



BLACKFEET CULTURAL PRESERVATION ACT

Blackfeet Tribal Ordinance #100

April 2004



BLACKFEET NATION

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EXECUTIVE COMMITTEE

JAY ST. GODDARD - CHAIRMAN
JIMMY ST. GODDARD - VICE CHAIRMAN
GORDON MONROE - SECRETARY
CLIFFORD TAILFEATHERS - ACTING SECRETARY
JOE A. GERVAIS - TREASURER

BLACKFEET TRIBAL BUSINESS COUNCIL

JAY ST. GODDARD
JIMMY ST. GODDARD
GORDON MONROE
CLIFFORD TAILFEATHERS
FRED GUARDIPEE
EARL OLD PERSON
WILLIAM "ALLEN" TALKS ABOUT
ERVIN C. CARLSON
HUGH MONROE

R E S O L U T I O N

NUMBER: 135-2004

WHEREAS: The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation, and

WHEREAS: The Blackfeet Tribal Business Council has been organized to represent, develop, protect, and advance the views, interests, education and resources of the Blackfeet Indian Reservation, and

WHEREAS: The Blackfeet Tribal Business Council finds that the language, culture, tradition and heritage is necessary to ensure the present and future perpetuation and survival of the Blackfeet People, and

WHEREAS: The Blackfeet Tribal Business Council finds a need to protect, preserve and manage, by implementing written law and policy regarding the irreplaceable, invaluable and endangered Blackfeet Language, Blackfeet Culture, Blackfeet History and Heritage, Blackfeet Customs and Traditions, Blackfeet Traditional Cultural Landscape, Blackfeet Flora and Fauna, including their habitations and Blackfeet sites of antiquity, and

WHEREAS: The Blackfeet Tribe finds that recognition of such laws and policies are but an initial step in the overall effort to promote, protect and preserve, now,

THEREFORE BE IT RESOLVED: by the Blackfeet Tribal Business Council of the Blackfeet Indian Reservation, pursuant to Article VI, Section (m), of the Constitution and Bylaws for the Blackfeet Tribe of the Blackfeet Indian Reservation, that the attached Blackfeet Tribal Ordinance # 100, Titled "The Blackfeet Cultural Preservation Act", is hereby adopted:

BE IT FURTHER RESOLVED: cultural, historical, anthropological, and archaeological resources include sites beyond the exterior boundaries of the Blackfeet Indian Reservation, including reserved rights, traditions, practices and customs in traditional lands ceded by Ratified Treaty to the United States of America hereinafter referred to as "Blackfeet Cultural Landscape"; and

BE IT FURTHER RESOLVED: (1) the Blackfeet Language is the official language of the Blackfeet Tribe of the Blackfeet Indian Reservation; and (2) the Blackfeet Knowledge System inextricably and inalienably connected with Blackfeet ancestry and Blackfeet ancestral territory (landscape) shall be the foundation knowledge system of social, history and cultural studies in the educational institutions (schools) located within the exterior boundaries of the Blackfeet Indian Reservation, and

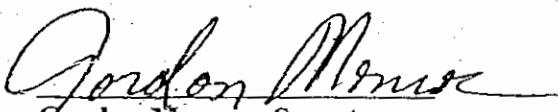
BE IT FURTHER RESOLVED: traditional Blackfeet law shall supercede all laws and policies enacted herein relative to Blackfeet Language, Blackfeet Culture, Blackfeet History and Heritage, Blackfeet Customs and Traditions, Blackfeet Traditional Landscape, Blackfeet Flora and Fauna, including their habitations and Blackfeet Anthropological and Archaeological Sites, and

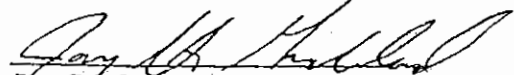
BE IT FURTHER RESOLVED: the, "Buffalo Rock", iiniskim shall be protected as a cultural resource with exclusive collection rights reserved to only Blackfeet Indians, and

BE IT FINALLY RESOLVED: that it is the express finding of the Blackfeet Tribal Business Council that nothing in this Ordinance should be interpreted to encourage excavations. They are not encouraged because of the interest of the Blackfeet Tribe and its members in protecting the privacy and non-disturbance of their Reservation, persons, lands and property. The intent of this Ordinance is to merely control such activity when it does take place.

Attest:

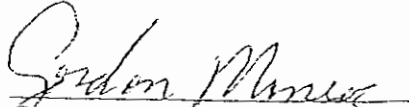
The Blackfeet Tribe of the
Blackfeet Indian Reservation


Gordon Monroe, Secretary


Jay St. Goddard, Chairman

CERTIFICATION

I hereby certify that the following Resolution was adopted by the Blackfeet Tribal Business Council during a duly called, noticed and convened Regular Session assembled for business on the 1st day of April, 2004 with Six (6) members present to constitute a quorum, and with a vote of Six (6) members for and Zero (0) opposed.


Gordon Monroe, Secretary

Blackfeet Tribal Ordinance #100

Blackfeet Cultural Resources Preservation Act

Section 1. Short Title

This Ordinance may be referred to as THE BLACKFEET CULTURAL PRESERVATION ACT or Blackfeet CPA

Section 2. Authority

The Blackfeet Tribe of the Blackfeet Indian Reservation enacts this Ordinance pursuant to Article VI, Part (m), of the Constitution and Bylaws for the Blackfeet Tribe of the Blackfeet Indian Reservation approved by the Secretary of the Interior on December 13, 1935.

Other federal and state laws also impact, acknowledge and affirm certain tribal authority over cultural resources; those federal and state laws include, but are not limited to:

- 1.) Archaeological Resources Protection Act, 16 U.S.C. Section 470 (g) (2).
- 2.) National Historical Preservation Act, as amended, 16 U.S.C., Section 470.
- 3.) Historic Sites, Buildings and Antiquities, 16 U.S.C. Section 469.
- 4.) Reservoir Salvage Act of 1960, U.S.C., Section 469 (a) (1).
- 5.) Archaeological and Historic Preservation, 16 U.S.C., Section 4709.
- 6.) National Historic Preservation 36, C.F.R. 800.
- 7.) Protection of Historic and Cultural Property, 42 U.S.C., Section 4321.
- 8.) National Environmental Policy, 42 U.S.C., Section 1996.
- 9.) American Indian Religious Freedom Act, 42 U.S.C., Section 1996.
- 10.) Native American Graves Protection and Repatriation Act, 25 U.S.C. Section 3001.
- 11.) National Indian Forest Resource Management Act, 25 U.S.C., Section 3108.
- 12.) Executive Order 12898.
- 13.) Executive Order 13007, and
- 14.) Executive Order 13174.

Section 3. Findings and Policy

The Blackfeet Tribal Business Council finds that:

- (1) Although we have been subjected to colonial forces and nation-state ideology for several centuries, we, the Blackfeet People, retain and affirm all of our inherent collective rights as a sovereign nation.

- (2). These rights include the right to protect our own survival, in particular, by protecting our culture, our language, and our knowledge systems from expropriation, encroachment, or theft.
- (3). The Blackfeet Language, Blackfeet Customs and Traditions, Blackfeet Culture, Blackfeet Traditional Cultural Landscape and Blackfeet knowledge systems are indispensable to the Blackfeet Identity, and are the foundation for self-determination.
- (4). The spirit and future direction of the Blackfeet Tribe and its members, the Blackfeet People, is founded upon, grounded in and reflected through its cultural heritage.
- (5). The cultural education of tribal members is of equal or greater importance to the long term welfare of the Blackfeet Tribe and its members, as is the contemporary school room education, in that provides a foundation and grounding for the continuance of the Blackfeet Tribe as a distinct cultural and political entity perpetually.
- (6). The activities to preserve and maintain the Blackfeet Language, Blackfeet Culture and Heritage are a legitimate and necessary Blackfeet Tribal governmental function and will require annual expenditure of tribal funds.
- (7). The cultural resources of the Blackfeet Tribe are being substantially neglected, altered, destroyed, or lost.
- (8). The ever increasing need for homesites, energy development, road construction, sanitation drain fields and water wells, sod busting for food sources, cattle grazing and other forms of development indicate the present tribal government and non-tribal government programs to preserve and enhance the Blackfeet Tribe's cultural resources are inadequate to ensure future generations a genuine opportunity to participate, enjoy and appreciate the rich heritage of the Blackfeet.
- (9). Tribal actions and procedures are necessary to promote conditions under which our contemporary society, prehistoric (Contemporary definition indicating "before the European landings"), historic and cultural resources and rights can co-exist in useful harmony to execute the social, economic, educational and other requirements of present and future generations.
- (10). The self-governing capabilities, political integrity, health and welfare, economic and educational security of the Blackfeet Tribe will be enhanced and protected by Blackfeet Tribal Governmental control, regulation and preservation of invaluable, irreplaceable and endangered tribal cultural resources which are essential to the continued health, welfare, security and happiness of the Blackfeet Tribe and its members, and will be enriched and maintained for future generations of Blackfeet Tribal members.
- (11). The Blackfeet Tribal Business Council recognizes the NAGPRA definition regarding items of cultural patrimony, and such items will not be dealt with by the Blackfeet Tribal Business Council as personal property.
- (12). Tribal cultural resources are not limited to the following:
 - a. Blackfeet Oral History
 - b. Blackfeet Language
 - c. Blackfeet Song and Music

- d. Blackfeet Knowledge System
- e. Blackfeet Culture
- f. Blackfeet Custom and Tradition
- g. Blackfeet Ceremony
- h. Native Birds
- i. Traditional Flora and Fauna
- j. Habitation Sites
- k. Artifact or Object
- l. Photo Archives
- m. Document Archives
- n. Blackfeet Cultural Landscapes
- o. Blackfeet Cultural Features
- p. Drive Lines and Buffalo Jumps
- q. Rock Art
- r. Fasting or Vision Site
- s. Ceremonial Site
- t. Burial Site
- u. Historic Structure
- v. Historic Site
- w. Historic District
- x. Historic Property
- y. Traditional Trails
- z. Habitation or Camp Sites
- aa. Cultural/Religious Significance
- bb. Offerings
- cc. Aesthetic Quality

Section 4. Policy

It is the policy of the Blackfeet Tribal Business Council to control, protect, regulate and manage traditional cultural resources on the Blackfeet Indian Reservation by establishment of a Tribal Historic Preservation Office (THPO) to identify, enhance, evaluate and protect Blackfeet cultural, historic and archaeological resources and by regulating undertakings upon protected lands when they may result in changes in the character, integrity or use of such cultural resources.

Section 5. Definitions

- (1) "Archaeological resource" means any material remains, or any portion or piece thereof found in an archaeological context of past human life or activities of archaeological interest.
- (2) "Archaeological Material" means material evidence of cultural activities of the past, at least 50 years of age.
- (3) "Archaeological Site" means a geographically locality which contains archaeological materials or features in contextual association with each other and the surrounding area.

- (4) "Ceded Area" means that area ceded to the United States by the Blackfeet Tribe.
- (5) "Cultural/Religious Significance" means items, places, fauna or flora, material, landscape associated with Blackfeet culture or spiritual practices.
- (6) "Culture" means the language, knowledge system, beliefs, customs, practices landscapes lifeways, world view, arts, social organizations, societies, clothing and regalia of the Blackfeet people.
- (7) "Cultural Preservation Board" means the Blackfeet Cultural Preservation Board of the Blackfeet Tribe.
- (8) "Cultural Items" means human remains, associated funerary object, unassociated funerary objects, sacred objects and cultural patrimony as defined by the Native American Graves Protection and Repatriation Act.
- (9) "Cultural Resource" means native plant materials, native animals and parts thereof or cultural/religious/spiritual sites which are eligible, nominated or determined eligible for the Blackfeet Historic Register as having cultural significance. Cultural materials include Traditional flora, fauna, native birds, Blackfeet lingual, song, music and knowledge systems.
- (10) "Blackfeet Knowledge System" means the traditional knowledge as applied to the "worldview" definition in this Ordinance.
- (11) "Traditional Landscape" means places that are associated with Blackfeet cultural, religious or spiritual beliefs, customs, practices or traditional knowledge systems of the Blackfeet People within the Blackfeet Aboriginal Territory of the pre-1885 era.
- (12) "Cultural Landscape" means a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, dream, or person or exhibiting other cultural or aesthetic values.
- (13) "Worldview" means a distinctive vision of reality which not only interprets and orders the places and events in the experience of the Blackfeet People, but lends form, direction and continuity to life as well, and provides the Blackfeet with a distinctive set of values, an identity, a feeling of rootedness, of belonging to a time and place, and a felt sense of continuity with a tradition, traditional characters, stories, dreams, songs, night sky, protocols and place which transcends the experience of a single lifetime, a tradition which may be said to transcend even time.
- (14) "Cultural Site" means an area designated as such by the Blackfeet Tribal Business Council or the Blackfeet Cultural Preservation Board which has a special cultural, religious, spiritual or traditional value to the Blackfeet Tribe, or its members, and which requires the protection of this chapter to prevent disturbance, damage, abuse or deterioration.
- (15) "Historic Site" means an area designated as such by the Blackfeet Tribal Business Council, or the Blackfeet Cultural Preservation Board which has a particular historic value to the Blackfeet Tribe, or its members, and which requires the protection of this chapter to prevent disturbance, damage, abuse or deterioration.

- (16) "THPO" means Tribal Historic Preservation Office or Tribal Historic Preservation officer
- (17) "Buffalo Rock" means the sacred stone [ammonite/bacculite] referred to by the Blackfeet Indians as iiniskim.
- (18) "Blackfeet Indian" means, unless otherwise specified, a member of the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana and a member of the North Piegan, Blood and North Blackfoot Bands of Alberta, Canada.
- (19) "Protected Lands" means all lands within the exterior boundaries of the Blackfeet Indian Reservation, all lands owned by the Blackfeet Tribe off the reservation and all federal and state lands within the Blackfeet cultural landscape or private lands undertakings funded with government funds.
- (20) "Religious Site" means any place or area, including but not limited to, any geophysical or geographical area or feature where Blackfeet practitioners are required by their religion or spirituality to hold ceremony, fast or seek visions and/or gather, harvest or maintain natural substances or natural products for use in religious ceremonies or spiritual purposes, including all places or areas where natural substances or products are located, or which is used by Blackfeet spiritual practitioners for ceremonial purposes or spiritual practices, or has been used.
- (21) "Undertaking" means a project, activity or program funded in whole or in part, under the direct or indirect jurisdiction of a federal agency or tribal department, including:
- a. Those carried out with federal, or tribal financial assistance;
 - b. Those carried out by or on behalf of the federal or tribal agency;
 - c. Those requiring a federal or tribal permit, license or approval; and
 - d. Those subject to tribal, state or local regulation administered pursuant to a delegation or approval of a federal agency.
- (22) "Tribal Council" means the duly elected governing body within the exterior boundaries of the Blackfeet Indian Reservation.
- (23) "Responsible Person" means any person who has decision making authority over a particular undertaking on protected lands.
- (24) "Cultural Director" means the tribal program's Cultural Resource Specialist who must; demonstrate to a Blackfeet Elder's Council their knowledge about traditional customs, practices, beliefs and the Blackfeet Knowledge System and worldview grounded in Blackfeet Societies and various sacred bundles (discipline); be declared a Tribal Traditional Cultural Authority; and, serving as the THPO.
- (25) "Blackfeet Elder" means a non-gendered teacher of Blackfeet wisdom and tradition with various transfers within the Blackfeet knowledge System.
- (26) "Blackfeet Elder's Council" means a designated group of elders specifically associated with this ordinance by bundles of discipline and the Tribe's Honorary council.

Section 6. Blackfeet Cultural Preservation Office

- (1) There is hereby established a Blackfeet Cultural Preservation Office which will be directed by a Cultural Resource Specialist. This office will be officially referred to as the Tribal Historic Preservation Office (THPO). The cultural director defined above will be officially referred to as the Tribal Historic Preservation Officer (THPO) to be appointed by the Blackfeet Tribal Business Council by tribal resolution to administer the Blackfeet Cultural Preservation Office with duties and powers not limited to this ordinance.
- (2) The cultural director (THPO) will meet the required professional qualifications and have substantial experience in the administration of a cultural program and should have expertise in at least one of the following disciplines: archaeology, anthropology, cultural resources management or Blackfeet traditional cultural properties and practices. In addition, the cultural director should possess at least a Master's Degree and be declared a Tribal Traditional Cultural Authority.
- (3) It shall be the responsibility of the cultural director (THPO) as follows:
 - a. The cultural director (THPO) will maintain the Blackfeet Register of Cultural and Historic Places composed of religious sites, spiritual sites, ceremonial sites, offering sites, fasting and vision sites, traditional cultural properties, traditional flora and fauna and their habitations, burial sites, archaeological sites, districts, buildings and structures significant to history, lifeways, customs of the Blackfeet.
 - b. The cultural director (THPO) will, as funds and personnel are available and in cooperation with the Blackfeet Preservation Board and Blackfeet Elder's Council, conduct a comprehensive Reservation-wide survey of cultural resources and maintain an inventory of such properties documented in such a manner that the data can be retrieved to assist tribal priorities and planning decisions.
 - c. The cultural director (THPO) will identify and nominate eligible cultural resources to the Blackfeet Register of Cultural and Historic Places and build, manage and provide security for a data collection system that will store sensitive information relative to cultural resources.
 - d. The cultural director (THPO) will prepare, implement and conduct a comprehensive Reservation-wide cultural preservation planning process which includes the identification, evaluation, registration and treatment of cultural properties so that effective decisions concerning preservation can be carried out.
 - e. The cultural director (THPO) will provide advice and assistance, as appropriate, to tribal, federal and state agencies in carrying out their cultural and historic preservation responsibilities (surveys), including all public, tribal and private schools within the exterior boundaries of the Blackfeet Indian Reservation.
 - f. The cultural director (THPO) will consult with appropriate tribal, federal and state agencies in accordance with this Ordinance, regulations and policy on:

1. Undertaking that may affect cultural or historical resources or properties.
 2. Content and sufficiency of any plans developed to protect, manage, avoid or mitigate harm to such properties.
- g. The cultural director (THPO) will maintain a cultural, historical and archaeological data base in a manner that takes into account tribal customs, beliefs and protocols regarding disclosures of personal, private, religious or ceremonial information.
 - h. The cultural director (THPO) will cooperate with the Advisory Council on Historical Preservation, the State Historic Preservation Office, and other tribal, federal and state agencies to ensure that cultural and historic properties are taken into account or consideration at all levels of planning and development.
 - i. The cultural director (THPO) will provide public information, education, training and technical assistance relating to the Blackfeet Cultural Preservation Office.

Section 7. Cultural Preservation Board

- (1) There is hereby established a Blackfeet Cultural Preservation Board whose chairmanship shall be held by the Chairman of the Cultural Committee. The Board shall be composed of three at-large members appointed by the Blackfeet Tribal Business Council. All board members shall have a demonstrated special knowledge of Blackfeet Knowledge Systems with foundations in the Blackfeet worldview comprised of Blackfeet Societies, Blackfeet Ceremonial Bundles of Discipline and Traditional Blackfeet History. Members appointed by the Blackfeet Tribal Business Council shall serve a term for two, three and four years. Any vacancy of the three appointed members of the board shall be filled by appointment of the Blackfeet Tribal Business Council to serve out the remaining portion of the term. The Preservation Board will determine within which members will be appointed to two, three and four year terms.
- (2) The Blackfeet Cultural Preservation Board shall be charged with administering this Ordinance, unless otherwise specified in this section, including, but not limited to: the issuance of permits, the issuance of orders, the levying of penalties and making of any and all decisions and determinations in connection therewith. The Blackfeet Tribal Business Council, upon recommendation by the board, is authorized to issue such rules, regulations and standards as are necessary to effectively carry out the purpose of this ordinance.
- (3) The actions and decisions of the Blackfeet Cultural Preservation Board shall constitute final action appealable to the Blackfeet Tribal Business Council at a duly called General Session with six members present to constitute a quorum.
- (4) The powers and duties of the Blackfeet Cultural Preservation Board include:
 - (a) Undertakings located off the Blackfeet Indian Reservation.

- i. The board members and staff of the Blackfeet Cultural Preservation Act are authorized to participate in the reviewing process of an undertaking or project which might affect any off-reservation cultural resources, including but not limited to religious sites, spiritual sites, fasting sites, vision sites, ceremonial sites, archaeological resources, human skeletal remains, historic or pre-historic resources, cultural items, traditional properties, traditional fauna and flora, ethnographic or academic studies involving the Blackfeet people or their knowledge systems. The staff of the Blackfeet Cultural Heritage Program shall provide an annual report and summary of such consultation to the board. The Blackfeet Tribe encourages memoranda of agreement with persons, agencies or institution to effectuate the policies of this Ordinance.

(b) Undertakings on the Blackfeet Indian Reservation.

1. Review any proposed undertaking that might affect any cultural resource, including but not limited to, religious sites, spiritual sites, fasting sites, vision sites, ceremonial sites, cultural landscape, ethnographic landscape, archaeological resources, human skeletal remains, historic or pre-historic resources, cultural items, traditional properties, traditional fauna and flora ethnographic or academic studies involving the Blackfeet People or their knowledge systems.
2. Review requests for excavations or removal of archaeological resources in protected lands.
3. Review requests for ethnographic or academic studies or surveys of the Blackfeet culture.
4. Issue permits as authorized by this Ordinance.
5. Identify and nominate traditional cultural properties to the Blackfeet Register of Cultural and Historical Places and identify cultural and historical sensitivity for placement in the Secure Register.
6. Provide general advise and guidance to the cultural director (THPO) while maintaining a governing board integrity by refraining from the daily administration of the program whose authority lies with the cultural director (THPO).
7. To accept on behalf of the tribe, gifts, grants and fees to administer this Ordinance. Such money may be expended to hire staff or consultants for the purpose of carrying out the powers and duties of the board or for performing other appropriate functions.
8. To call upon tribal staff or elders having expertise for advice.
9. Perform other duties as may be deemed necessary to implement this Ordinance.

- (c) Tribal and federal agencies shall not approve an undertaking if it will adversely affect cultural, historical or archaeological sites included on,

or eligible for the Blackfeet Register of Cultural and Historical Places unless it has made the determination that:

1. there is no prudent and feasible alternative available to avoid impacting such site; and
2. the action includes all possible planning to minimize harm to the property resulting from such use.
 - a. supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic and environmental impacts, or community disruptions resulting from such alternatives reach extraordinary magnitude.

Section 8. Permits

- (1) Academic, ethnographic or historical work or studies relating the Blackfeet cultural resources or Blackfeet knowledge systems are not allowed to be conducted on protected lands unless a permit has been issued to the responsible person.
- (2) Excavations, digs or removal of archaeological resources or cultural items are not allowed on protected lands unless a permit has been issued to the responsible person, party or agency.
- (3) An undertaking which may effect cultural resources on protected lands may not commence unless a permit has been issued to the responsible person, party or agency.
- (4) All work on an undertaking shall be conducted pursuant to the terms and conditions for the permit issued to the responsible person, party or agency.

Section 9. Permit Fees

The Blackfeet Cultural Preservation Board shall determine and set the amounts of the permit fees schedule. The board shall be reasonable in setting the fees schedule on an annual basis while taking into consideration the scope of past and potential projects.

Section 10. Application for Permit

- (1) Any person who intends to conduct an undertaking which may effect cultural resources on protected lands shall submit a written application to the Blackfeet Cultural Preservation Office.
- (2) The application shall be on a form provided by the Blackfeet Tribal Preservation Office, and shall include, but is not limited to:
 - a. map, including specific locations by legal description and GPS coordinates;
 - b. a specific description of the proposed undertaking;
 - c. the purpose, need and intended outcome of the proposed undertaking;
 - d. feasible alternative methods of implementing the undertaking;

- e. the project dates and length or time necessary to complete the undertaking;
- f. the name, address and telephone numbers of the responsible person;
- g. and other such information the board deems necessary.

Section 11. Review of Proposed Projects

- (1) The cultural director (THPO) shall review an application for adequacy and shall determine if the proposal constitutes an undertaking. The cultural director and the Blackfeet Cultural Preservation Board may make such onsite investigations as are necessary to perform these duties.
- (2) If the cultural director (THPO) determines that the proposal is not an undertaking the cultural director shall so state in a written notice within 14 days of the receipt of the application.
- (3) If the cultural director (THPO) determines that the proposal is for an undertaking, the cultural director shall transmit the proposal to the Blackfeet Cultural Preservation Office staff who is responsible for conducting a review.
- (4) The Blackfeet Cultural Preservation Office staff will conduct a literature and oral history search and a field survey, when necessary, and will notify the cultural director (THPO) of its findings.
- (5) Once the cultural director (THPO) has been notified by the cultural preservation office staff of its finds and recommendations based on such investigation, the cultural director (THPO) shall bring the application before the Blackfeet Preservation Board for evaluation and review.
- (6) The Blackfeet Cultural Preservation Board shall review all applications. The board shall either approve, approve with modifications or alternatives, or disapprove an application and shall state its decision in writing to the responsible person.
- (7) Upon approval, or upon approval with modification or alternatives, the cultural director (THPO) shall forward to the responsible person a permit which shall address and relate to the plan for the undertaking approved by the board, and which may include provisions for avoidance or mitigation of adverse impact associated with the undertaking.
- (8) This Section 11 (1-7) process should be completed prior to the approval of the expenditure of any federal or tribal funds on the undertaking or prior to the issuance of any federal or tribal license or permit. This does not bar any expenditure of funds on, or any non-destructive planning activities preparatory to an undertaking before complying with this Section 11. The responsible person should ensure that the Section 11 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives are still open for consideration.

Section 12. Emergencies

- (1) All or part of a person's responsibilities under this Ordinance may be waived if the responsible person determines that emergency action is necessary to prevent imminent harm to preserve human life or property and that such emergency action

would be impeded if the responsible person was required to concurrently meet its cultural preservation activities and if the responsible person implements such measures or procedures as are possible in the circumstances to avoid or minimize harm to cultural resources.

- (2) Waiver under section 12 shall not exceed the period of time during which the emergency circumstance necessitating the waiver exists.
- (3) The responsible person shall notify the cultural director (THPO) in writing of the emergency undertaking within 14 days of the commencement of such undertaking. The notice shall include:
 - a. A natural disaster or event necessitating emergency action; and
 - b. The date and nature of the emergency action; and
 - c. A description of the measure(s) taken to avoid or minimize harm to cultural resources or reasons why such measures were taken.

Section 13. Modification or Revocation of Permit

The Blackfeet Cultural Heritage Board may, upon a finding of non-compliance or upon a finding of necessity, either modify or revoke a permit after the responsible person has been notified and given an opportunity to be heard.

Section 14. Native American Graves Protection and Repatriation Act

- (1) The Native American Graves Protection and Repatriation Act (NAGPRA) provides for the protection of Native American graves and for the return and repatriation of human remains, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony. It is the policy of the Blackfeet Tribal Business Council to support the enforcement and implementation of this Act.
- (2) The Cultural Director (THPO) and/or, Blackfeet Cultural Preservation Board and Blackfeet Elder's Council are vested with the authority to implement and administer the provisions of NAGPRA while keeping in mind this Ordinance specifies traditional Blackfeet law to supercede all other laws.
- (3) The Cultural Director (THPO) and/or Blackfeet Cultural Preservation Board and Blackfeet Elder's Council are authorized to consult with federal and state agencies and others, regarding the proper handling and disposition of human remains, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony while keeping in mind this Ordinance specifies traditional Blackfeet law to supercede all other laws.

Section 15. Inadvertent Discovery of Cultural Items

- (1) Any person who knows or has reason to know of the discovery of Blackfeet cultural items, including human skeletal remains on federal trust lands within the Blackfeet territorial cultural landscape and all land within the exterior boundaries of the Blackfeet Reservation shall immediately contact the Blackfeet Cultural Director (THPO).

- (2) If the discovery occurred in connection with an activity or event, including but not limited to, construction, mining, logging, wildland fire, and agriculture, the person(s) shall cease activity in the area of activity in the area of discovery, and make all reasonable efforts to protect the items discovered.
- (3) The activity may resume only after the consultation with the Cultural Director (THPO) and/or Blackfeet Preservation Board and the land owner on whether the cultural items can be preserved in place or whether they need be removed.
- (4) The disposition and control of human remains and cultural items removed under this section shall be determined in accordance to the priorities established in Section 3002 (a) of NAGPRA.

Section 16. Intentional Excavation

- (1) Any person who proposes an undertaking within the exterior boundaries of the Blackfeet Indian Reservation which may result in the excavation of human skeletal remains or cultural items shall apply for a permit pursuant to this Ordinance.
- (2) Federal agency officials who are required to give notice and consult with the Blackfeet Tribal Business Council regarding undertakings within the Tribe's traditional landscape which may result in the excavation human skeletal remains or cultural items shall also provide notice to the Blackfeet Cultural Director (THPO).
- (3) Violations of this part may be enforced in accordance to this ordinance. The Blackfeet Tribal Business Council acting on recommendation of the Blackfeet Cultural Preservation Board may request the U.S. Attorney, Bureau of Indian Affairs or Blackfeet Tribal Law Enforcement pursue appropriate penalties in accordance with NAGPRA.

Section 18. Confidentiality and Disclosure

- (1) A determination regarding the nature and cultural significance of cultural resources may involve the use of sensitive and confidential information regarding Blackfeet traditional law, tribal customs, beliefs, protocols, practices and traditions. Such information is of a highly specialized and personal nature and sometimes held by only a few individuals in the Blackfeet Tribes of South Piegan, North Piegan, Blood and Siksika. According to traditional Blackfeet law, belief and customs, such information is not readily shared and is proprietary and confidential, unless traditional Blackfeet protocols and practices are used to elicit such information. Public disclosure of this type of information could cause harm to the integrity of the Blackfeet culture, worldview and traditional knowledge system.
- (2) The Blackfeet Cultural Preservation Board and the Blackfeet Cultural Director (THPO) shall withhold from disclosure to the public, information about the location, character or ownership of a cultural resource if the chairman of the board or the cultural director determine that disclosure may:
 1. cause a significant invasion of privacy;

2. risk harm to the cultural resource;
3. violate Blackfeet traditional, customs or practices;
4. impede the use of spiritual/religious site by practitioners.

Section 18. Enforcement

(1) Inspections

- (a) The cultural director (THPO) or his/her duly authorized agent may inspect any undertaking for the purpose of determining compliance with this Ordinance, its implementing regulations, or permit term and conditions

(2) Civil Penalties

- (a) Except for emergency actions, any person who violates any prohibitions contained in an applicable regulation or permit issued under this Ordinance may be assessed a civil penalty by the Blackfeet Cultural Preservation Board. No penalty may be assessed under this subsection unless such person or party is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Blackfeet Cultural Preservation Board.
- (b) The amount of such penalty shall be determined under regulations promulgated pursuant to this Ordinance, taking into account, in addition to other factor:
 - i. The damages suffered, both economic and non-economic by tribal members; and
 - ii. The costs of restoring or replacing a traditional cultural property, burial site or archaeological resource or its equivalent, if possible; and
 - iii. Enforcement costs associated with the enforcement of the Ordinance; and
 - iv. The costs associated with the disposition of human skeletal remains or cultural items; and
 - v. Costs associated with documentation, surveying and evaluation of the religious site, burial site, traditional cultural property, or human skeletal remains or archaeological site to assess the characteristics of the site.
- (c) Such regulations shall provide that in the case of a second or subsequent violation by any person or party, the amount of such civil penalty will be double the amount which would have been assessed if such violation were the first violation by such a person(s) or party.

(3). Appeal and Review

- (a) Administrative Appeal

- (1) A person(s) or party aggrieved by an order assessing a civil penalty may seek review to the Blackfeet Cultural Preservation Board and the decision of the board shall be final.
- (b) Judicial Review
 - (1) The Blackfeet Tribal Court shall have jurisdiction to hear appeals from those final decisions of the board that may have not met due process requirement or that are unconstitutional.

Section 19. Choice of Law

- (1) In any administrative appeal or legal hearing regarding the subject matter of this Ordinance or interpretation of the rights and responsibilities arising from such subject matter, this Ordinance shall be applied first. In the absence of the applicable written tribal law in the Blackfeet law, customs and practices shall be recognized by the Blackfeet Tribal Court and apply. If no tribal written law, legal opinions or Blackfeet traditional law exists, applicable federal statutes, regulations, or case law will apply.

Section 20. Severability

- (1) The provisions of this Ordinance, and if any clause, sentence, paragraph, section or sub-section of this Ordinance shall be adjudged by Blackfeet Tribal Court to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation directly involved in the dispute in which judgment shall be rendered.

Section 21. Regulations

- (1) The Cultural Preservation Board shall give consultation to the Blackfeet Tribal Business Council to promulgate rules, standards, regulations and policies and procedures to implement the provisions of this ordinance.

Section 22. Effective Date

This Ordinance shall become effective upon adoption by the Blackfeet Tribal Business Council in accordance with the Blackfeet Tribal Constitutions and Bylaws.