harm to the site because of the importance of the site.

### § 49.12.102 Nominations to the National Register of Historic Places

The NRRRA shall recommend to the THPO nomination of any properties that appear to be eligible for placement on the National Register of Historic Places discovered through the administration of this Code.

ARTICLE THIRTEEN  
Reburial

§ 49.13.101

All Indian human remains and funerary objects unearthed within the exterior boundaries of the Pine Ridge Indian Reservation pursuant to a permit issued under this Chapter, repatriated to the Tribe, or within the possession of the Tribe shall be reburied in accordance with Lakota tribal customs under the supervision of the THPO. The THPO shall have the power and responsibility to resolve any issues or questions that arise under this Code, including a determination of whether an artifact is a funerary object.

ARTICLE FOURTEEN  
Records Management and Retention

§ 49.14.101

- A) The NRRRA shall initiate measures to ensure, at a minimum, that when a paleontological, archeological, cultural, or historical resource listed on the Oglala Lakota Cultural Resource Register is to be substantially altered or affected, timely steps are taken to preserve all original records, including measured drawings, photographs and maps of the property, and that a copy of such records be deposited in the NRRRA for future use.
- B) The Land Committee shall maintain records of its proceedings regarding this Code. Records shall be kept in accordance with standard record management policy and/or special requirements established by the Tribe.

ARTICLE FIFTEEN  
Promotion of Preservation Efforts

§ 49.15.101

The NRRRA is authorized to take the following actions for the purpose of promoting paleontological, archeological, cultural and historic resources and preservation efforts:

- A) Develop and make available to tribal agencies information and advice concerning professional methods and techniques for identifying preserving, stabilizing, improving, restoring, and maintaining paleontological, archeological, cultural, and historical resource sites and properties.
- B) Advise tribal programs, entities, businesses, and contractors in the evaluation, identification, preservation, stabilization, improvement, restoration, and maintenance of paleontological, archeological, cultural and historical resource properties.
- C) Encourage, in cooperation with the Land Committee, THPO, public interest and participation in cultural resources management/archeology, and historic preservation.
- D) Conduct studies for the adequacy of the Oglala Sioux Tribe Law and Order Code and federal, state and local laws pertaining to tribal paleontological, archeological, cultural, and historic preservation activities.

- E) Encourage training and education in the field of tribal cultural resource management and paleontological, archeological and historic preservation as outlined within this Code and other federal, state and local paleontological, archeological, cultural resources preservation laws.
- F) Assist in preparation and submission to the Secretary of the Interior a plan describing the functions that the THPO proposes to assume with respect to the tribal lands as provided in the National Historic Preservation Act. 16 U.S.C. 470a(d)(2).
- G) Prepare and maintain a current listing of archeologists, anthropologists, historians, paleontologists, and other relevant professionals approved to perform services related to cultural resources and historic preservation efforts and activities within the Pine Ridge Indian Reservation.
- H) Employ professional and support staff as employees and/or independent contractors, within the limits of the Department's approved budget, to fulfill the purposes of this Code and provide the services the Department is designed to perform.
- I) The NRRRA is authorized to develop and operate a program of information and education for tribal members, employees, and/or the general public concerning paleontological, archeological and cultural resources and protection of properties listed under the Oglala Lakota Cultural Resource Register and the National Register of Historic Places.

#### ARTICLE SIXTEEN

##### Establishment of Agreements, Funding, and Contract Services

#### § 49.16.101

The NRRRA, in consultation with the Land Committee, is authorized to review and make recommendations to the Tribal Council regarding proposed agreements, funding, services, and hiring contracts as follows:

- A) Agreements. The NRRRA shall initiate, review, and recommend for approval or disapproval to the Oglala Sioux Tribal Council any formal written agreements or memorandum of understanding with governmental entities and private parties concerning tribal and other cultural resources preservation undertakings and projects. The recommendation shall include a description of the review procedures followed by the NRRRA and whether terms of the proposed agreement are consistent with the purposes and requirements of this Code and any applicable federal historic preservation law.
- B) Legislative Funding Contract(s). The NRRRA shall initiate, review, and/or recommend for approval to the Land Committee and Tribal Council any application for or acceptance of any federal, tribal, state, or local grant/contract or funding source that promotes cultural resources preservation undertakings, projects, and activities.
- C) Public Agency or Private Sector Contract Services. The NRRRA may solicit and enter into contracts with governmental entities and/or private parties to conduct activities and provide services solely for the purposes of cultural resources or historic preservation. Funds generated from such contracts shall be deposited in [specify an account to provide this budget for enforcement] for disbursement in accordance with the Oglala Sioux Tribe Budget Ordinance.



- D) Cultural Attorney. The NRRRA may initiate and recommend to the Land Committee and Tribal Council the hiring of a cultural attorney to provide legal services related to Tribal cultural resources preservation.
- E) Oral History and Elder Knowledge. The NRRRA may hire Tribal Elders/Eminent Persons to provide guidance and expertise on tribal cultural resources and preservation matters.

## ARTICLE SEVENTEEN

### Reports

#### § 49.17.101 Annual Report

The NRRRA, in consultation with OSPRA, OST Land Office, and the OST Department of Public Safety, shall annually submit a comprehensive report of its activities and the results of its studies to the Oglala Sioux Tribal Council. Such reports shall include a summary of actions undertaken by the NRRRA and the Land Committee in reviewing proposed undertakings, applications for permits, and in reviewing nominations for the Oglala Lakota Cultural Resource Register and the National Register of Historic Places under this Code. The NRRRA shall submit such additional and special reports as the Tribal Council deem advisable.

## ARTICLE EIGHTEEN

### Damaging or Adverse Effects Prohibited

#### § 49.18.101 Prohibited Acts

- A) Unauthorized Excavation, Removal and Damage. No person shall excavate, remove, damage or otherwise alter, deface, destroy, or adversely effect any cultural resource or historic property on land within the Pine Ridge Indian Reservation unless such activity is conducted pursuant to the terms of this Code.
- B) Trafficking resources. No person shall sell or offer to sell, purchase, exchange, transfer, transport, receive or possess any paleontological, archeological, cultural or historic resources if such resource is excavated or removed from land within the exterior boundaries of the Pine Ridge Indian Reservation without a permit issued under this Code.
- C) Restricted Entrance. No Oglala Sioux lands may be visited or investigated by a nonmember of the Oglala Sioux Tribe except those designated as open to the public within the boundaries of the Pine Ridge Indian Reservation or Tribal Park, National Park or Monument unless such investigation is pursuant to a permit issued under this Code or written authorization from the Land Committee.
- D) Ethnographic research. No person may engage in ethnographic research on the Pine Ridge Indian Reservation, except when such activities are conducted pursuant to the terms and conditions of a permit issued under this Code or written authorization from the Land Committee.

- E) Confidentiality and Disclosure. No person shall disclose information concerning the nature and location of any paleontological, archeological, cultural or historical resource on the Pine Ridge Indian Reservation without the express written consent of the Tribal Council after a determination has been made that such resources have been located. A determination regarding the nature and significance of paleontological, archeological, cultural, or historical resources may involve the use of sensitive and confidential information regarding tribal custom, beliefs, practices, and traditions. Such information is of a highly specialized and personal nature and is sometimes held by only a few individuals in the Tribe. According to belief and custom, such information is not readily shared and is considered proprietary and confidential. Public disclosure of this type of information may cause harm and loss to Tribal culture.
- F) False Labeling. No person shall make or submit any false record, account, or label for, or any false identification of, any paleontological, archeological, cultural or historical resource excavated or removed from the Pine Ridge Indian Reservation.
- G) Failure to file a report. Any person who fails to file a report under this code may face a suspension or removal of their license.
- H) Quarrying of Fossils. No person shall quarry fossils without a permit.
- I) Private Profit. No person shall knowingly extract any resources covered under this Code for private profit.
- J) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in this section, shall be deemed to have violated one of the Prohibited Acts and shall face criminal penalties.

## ARTICLE NINETEEN Enforcement

### § 49.19.101 Enforcement

Enforcement of this Code shall be conducted in cooperation with NRRA, THPO, OSPRA, OST Land Office, and OST Department of Public Safety. The NRRA will keep record of all enforcement actions conducted by the above named departments. Each department is responsible for turning all enforcement actions over to the NRRA for record keeping, thereby allowing the NRRA to follow up on enforcement in Tribal Court or with federal authorities.

### § 49.19.102 Violations

It shall be unlawful for any person to perform any act which is prohibited under this Code, or to fail to do any act that is required under this Code.

### § 49.19.103 Suspension or Revocation of a Permit

Any violations of this Code may result in a Suspension, Revocation, or Termination of the permit.

A) A permit may be suspended for:

- 1) Lack of compliance with this Code or other tribal or federal laws;
- 2) Violating the terms and conditions of the permit;
- 3) An application that no longer meets the criteria specified in the application, such as a change in principal investigator specified on the application, scope of work has changed, etc. ;
- 4) Misrepresentation of information provided on the permit application;
- 5) A permit that was improperly granted; or
- 6) A violation of any provision of this Ordinance.

B) A suspension shall be in effect until the NRRA determines that the causes for suspension have been corrected or are no longer applicable.

C) A permit may be revoked when the NRRA determines that a continuation of activities under a permit would not be in the best interest of the OST or the Oglala Lakota people or if a permittee fails to correct the situation which lead to the suspension or upon assessment of a civil penalty against permittee under § \_\_.19.105

#### § 49.19.104 Criminal Penalties

The procedures established for criminal offenses under the Oglala Sioux Tribal Criminal Code shall apply to criminal offenses charged under this Code. Persons subject to the criminal jurisdiction of the Oglala Sioux Tribe may be subject to criminal penalties for violating provisions of this the Prohibited Acts § \_\_.18.101 of this Code. In the event a defendant pleads guilty or no contest, or is found guilty of committing one of the acts prohibited by the Prohibited Acts § \_\_.18.101, the Tribal Court may impose one or all of the penalties defined under federal law, currently codified at 25 U.S.C. 2801 et. seq., Pub. L. 101-378. August 18, 1990, 104 Stat. 473, along with any tribal law penalties.

#### § 49.19.105 Civil Assessments

A) Individuals violating the Prohibited Acts section, § \_\_.18.101 of this Code shall be subject to civil assessments imposed by the Tribal Court as defined in this Code.

B) Violations of the provisions of the Prohibited Acts section shall be grounds for withdrawal of the privilege of doing any business with the Oglala Sioux Tribe.

- C) Any person not a member of the Oglala Sioux Tribe who visits or inspects paleontological, archeological, cultural, and historical resources within the exterior boundaries of the Pine Ridge Indian Reservation and Dependent Indian Communities without a valid permit shall be committing trespass. Such individuals determined to be in trespass after a hearing before the Land Committee, shall be assessed a civil forfeiture of not to exceed \$500.00 for the first offense and not to exceed \$1,000.00 for any subsequent offenses. For the purposes of this part, each visit to or inspection of a cultural site, area or property of any property within the exterior boundaries of the Pine Ridge Indian Reservation shall be considered a separate offense. The NRRRA, through the Land Committee, may, at its discretion, recommend to the Tribal Council that any person found to be in trespass be excluded from the lands of the Oglala Sioux Tribe.
- D) Any person not a member of the Oglala Sioux Tribe who engages in paleontological, archeological, cultural, and historic resources activities on the Pine Ridge Indian Reservation without a valid permit shall be committing trespass. Such individuals determined to be in trespass after a hearing before the Land Committee shall be assessed a civil forfeiture not more than \$2,000.00 for each offense. For the purposes of this section, each inventory on lands within the Pine Ridge Indian Reservation shall be considered a separate offense. The Land Committee may at its discretion, recommended to the Tribal Council that any person found to be in violation shall be excluded from the lands of the Oglala Sioux Tribe.
- E) Any individual within the exterior boundaries of the Pine Ridge Indian Reservation who alters, collects, damages, defaces, destroys, excavates, removes or sells cultural properties or who collects ethnographic data without explicit permission or valid permit, or as permitted under the exceptions provision, or who engages in activities in violation of the terms and conditions of a valid permit, shall be liable, after a hearing before the Land Committee, to the Oglala Sioux Tribe for civil damages as determined by the Land Committee:
- 1) Assessment of Actual Damages. The Land Committee shall impose the civil assessments based upon actual damages in accordance with "Standards for Assessing Damages to Cultural Properties" that the NRRRA shall recommend and the Tribal Council shall adopt expressly for this purpose. The "Standards for Assessing Damages to Cultural Properties" shall include, but not need necessarily limit considerations to:
    - a) Full costs of restoration of the paleontological, archeological, cultural, and historic resources and site;
    - b) Enforcement and administrative costs associated with the civil action;
    - c) Costs of dispositions of cultural properties, including as appropriate, costs of curation in perpetuity;
    - d) Costs associated with documentation, approved testing and evaluation of the cultural property in order to assess the characteristics of the cultural resource and plan for its restoration; and
    - e) Costs of any additional mitigation measures the Land Committee deems appropriate.

- 2) Assessment of Treble Damages. In addition to the actual damages, the Land Committee may, at its discretion, assess damages up to three (3) times the amount of the actual damages.
  - 3) Seizure of Equipment and Cultural Resources. The NRRRA Director or his/her designee, or any Oglala Sioux Law and Order Officer, shall seize all cultural resources in the possession of any individual cited for violating the Prohibited Acts section of this Code, together with any other property used for or related to the violation in the possession of the individual cited, as the NRRRA Director or any officer may deem necessary to obtain payment of any civil assessments.
  - 4) Forfeiture of any bond. The Land Committee may revoke any bond posted by the individual up to the amount of any civil assessment imposed by the Land Committee.
- F) Use of Civil Assessment Fees. Civil assessments imposed under this section shall be reserved solely for the purposes of restoring damaged cultural properties and for meeting the purposes of this Code and shall be put into an account (specify the account that will be used for the enforcement of this code).

#### § 49.19.106 Forfeiture

Any individual who violates any portion of this Code shall forfeit any article seized by reason of illegal activities prohibited by this Code.

After hearing before the Land Committee:

- A) Any cultural resource or properties obtained in violation of this Code shall be forfeited to the Oglala Sioux Tribe;
- B) Any other property seized in accordance with the Civil assessments shall be released to the owner upon timely payment of any related civil assessments;
- C) Any seized property shall be forfeited to the Oglala Sioux Tribe if the assessment has not been paid within fifteen (15) calendar days of the hearing at which the civil assessment was levied or pursuant to this Code, whichever is later. Any such forfeiture shall be limited to the amount of the civil assessment. Any property remaining after forfeiture of property up to the value of the assessment shall be returned to the owner.

#### § 49.19.107 Other remedies

Violations of the terms of this Code may also be enforced in accordance with the remedies available under ARPA and NAGRPA, and the NRRRA is authorized to recommend and seek assistance from the U.S. Attorney, and any other duly authorized law enforcement agency or official, to address potential violations of the provisions of this Code.

ARTICLE TWENTY  
Regulations, Procedures, Policies, and Guidelines

§ 49.20.101

The NRRA is authorized to prepare regulations, administrative policies, and procedural guidelines and requirements to implement and achieve the purposes of this Code. Such regulations, administrative policies, and procedural guidelines and requirements shall not be effective until approved by the Tribal Council.

ARTICLE TWENTY-ONE  
Appeals

§ 49.21.101 Judicial Review

Any person directly or adversely affected by a final administrative decision of the Department or the Land Committee, shall be entitled to judicial review of the decision in the Oglala Sioux Tribal Court. Notice of an appeal must be filed with the Tribal Court within thirty (30) calendar days of receipt of notice of the final decision being appealed.

ARTICLE TWENTY-TWO  
General Provisions

§ 49.22.101 Governing Law

This Code shall be governed by the Laws of the Oglala Sioux Tribe.

§ 49.22.102 Conflicting Regulations

Any ordinance or resolution in conflict herewith is hereby repealed to the extent of such conflict.

§ 49.22.103 Severability

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

§ 49.22.104 Publication of Code

The provisions of this Code shall be made public in the following manner:

Immediately upon enactment of this Code, a copy thereof shall be posted on the public bulletin board of the Oglala Sioux Tribe for a period of not less than sixty (60) days. The Tribal Council Representatives for each election district shall immediately post a copy of this Code at a conspicuous public place or places within their reservation districts. In addition, the Secretary of the Oglala Sioux Tribal Council shall provide that a copy of this Code be published in a newspaper or papers of general circulation throughout the Pine Ridge Indian Reservation at least once per week for the four weeks immediately following its enactment.

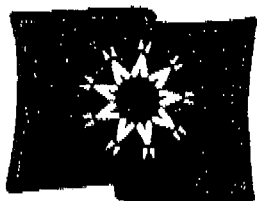
§ 49.22.105 Amendments

The NRRA shall conduct an annual review of preservation efforts and/or changes in federal or tribal law, the Land Committee shall propose recommended changes of this Code to the Tribal Attorney for review and then finalize and recommend changes to the Tribal Council.

Final approval of amendments to this Code shall be made according to requirements of the Oglala Sioux Tribal Constitution, the Oglala Sioux Tribal Law and Order Code, and procedures adopted by the Oglala Sioux Tribal Council.

Any proposed changes to this Code shall not change or undermine:

- A) The Fiduciary Trust Responsibility of the federal government;
- B) The Tribal sovereignty and jurisdiction of the Oglala Sioux Tribe, including the spiritual, cultural, political, economic, legal, social and the territorial realms, and the right to subsist without interference from the outside influences that impinge on Lakota survival;
- C) Treaty Rights;
- D) Oglala Sioux Tribe efforts and rights to protect our tribal tradition, spirituality and customs, traditional law or ceremony; or
- E) Other official tribal policy statements enacted by the Tribal Council.



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# Oglala Sioux Tribe

## Office of the President

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Wiyaka Tokaheya Yuha Najin

Theresa B. Two Bulls  
President  
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### MEMORANDUM

DT: October 5, 2010

TO: David Kelly, Director  
OST Transportation

FR: Theresa Two Bulls/  
OST President

RE: Mandatory Meeting

This memorandum is written to inform you, that beginning Wednesday, October 6, 2010, monitors from the OST Tribal Historic Preservation Office will be on site of the BIA Route 27 project, during the duration of the project.

This office received a report that remains were discovered on site, therefore, a mandatory meeting has been scheduled for Tuesday, October 14, 2010 at 9:00 am in my office to discuss this issue.

If you have any questions, please contact this office.

Cc: Joyce Whiting, Cultural Specialist  
OST THPO

John Long, Special Agent  
Bureau of Indian Affairs

Blake Schweigert, Owner  
Schweigert Construction, Inc.