

# Mille Lacs Band Statutes Annotated

Amendments received through: August 31, 2016

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## TITLE 10 - CULTURAL RESOURCES

<b>Chapter</b>	<b>Section</b>
<b>1. Historical Preservation</b>	<b>1</b>
<b>2. Protection of Burial Grounds</b>	<b>1001</b>
<b>3. Archives</b>	<b>2001</b>
<b>4. Cemeteries</b>	<b>3001</b>

### Historical and Statutory Notes

The Preamble to Band Statute 1072-MLC-23 provides:

"It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians, in order to exercise a more effective form of tribal government to regulate the cultural resources of the Mille Lacs Band of Chippewa Indians."

Band Statute 1072-MLC-23, Title I. § 19 provides:

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

The Title of Ordinance 41-16 is "An Ordinance establishing the Mille Lacs Band of Ojibwe Cemetery Association and Regulation of Cemetery under Mille Lacs Band Statute, Chapter 4 §§ 3001-3012 of Title 10 – Cemeteries, pursuant to legislative process articulated in 3 MLBSA §16."

The Preamble for Ordinance 41-16 provides "Be it enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of adding Chapter 4 §§ 3001-3012 of Title 10 entitled "Cemeteries" to establish the Mille Lacs Band of Ojibwe Cemetery Association and Regulation of Cemetery.

## CHAPTER 1

### HISTORICAL PRESERVATION

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**SUBCHAPTER I**

**GENERAL PROVISIONS**

**Section**

1. Title.
2. Legislative findings-Federal laws preemption.
3. Definitions.
4. Nondisclosure.
5. Cultural items presently used.

**§ 1. Title**

This title shall be known as the Mille Lacs Band of Chippewa Indians Cultural Resources Protection Statute.

**Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 1.

**§ 2. Legislative findings-Federal laws preemption**

(a)(1) Under the federal Archaeological Resources Protection Act of 1979, 16 U.S.C. 470cc(c), the federal officials must notify the Mille Lacs Band of Chippewa Indians whenever a permit application is being considered which might adversely affect any religious or cultural off-reservation site.

(2) Under the Federal Archaeological Resources Protection Act, 16 U.S.C. 470cc(g)(2), no federal permit for excavation or removal of any archaeological resource located within the jurisdiction of the Mille Lacs Band of Chippewa Indians can be issued without the consent of the Band.

(3) There can be no exchange or disposition of

archaeological resources from the Mille Lacs Band of Chippewa Indians without the consent of the Band pursuant to the federal Archaeological Resources Protection Act, 16 U.S.C. 470dd.

(4) The National Historic Preservation Act, 16 U.S.C. § 470 et seq., declares a national policy to work in partnership with Indian tribal governments to protect cultural resources and provides a mechanism by which tribal governments may carry out the provisions of that Act (16 U.S.C. § 471, 470a(c)).

(5) The Band Assembly finds that an orderly procedure must be established for considering the acting upon such notifications, requests, and review functions.

(b)(1) The National Historic Preservation Act does not confer upon state governments the power to nominate sites within Indian reservations to the National Register.

(2) The Band Assembly finds that the power to make such nominations to the National Register must be exercised by the Mille Lacs Band of Chippewa Indians and that an effective procedure must be established to carry out this activity.

(3) The Band Assembly hereby declares its intent to preempt the field of nominations to the National Register of archaeological and historical sites located with the Mille Lacs Band of Chippewa Indians.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 2.

### **§ 3. Definitions**

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

(a) "Archaeological Resources" means any remains of the past human life or activities which are of archaeological or historical interest. Such material remains shall include, but not limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, talus slide

depressions, cairns, graves, human skeletal remains, or any portion or piece of any of the foregoing items. The material or remains may also include non-fossilized or fossilized paleontological specimens, or any portion or piece thereof, whether or not found in an archaeological context. No item shall be treated as an archaeological or historic resource unless such an item is as at least fifty years of age.

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

(c) "Band's Register of Historic and Archaeological Properties" means the tribal register of districts, sites, buildings, structures and objects significant in tribal history, architecture, archaeology or culture, as determined by the Board and maintained by the Department.

(d) "Board" means the Federation Cultural Resources Board.

(e) "Department" means the Federation of Archaeological and Historical Programs.

(f) "Effect" means any condition of the undertaking that causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualify the property to meet the criteria of the Band's Register or the National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling or association of the property that contributes to its significance in accordance with the Band's Register or the National Register criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are foreseeable. Such effects may include changes in the pattern of land use, population, density or growth rate that may effect any properties of historical, architectural, archaeological, or cultural significance.

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

(h) "National Register" means the National Register of Historic Places.

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

(j)(1) "Undertaking" means any governmental, governmentally assisted or licensed action, activity or program or the approval, sanction, assistance, or support of any non-governmental action, activity or program. Undertakings include new and continuing projects and program activities

that are

- (A) directly undertaken by government agencies;
- (B) supported in whole or in part through governmental contracts, grants, subsidies, loans, loan guarantees or other forms of direct or indirect funding assistance;
- (C) carried out pursuant to a governmental lease, permit, license, certificate, approval or other form of entitlement or permission; or,
- (D) proposed by a Federal, State or other governmental agency for legislative authorization or appropriation.

(2) Site-specific undertakings affect areas and properties that are capable of being identified at the time of approval by the governmental agency.

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

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 3.

#### **§ 4. Nondisclosure**

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

### **Historical and Statutory Notes**

Source: Band Statute 1072-MLC-23, T. I, § 14.

### **Cross References**

Comprehensive survey, see 10 MLBSA § 501.

## **§ 5. Cultural items presently used**

In relationship to the protection of conservation of Historical or Archaeological resources, there is no authority granted by this title that would allow the Band or the Department to take, regulate or preserve any item of traditional Ojibwe religion or culture that is presently being used or has been used by members of the Mille Lacs Band of Chippewa Indians without the written approval of the owner, keeper or the appropriate religious leaders who are concerned with the said article.

### **Historical and Statutory Notes**

Source: Band Statute 1072-MLC-23, T. I, § 18.

## **SUBCHAPTER 11**

### **FEDERATION CULTURAL RESOURCES BOARD**

#### **Section**

101. Establishment of Federation Cultural Resources Board; membership.
102. Officers.
103. Quorum.
104. Meetings.
105. Principal office.
106. Oath of office.
107. Powers and duties of the Board; undertakings off-reservation.
108. Undertakings on-reservation.
109. Disposition of archaeological resources.
110. Governmental rulemaking.
111. Regulation by Board.
112. Annual reports.
113. Records.
114. Cooperation with agencies and organizations.
115. Comprehensive plan; Board review.
116. Band's Register; review of nominations.
117. National Register; review of nominations.
118. Education.
119. Review by Court of Central Jurisdiction.

## **§ 101. Establishment of Federation Cultural Resources Board; membership**

The Board shall be composed of the Director of the Cultural Department, the Chairperson of the Elderly Advisory Board, the Commissioner of Natural Resources Department, a Band archaeologist, and Band staff attorney designated by the Chief Executive.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 4.

## **§ 102. Officers**

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

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 4.01.

## **§ 103. Quorum**

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

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 4.02.

## **§ 104. Meetings**

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

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 4.03.

## **§ 105. Principal office**

The principal office of the Board shall be the Mille Lacs Government Center.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 4.04.

## **§ 106. Oath of office**

Each member of the Board shall take the following oath before beginning his duties:

"I promise to faithfully execute all provisions of the Federation Cultural Resources Protection Ordinance and any regulations promulgated in furtherance thereof, and to be bound by the Mille Lacs Statutes, the jurisdiction of the Court of Central Jurisdiction and the Mille Lacs Band and to otherwise faithfully perform my duties as outlined by the law."

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 4.05.

### **Cross References**

Oath for Band offices, see 5 MLBSA § 115.  
Official oath of office, see 2 MLBSA § 8.

## **§ 107. Powers and duties of the Board; undertakings off-reservation**

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

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.

## **§ 108. Undertakings on-reservation**

The Board is authorized and directed to review any proposed undertaking that might adversely affect any on-reservation archaeological resource or historic property included on or eligible for inclusion on the Band's Register or the National Register. The Board is also empowered to consider requests for consent to on-reservation excavation or removal of archaeological resources as an initial application or as referred by officials acting pursuant to ARPA, 16 U.S.C. § 470cc(g)(2), the NHPA, or the American Indian Religious Freedom Act. (42 U.S.C.A. § 1996.)

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.01.

### **§ 109. Disposition of archaeological resources**

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

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.02.

### **§ 110. Governmental rulemaking**

As directed by the Chief Executive, the Board is empowered to initiate, comment and participate in federal, state or other governmental rule making processes concerning matters pertaining to its expertise (see 16 U.S.C. §§ 470s, 470ii).

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.03.

### **§ 111. Regulation by Board**

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

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 16.

### **§ 112. Annual reports**

The Board shall prepare a comprehensive annual report for submission to the Chief Executive, which shall report on the activities carried out under the provisions of this title, and shall make such recommendations as the Board deems appropriate as to changes or improvements needed in the provisions of this title. Such report shall include a summary of actions undertaken by the Board in reviewing proposed undertakings,

applications for excavation or removal permits, and nominations for the Band's Register and the National Register.

**Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.04.

**§ 113. Records**

The Board shall maintain records of its proceedings. All proceedings shall be documented in writing, to be distributed to the Band Assembly not more than five days following a meeting.

**Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.05.

**§ 114. Cooperation with agencies and organizations**

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

**Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.06.

**§ 115. Comprehensive plan; Board review**

The Board is authorized and directed to review the comprehensive Reservation-wide archaeological and historic preservation plan prepared by the Department. The Board is further authorized to approve the plan and submit it to the Chief Executive or to direct the Department to change the plan until it met with its approval.

**Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.07.

### **Cross References**

Comprehensive plan, see 10 MLBSA § 502.

## **§ 116. Band's Register; review of nominations**

The Board is authorized and directed to review nominations of properties to the Band's Register submitted by the Department, and to approve those that qualify as significant in tribal history, architecture, archaeology, cultural, or religious sites.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.08.

### **Cross References**

Band's Register, see MLBSA §§ 401 , 402.

Department powers and duties, nominations to Band's Register, see 10 MLBSA § 202.

## **§ 117. National Register; review of**

The Board is authorized and directed to review forms or reports proposing to nominate properties to the National Register, assure adequate public participation in the nomination process, and to recommend to the Chief Executive those properties it deems appropriate for nomination for listing on the National Register.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.09.

### **Cross References**

National Register, see 10 MLBSA §§ 403, 404.

Preparation by Department of nomination forms, see 10 MLBSA § 203.

## **§ 118. Education**

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

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 5.10.

## **§ 119. Review by Court of Central Jurisdiction**

The Director, the Solicitor General, or any applicant or permittee aggrieved by any decision of the Board may petition the Court of Central Jurisdiction for a hearing to review such decision. A written notice of appeal must be filed with the Clerk of Court within twenty days of such adverse decision; provided, however, that such limitation period shall not apply to ban the petition of the Solicitor General or the Director of the Department where such would be contrary to the Band interest in preservation of archaeological resources or historic properties.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 17.

### **Cross References**

Subject-matter jurisdiction, Court of Central Jurisdiction, see 5 MLBSA § 111.

## **SUBCHAPTER III**

### **POWER AND DUTIES OF FEDERATION CULTURAL DEPARTMENT**

#### **Section**

- 201. Powers and duties.
- 202. Nominations to the Band's Register.
- 203. Nominations to National Register; preparation of forms.
- 204. Assistance to Boards.
- 205. Records and salvage.
- 206. Tribally-owned properties.
- 207. Transfer of property on Band's Register.
- 208. Promotion of preservation efforts.
- 209. Annual report.

## **§ 201. Powers and duties**

The Federation Cultural Department shall have the duties and powers set out in this subchapter, which shall be in addition to such powers and duties provided by prior Statutes of the Mille Lacs Band of Chippewa as are not inconsistent with this title.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 6.

## **§ 202. Nominations to the Band's Register**

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

- (a) Conduct a comprehensive survey of all historic properties on the reservation pursuant to 10 MLBSA § 501.
- (b) Compile an inventory that includes basic information about the location and history of each property.
- (c) Evaluate each property surveyed with regard to its historic, archaeological, anthropological, religious and cultural significance.
- (d) Based on the evaluation described in subsection (c), place each surveyed property into one of four categories of significance.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 6.01.

### **Cross References**

Band's Register, see 10 MLBSA §§ 401, 402.  
Board review of nomination, see 10 MLBSA § 116.

## **§ 203. Nominations to National Register; preparation of forms**

The Department shall prepare nominations forms for those properties that appear to be eligible for placement on the National Register, and present them to the Board.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T.1, § 6.02.

### **Cross References**

Board review of nominations, see 10 MLBSA § 117.  
National Register, see 10 MLBSA §§ 403, 404.

## **§ 204. Assistance to Boards**

The Department shall assist and consult with the Administrative Policy Board and the Board on issues relating to the conservation of historic and archaeological resources and on other matters within the scope of their duties.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T.I, § 6.03.

## **§ 205. Records and salvage**

The Department shall initiate measures to ensure, at a minimum, that where a property listed on the Band's Register is to be substantially altered or affected, timely steps be taken to make or have made records, including measured drawings, photographs and maps of the property, and that a copy of records then be deposited in the tribal archives for future use and reference. The Department shall use its best efforts to assure adequate surveying testing, to salvage, analysis and duration of artifacts, where such is feasible.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T.I, § 6.04.

## **§ 206. Tribally-owned properties**

The Department shall initiate measures and procedures to provide for the maintenance, preservation, rehabilitation or restoration, of tribally-owned and registered sites at professional standards prescribed by the Director of the Department.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T.I, § 6.05.

## **§ 207. Transfer of property on Band's Register**

The Department shall cooperate with purchasers and transferees of any property listed on the Band's Register in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in a unreasonable burden in the public interest.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T.I, § 6.06.

## **§ 208. Promotion of preservation efforts**

The Department is authorized to take the following actions for the purpose of promoting historic preservation efforts:

- (a) Develop and make available to Band Agencies information concerning professional methods and techniques for identifying, preserving, stabilizing, improving, restoring and maintaining, archaeological and historic properties.
- (b) Advise Band agencies in the evaluation, identification, preservation, stabilizing, improvement, restoration and maintenance of historic and archaeological properties.
- (c) Encourage in cooperation with the Board, public interest and participation in archaeological and historic preservation.
- (d) Conduct studies in such areas as the adequacy of federal, state and band laws pertaining to archaeological and historic preservation activities.
- (e) Encourage training and education in the field of archeological and historic preservation.

### **Historical and Statutory Notes**

Source: Band Statute 1072-MLC-23, T.I, § 6.07.

## **§ 209. Annual report**

The Department shall submit annually a comprehensive report of its activities and the results of its studies to the Chief Executive and the Board, and from time to time submit such additional and special reports as the Department deems advisable. These reports may propose such legislative enactments and other actions as, in the judgment of the Department, are necessary and appropriate to carry out its recommendations.

### **Historical and Statutory Notes**

Source: Band Statute 1072-MLC-23, T.I, § 6.08.

## SUBCHAPTER IV

### PERMITS

#### Section

- 301. Damaging or adverse effects: prohibited acts.
- 302. Illegal possession or transfer of archaeological or historic resources.
- 303. Contents of permit application.
- 304. Filing of application.
- 305. Criteria.
- 306. Board action.
- 307. Terms and conditions of permit.
- 308. Duration of permit.
- 309. Interim permits.
- 310. Duties of permittees.
- 311. Suspension and revocation of permits.
- 312. Hearing.
- 313. Emergency stop work orders.

#### **§ 301. Damaging or adverse effects: prohibited acts**

No person shall excavate, remove, damage or otherwise alter, deface or adversely affect any archaeological resource or historic property unless such activity is pursuant to a permit duly issued under this title.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T.I, § 7.

#### **§ 302. Illegal possession or transfer of archaeological or historic resources**

No person shall sell, purchase, exchange, transfer, transport, receive, possess or offer to sell, purchase or exchange any archaeological resource or historic property if such resource is excavated or removed from Reservation lands in violation of the prohibition contained in 10 MLBSA § 301.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 7.01.

#### **§ 303. Contents of permit application**

An application for a permit to excavate, remove, alter, damage, or otherwise adversely affect archaeological resources or historic properties from Reservation land shall include information concerning the time, scope, location and specific purpose of the proposed

work, together with such other information as the Board deems necessary. Each application must be accompanied by a definite outline of the proposed work, indicating the name of the individuals or group making the request, the date proposed for beginning the work, the length of time proposed to be devoted to it and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation or gathering, the museum in which the collections made under the permit are to be permanently preserved, and, where such museum is off-reservation, the length of time proposed by the application before such collections are to be returned to the reservation. The application must be accompanied by a sketch plan and a legal description of the particular site or area to be affected, so definite that it can be located on a map with accuracy. Each application shall be signed by the applicant and verified on oath or affirmation, and shall contain the promise of the applicant to abide and be bound by all of the provisions of this title and by all other Band laws.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T.I, § 8.

#### **Cross References**

Archaeological research methodology, see Nat. Res.Comm. Order 157-92.

### **§ 304. Filing of application**

Each application for a permit must be filed with the Board and the director of the Cultural Department.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 8.01.

### **§ 305. Criteria**

A permit may be issued pursuant to an application submitted in strict accordance with 10 MLBSA §§ 303 and 304, if the Board determines that:

- (a) The applicant has demonstrated its qualifications to carry out the proposed activity by submitting to the Board references and a resume showing prior successful experience in archaeological field work, site surveying, excavation techniques and reporting;
- (b) Adequate mitigation efforts are guaranteed that will avoid any adverse effect on properties included on or eligible for inclusion on the Band's

Register or the National Register, or that acceptance of an adverse effect on such properties is clearly in the Band's best interest;

(c) The archaeological resources or historic properties which are excavated or removed will remain the property of the Band; and,

(d) The activity pursuant to such permit is not inconsistent with any management plan applicable to the lands concerned.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 8.02.

#### **Cross References**

Band's Register, see 10 MLBSA §§ 401, 402.

National Register, see 10 MLBSA §§ 403, 404.

### **§ 306. Board action**

The Board shall allow the department a reasonable opportunity to comment on each application for a permit. The board shall make its decision to issue or deny a permit within six months after the date the application was filed; Provided, however, that the Board may make an unlimited number of three month extensions of such review period upon providing the applicant with a written explanation of the factors requiring such an extension. Applicants shall be notified of Board action by certified mail.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T.I, § 8.03.

### **§ 307. Terms and conditions of permit**

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

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 8.04.

### **§ 308. Duration of permit**

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

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T.1, § 8.05.

### **§ 309. Interim permits**

Persons who received approval from the Board to excavate or adversely affect any archaeological resource or historic property prior to the date of enactment of Band Statute 1072-MLC-23 may receive an interim permit to continue work during the period that their application for a permit is pending before the Board, under the following procedure:

(a) Within thirty days after the date of enactment of Band Statute 1072-MLC-23, such person shall file with the Board a declaration, stating the time approval was received, the location of the property the purpose of the work, and the work done. The declaration shall be accompanied by an application for a permit.

(b) Upon filing of the declaration and the application, the Board shall issue an interim permit. The Department shall determine whether the alleged authority to affect the property was validly obtained, the Board shall revoke the interim permit.

(c) Such interim permit shall be in effect until the Board approves or denies the application for the permit.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T.1, § 8.06.

### **§ 310. Duties of permittees**

During the course of the undertaking, each permittee shall report monthly and quarterly to the Board. Monthly reports shall contain a brief summary statement of the work performed during the month, and quarterly reports shall contain a catalog of collections and photographs made during the quarter. Each permittee shall cooperate fully with any

and all inspections conducted by the Department or the Board. No part of any collections shall leave the reservation unless the express written consent of the Board has been given in the form of a Temporary Removal License. Such license shall at all times accompany the artifacts while off the reservation.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 9.

### **§ 311. Suspension and revocation of permits**

Any permit issued under this chapter may be suspended or revoked by the Board in accordance with the procedures set forth in 10 MLBSA §§ 312 and 313, upon determination:

- (a) That the permittee has violated any provision of the permit, this title, or other applicable law;
- (b) That relevant circumstances have changed since the granting of the permit so that the application would no longer meet the criteria of 10 MLBSA § 305;
- (c) That material misrepresentations were contained in the application; or
- (d) That the permit was improvidently granted.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 10.

### **§ 312. Hearing**

Upon written notice specifying the alleged grounds for revocation for suspension, filed with the Board by the Chairperson or the Director of the Department, the Board shall schedule a hearing to determine the matter, which hearing shall not be less than five days nor more than thirty days after the service of such notice upon the permittee. The permittee shall be entitled to an opportunity to appear at such hearing and controvert the allegations in support of revocation or suspension.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 10.01.

### **§ 313. Emergency stop work orders**

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

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 10.02.

## **SUBCHAPTER V**

### **REGISTERS**

#### **Section**

- 401. Band's Register of Archaeological and Historic Properties; nomination and acceptance.
- 402. Band's undertakings upon property listed in Band's Register.
- 403. National Register; nomination of Reservation properties.
- 404. Band undertakings upon properties listed in National Register.

### **§ 401. Band's Register of Archaeological and Historic Properties; nomination and acceptance**

There is hereby established a Band's Register of Cultural Properties, which shall be a register of prehistoric or historic districts, sites, building, structures and objects significant in tribal history, architecture, archaeology, culture or religion. Nominations at the Band's Register may be made by any person. Acceptance or rejection of any nomination shall be made by the Board.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 11.

#### **Cross References**

Board review of nominations, see 10 MLBSA § 116.  
Department powers and duties, nominations to Band's Register, see 10 MLBSA § 202.

**§ 402. Band's undertakings upon property listed in Band's Register**

Whenever the Mille Lacs Band has direct or indirect jurisdiction over a proposed Band or Band assisted undertaking, or has authority to license or permit any undertaking, the Board shall, prior to the approval of the expenditure of any Band funds on the undertaking or prior to the issuance of any license or permit, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object that is included or eligible for inclusion in the Band's Register. The Board and the Director shall be afforded a reasonable opportunity to comment with regard to such undertaking.

**Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 11.01.

**Cross References**

Permit criteria, adverse effects on properties, see 10 MLBSA § 305.

**§ 403. National Register; nomination of Reservation properties**

Nomination of any district, site, building, structure, or object located within the Reservation for inclusion in the National Register shall be made by the Band Assembly.

**Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 12

**Cross References**

Board review of nominations, see 10 MLBSA § 117.  
Preparation of nomination forms by Department, see 10 MLBSA § 203.

**§ 404. Band undertakings upon properties listed in National Register**

Whenever the Chief Executive has direct or indirect jurisdiction over a proposed Band or Band-assisted undertaking or has authority to license any undertaking, the Board shall, prior to the approval of the expenditure of the Band funds on the undertaking or prior to the issuance of any license or permit, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object within the Reservation that is included in or eligible for inclusion in the National Register. The Board and the Director shall be afforded a reasonable opportunity to comment with regard to such undertaking.

**Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 12.01.

### **Cross References**

Permit criteria, adverse effects on properties, see 10 MLBSA § 305.

## **SUBCHAPTER VI**

### **SURVEY AND COMPREHENSIVE PLAN**

#### **Section**

501. Comprehensive survey.

502. Comprehensive plan.

#### **§ 501. Comprehensive survey**

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

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 13.

#### **Cross References**

Department powers and duties, nominations to Band's Register, see 10 MLBSA § 202.

Nondisclosure, see 10 MLBSA § 4.

Registers, see 10 MLBSA § 401 et seq.

## **§ 502. Comprehensive plan**

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

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 13.01.

### **Cross References**

Board review and approval of comprehensive plan, see 10 MLBSA § 115.

## **SUBCHAPTER VII**

## **ENFORCEMENT**

### **Section**

601. Prohibited and required acts.

602 . Criminal offenses.

603. Civil penalties.

### **Cross References**

Protection of burial grounds, violations, see 10 MLBSA § 1003.

## **§ 601. Prohibited and required acts**

It shall be unlawful and prohibited for any person to do any act the performing of which is prohibited under this chapter or to fail to do any act the performance of which is required under this chapter.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 15

## **§ 602. Criminal offenses**

The procedure established for criminal offenses under the Mille Lacs Statutes shall be utilized for violations of this chapter committed by persons subject to tribal criminal jurisdiction. In the event that the defendant pleads guilty or is found guilty of committing an offense, the Court may impose all or any of the following penalties:

- (a) A fine of not less than \$10.00 or more than \$500.00;
- (b) A jail term of not less than one day nor more than six months;
- (c) Forfeiture of any articles seized by reason of illegal activities prohibited by this chapter, under the procedures established by statute.

### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. I, § 15.01.

### **Cross References**

Criminal procedure, see 24 MLBSA § 4000 et seq.

## **§ 603. Civil penalties**

The Mille Lacs Band may bring an action for a civil penalty against any person who is alleged to have engaged in an activity which is violative of this chapter, including any person who is not subject to Band criminal jurisdiction. The Band also may bring an action for forfeiture of any articles possessed in violation of this chapter. Such civil penalty and forfeiture actions shall be brought under the procedures established in the Civil Law Statute. Any person violating the provisions of this chapter shall be subject to exclusion from the Reservation under 2 MLBSA § 201 [Digitizer's note: section not in digital copy] et seq. Such relief as may be fashioned by the Court shall be intended to be remedial in nature and not punitive and should compensate the Band for the damage done to the archaeological or historic resources of the Reservation and its archaeological and historic resources. Such relief shall also be intended to coerce the individuals into obeying this chapter and regulations promulgated hereto and not to punish such individuals for violation of this chapter and such regulations. Search, seizure and forfeiture of articles possessed in violation of this chapter shall be pursuant to 1 MLBSA § 1 et seq. The Court may also order the forfeiture of any bond, the revocation of any permits, the return of any property which has been removed from the Reservation or the restoration of any archaeological resources or historic property to its former or customary condition. In assessing civil penalties, the court may consider as factors the archaeological or commercial value of the resources involved, or the cost of restoration and repair of the resource and the archaeological or historic site involved.

## Historical and Statutory Notes

Source: Band Statute 1072-MLC-23, T. I, § 15.02.

### Cross References

Due process of law, see 1 MLBSA § 8.

Unreasonable searches and seizures, see 1 MLBSA § 2.

## CHAPTER 2

### PROTECTION OF BURIAL GROUNDS

#### Section

1001. Definitions.

1002. Permits.

1003. Violation; penalties.

1004. Force and effect of chapter.

#### 1001. Definitions

The Mille Lacs Reservation Band of Chippewa Indians hereby establishes that the following definition of terms be utilized when interpreting this chapter.

(a) An "artifact" is defined as

(1) "a usually simple object (as a tool or ornament) showing human workmanship or modification;

(2) "a product of civilization;

(3) "a product of artistic endeavor

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

(c) A "cemetery" is defined as "burial place; a burial ground".

(d) "Historic" is defined as "of or relating to times or events of written history".

(e) "Indian" is defined as "(American Indian) a member of any of the aboriginal peoples of the western hemisphere".

(f) A "monument " is defined as a "burial vault; a memorial stone or a building erected in remembrance of a person or event."

(g) "Prehistoric" is defined as "of or relating to times or events of written history".

(h) A "ruin" is defined as "the remains of something destroyed".

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. III, § 1.

### **§ 1002. Permits**

Permits for the examination of ruins, burial grounds, cemeteries, the excavation of archaeological sites and the gathering of objects of antiquity upon the lands under the jurisdiction of the Mille Lacs Band of Chippewa Indians may be granted by the Mille Lacs Reservation Business Committee to institutions or persons which they may deem properly qualified to conduct such examinations, excavation or gathering, subject to such rules and regulations as they may prescribe.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. III, § 2.

### **§ 1003. Violation; penalties**

(a) Any person who shall appropriate, excavate, injure or destroy any Indian cemetery, Indian burial mound or burial ground, historic or prehistoric ruin or monument, or any object of antiquity situate on lands owned or controlled by the Mille Lacs Band of Chippewa Indians or under their jurisdiction without the written permission of the Mille Lacs Reservation Business Committee having jurisdiction over said lands within the boundaries of the Mille Lacs Indian Reservation, Minnesota, shall upon conviction be fined in the sum of not more than five hundred dollars (\$500.00) or imprisonment for a period not to exceed six (6) months or shall suffer both fine and imprisonment, in the discretion of the Court.

(b) In addition to the above penalty, whosoever shall violate this chapter may be subject to civil suit for both actual damages plus punitive damages in the amount of five hundred dollars (\$500.00) by any aggrieved party. The Mille Lacs Reservation Business Committee shall be considered an

aggrieved party and may sue any violator in the name of the Mille Lacs Band of Chippewa Indians.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. III, § 3.

#### **Cross References**

Historical preservation, enforcement, see 10 MLBSA § 601 et seq.

### **§ 1004. Force and effect of chapter.**

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

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. III, § 4.

## **CHAPTER 3**

### **ARCHIVES**

#### **Section**

- 2001. Purpose.
- 2002. Archival program.
- 2003. Protection of records.
- 2004. Transfer of records.
- 2005. Archivist access to current records.
- 2006. Records management.
- 2007. Access to records.

### **§ 2001. Purpose**

The Federation Fund Archives, FFA, has been established for the purpose of preserving and making available for research materials which help to document the founding, development, organization, management and achievements of the Federation Fund. The collections also contain information on the Chippewa of the Mississippi (both before and after the formation of the FFA in 1855), and general information on Indian History and the history of Chippewa of the Mississippi. The records reflect the FFA dealings with government agencies, private foundations, the business community, fraternal and labor

organizations, individual donors and members, and most importantly, treaties with the United States Government.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. II, § I.

### **§ 2002. Archival program**

The Archivist shall collect, arrange, and describe the archival records of the FFA. They shall make available to qualified researchers all open archival record series.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23. T. II, § 2.

### **§ 2003. Protection of records**

The Archivist shall protect the integrity of the records in their custody. They shall guard them against defacement, alteration, or theft; they shall protect them against physical damage by excessive exposure to light, dampness, and dryness; and they shall ensure that their evidentiary value is not impaired in the normal course of rehabilitation, arrangement, and use.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. II, § 2.01.

### **§ 2004. Transfer of records**

(a) On behalf of the FFA the Archivist is authorized to receive all the noncurrent records of the organization.

(b) Any record-creating division, department, or campaign area of the FFA is directed to release to the Archives for preservation and administration such records legally in its custody that no longer are needed for the transaction of the current business of the office, whenever the Archivist is well and able to receive and take possession of them.

(c) The records of any division, department, or campaign area shall, prior to or upon the termination of the existence and functions of that office, be transferred to the custody of the Archives unless otherwise directed by the Archivist.

(d) Since all records created by an employee in the performance of his or her duties legally are the property of the FFA, upon termination of employment all individuals shall transfer to the Archives those records no longer needed for the current operations of their respective offices. In no case shall anyone remove such records from the FFA Headquarters or the area offices, or destroy same without the prior permission of the Archivist.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, § 3.

### **§ 2005. Archivist access to current records**

The Archivist shall have the right of reasonable access to and examination of all current FFA records.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. II, § 3.04.

### **§ 2006. Records management**

The Archivist, together with the Executive Director, Assistant Executive Director, Secretary of the Corporate, and the several division and department heads, shall develop guidelines and procedures for the management of the current records of both FFA Headquarters and the area offices. They shall determine retention and disposal schedules for all types of records, and see to it that such schedules are observed by all divisions, department, and campaign areas.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1072-MLC-23, T. II, § 4.

### **§ 2007. Access to records**

(a) The FFA Archives conforms to the "Standards for Access to Research Materials in Archival and Manuscript Repositories," as approved by the Council on the Society of American Archivists in December 1973.

(b) It is the policy of the FFA that all record series contained in its Archives be opened to qualified researches ten years after the creation of the record except for certain record series which are closed for either shorter or longer periods of time. A complete list of open and closed record series may be obtained from the FFA Archivist.

## Historical and Statutory Notes

**Source:** Band Statute 1072-MLC-23, T. II, § 5.

# CHAPTER 4 CEMETERIES

## Section

- 3001. Establishment of the Mille Lacs Band Cemetery Association.
- 3002. Purposes.
- 3003. Powers and Responsibilities.
- 3004. Membership.
- 3005. Duration.
- 3006. Authorized Activities.
- 3007. Board of Trustees.
- 3008. Officers.
- 3009. Employees.
- 3010. Operations.
- 3011. By-Laws.
- 3012. Regulation of the Cemetery.

## § 3001. Establishment of the Mille Lacs Band Cemetery Association

The Mille Lacs Band of Ojibwe Indians (“Band”) hereby establishes the Mille Lacs Band Cemetery Association (“Association”). The Association shall be a distinct, non-profit legal entity that is separate and apart from the Band. organizations, individual donors and members, and most importantly, treaties with the United States Government.

## Historical and Statutory Notes

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

## § 3002. Purposes

The purposes of the Association are: (a) to acquire the existing Lake View Cemetery (“Cemetery”), including all real and personal property appurtenant thereto, from Kathio Township; (b) to hold and manage the Cemetery and all such property appurtenant thereto, unless such property is not needed for cemetery purposes; and (c) to protect, preserve, and improve the burying grounds within the Cemetery.

## Historical and Statutory Notes

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

### **§ 3003. Powers and Responsibilities**

Except as otherwise provided in this Ordinance, the Association shall have all of the powers and responsibilities of a cemetery association under Band law , provided that the Association shall not dispose of any real property it acquires without the prior written approval of the Chief Executive and Band Assembly, and provided further that the Association shall not dispose of any real property needed or being used for cemetery purposes except to another lawful cemetery association possessing all of the powers and responsibilities of a cemetery association under law. Upon its acquisition of the Cemetery and all property appurtenant thereto, the powers and responsibilities of the Association shall include, but not be limited to, the following:

- (a) to set walkways and, if necessary, relocate gravestones on or near graves so as to preserve the alignment of walkways, provided that any unmarked graves shall be preserved as completely as possible, without removing the bodies interred therein;
- (b) to make regulations governing the location of future graves and the opening of graves;
- (c) to set and charge a uniform fee for the privilege of burial in the cemetery, which may be adjusted from time to time;
- (d) to provide for the upkeep and maintenance of the Cemetery;
- (e) to assist in locating gravesites, with the understanding that records of burials in the Cemetery are not always accurate or available; and
- (f) to remove shrubs or trees that have overgrown a gravesite or that have otherwise become unsightly or a nuisance, provided that the Association will make reasonable efforts to inform known living descendants of an individual buried in an affected gravesite before removing such shrubs or trees.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

### **§ 3004. Membership**

The membership of the Association shall consist of: (a) all enrolled members of the Band; (b) all other persons who have an ancestor or relative buried in the Cemetery and who

choose to become members of the Association; and (c) any other person who chooses to become a member of the Association, upon approval of the Association's Board of Trustees. The Association will charge a one-time membership fee to all Association members except enrolled members of the Mille Lacs Band. The Association will not collect dues from its members, but may request voluntary contributions from them.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

### **§ 3005. Duration**

The duration of the Association shall be perpetual unless the Association, with the approval of the Chief Executive and Band Assembly, transfers the Cemetery and all property appurtenant thereto to another lawful cemetery association possessing all of the powers and responsibilities of a cemetery association under Band law.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

### **§ 3006. Authorized Activities**

The Association is authorized to engage in any lawful activity that is reasonable and necessary to achieve its purposes or to exercise its powers and fulfill its responsibilities, including but not limited to:

- (a) entering into and performing contracts;
- (b) employing personnel and retaining independent contractors, including accountants and attorneys;
- (c) establishing, maintaining, and carrying out employee benefit plans, either on its own or through the Band;
- (d) compromising or otherwise settling disputes; and
- (e) suing or being sued, but only in the Mille Lacs Band Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

### **§ 3007. Board of Trustees**

The activities of the Association shall be managed by a Board of Trustees ("Board") in accordance with the following provisions:

(a) Composition, Appointment and Election. There shall be five positions on the Board. Two of the positions on the Board will be filled by the Band's Commissioner of Natural Resources and its Historic Preservation Officer, each of whom shall serve on the Board during their terms in office. Such service shall be a part of their respective job responsibilities, and shall not entitle them to additional compensation or remuneration. The other three positions on the Board shall be appointed in the following manner:

(1) One (1) position shall be filled by appointment of the Chief Executive subject to ratification by the Band Assembly. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of a term, shall be two (2) years.

(2) One (1) position shall be filled by appointment of the Secretary-Treasurer subject to ratification by the Chief Executive. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of the term, shall be two (2) years.

(3) One (1) position shall be filled by the District I Representative subject to ratification by the Chief Executive. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of the term, shall be two (2) years.

(b) Vacancies. A Board seat shall be considered vacant under the following circumstances: (i) if there is a vacancy in the position of Band Commissioner of Natural Resources or Band Historic Preservation Officer, in which case the corresponding Board seat shall be considered vacant; (ii) in the event of the death or resignation of a Trustee; or (iii) if the Board finds that a Trustee is unable or unwilling to serve. If a Board seat is considered vacant, the vacancy shall be filled as follows: (i) by appointment of the Chief Executive and ratified by the Band Assembly, in the case of a vacancy in the position held by the Band's Commissioner of Natural Resources or its Historic Preservation Officer, until such time as a new Commissioner of Natural Resources or Historic Preservation Officer takes office; (ii) by appointment of the Chief Executive, Secretary-Treasurer, and District I Representative subject to ratification as provided in § 3007(a), in the case of a vacancy in the position held by one of the other three initial appointees, until the end of such appointee's term ; and (iii) by appointment of the Chief Executive, Secretary-Treasurer, and District I Representative subject to ratification as provided in § 3007(a), in the case of a vacancy held by one of the other three positions of the Board subsequently appointed, until the end of such member's term.

(c) Meetings.

(1) Association's Annual Membership Meeting. The Association will hold an annual membership meeting, in which officers of the Association shall make a full report of the activities of the Association, including a financial report. The date and time of the meeting will be set by the Board.

(2) Board Meetings. The Board shall hold an annual Board meeting following the Association's annual membership meeting for the appointment of officers of the Association. The Board may establish a schedule for regular Board meetings by resolution setting the date and time for such meetings. Special meetings of the Board may be called by the Board's Chairperson on his or her own initiative or at the request of any two Trustees, to be held at a convenient date and time determined by the person or persons calling the meeting.

(3) Meeting Locations. All meetings of the Association and the Board shall be held in the Band's Government Center or in another Band facility made available to the Association and the Board at no charge.

(4) Notice of Meetings. Notice of the Association's annual membership meeting shall be published at least seven calendar days before the meeting in the Mille Lacs Band newspaper, Government Center and District Community Centers bulletin boards, and upon the Band website. No notice is required for annual or regular Board meetings. Notice of special Board meetings shall be given at least three business days in advance of the meeting by written notice delivered personally or by mail, telefax, electronic mail, or other similar means to each Trustee at his or her business or home address or to an electronic mail address designated by such Trustee in writing. If mailed, the notice shall be deemed to be given three calendar days after being deposited in the United States mail properly addressed with postage prepaid. Notice need not be given to a Trustee who waives notice either before or after the meeting or who participates in the meeting without timely objection as to notice. Notice also need not be given to a meeting resumed after adjournment. Neither the business to be transacted at nor the purpose of any special Board meeting need be specified in the notice or waiver of notice.

(d) Quorum. Except as otherwise provided in this Ordinance, three Trustees shall constitute a quorum for the transaction of business at any meeting of the Board, but if less than a quorum is present, a majority of the Trustees present may adjourn the meeting from time to time without further notice.

(e) Manner of Acting. Except as otherwise provided in this Ordinance, the act of a majority of the Trustees present at a Board meeting at which a quorum is present shall be the act of the Board.

(f) Presumption of Assent. A Trustee present at a Board meeting, who neither casts a vote nor expressly abstains from voting on a Board action taken at the meeting, shall be presumed to have assented to the action unless his or her dissent is

entered in the minutes of the meeting or he or she files a written dissent to the action with the person acting as the Secretary of the meeting before the adjournment thereof or forwards such dissent by certified or registered mail to the Secretary of the Association immediately after the adjournment of the meeting.

(g) Committees. The Board, by affirmative vote of three Trustees, may delegate specific authority possessed by the Board to a committee of at least two Trustees ("Committee"), provided such delegation shall not operate to relieve the Board or any Trustee of any responsibility imposed by this Ordinance or other applicable law.

(h) Telephone Meetings. The Trustees may participate in any meeting of the Board or a Committee by means of a telephone conference call or similar communications system by which all persons participating in the meeting can hear each other, and such participation shall constitute presence at the meeting.

(i) Action without a Meeting. Any Board or Committee action may be taken without a meeting if consent is expressed in writing, setting forth the action taken, and signed by all Trustees or Committee members, as the case may be. Such written consent shall have the effect of a unanimous vote at a meeting.

(j) Compensation. There shall be compensation for service as a member of the Board of Trustees as provided by the Association's By-laws.

(k) Limited liability and indemnification. The Association shall indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding either civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, agent or employee acting on behalf of the Association, or is or was serving at the request of the Association as a director or officer of another enterprise or corporation, against expenses, including attorneys' fees and costs, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, to the extent that such person is not otherwise indemnified. The Association shall not be required to indemnify such director, officer, agent or employee if independent counsel shall determine pursuant to a judicial decision in any such action, suit or proceeding or independently, in case of settlement, that the director, officer, agent or employee has failed to act in good faith and with that degree of diligence, care and skill which ordinary prudent people would exercise under similar circumstances in like positions.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

## § 3008. Officers

The officers of the Association shall consist of a Chairman of the Board, a Vice Chairman of the Board, a Secretary, a Treasurer, and such other officers as the Board may deem necessary or appropriate, all of whom shall be appointed and hold office as follows:

(a) Appointment and Term. Officers shall be appointed by the Board at the annual Board meeting. Unless the Board specifies a shorter term, each Officer shall hold office until the next annual Board meeting and until his or her successor is appointed and assumes office. Any two or more Offices may be held by the same person except Chairman and Vice Chairman or Chairman and Secretary.

(b) Resignation, Removal and Vacancies.

(1) Any Officer may resign by giving written notice to the Association. The resignation shall be effective when given, unless a later effective date is specified in the notice.

(2) The Board may remove any officer with or without cause.

(3) The resignation or removal of an Officer who also serves as a Trustee shall not also terminate that person's status as a Trustee, unless the resignation so states or that person's position on the Board is considered vacant under paragraph 7(b) above.

(4) As provided below, the Chairman and Vice Chairman of the Board must also be Trustees. Accordingly, upon termination of either Officer's status as a Trustee, his or her status as Officer shall also terminate.

(5) If a vacancy occurs in any Office of the Association for any reason, the Board shall appoint a successor to fill the vacancy for the remainder of the unexpired term.

(c) Chairman of the Board. The Chairman of the Board ("Chairman") shall be appointed from among the Trustees and shall preside at all Board meetings and have such other powers and duties as the Board may prescribe.

(d) Vice Chairman of the Board. The Vice Chairman of the Board ("Vice Chairman") shall be appointed from among the Trustees. In case of the absence, disability or death of the Chairman, the Vice Chairman shall exercise and perform all powers and duties of the Chairman. The Vice Chairman shall have such other powers and duties as the Board may prescribe.

(e) Secretary. The Secretary shall:

(1) take minutes of all Board and Committee meetings, and maintain a book thereof at the Band Government Center, reporting the time and place of the meeting, how it was authorized, the notice given, the names of those present at the

meeting, and the actions taken;

(2) keep at the Band Government Center a book containing a copy of this Ordinance and all subsequent actions of the Chief Executive and Band Assembly with respect to the Association and Cemetery;

(3) keep at the Band Government Center copies of any By-Laws adopted by the Board in accordance with this Ordinance;

(4) keep at the Band Government Center annual and quarterly financial statements showing in reasonable detail the Association's assets and liabilities and the results of its operations; and

(5) make the foregoing books and records available at all reasonable times for review and inspection by the Trustees, Chief Executive, Commissioner of Finance, Band Assembly, and their designees.

(f) Treasurer. The Treasurer shall:

(1) supervise and control the maintenance of fiscally responsible accounts for the Association's assets, liabilities, receipts, disbursements, and other financial affairs;

(2) cause the books of these accounts to be open at all reasonable times for review and inspection by the Trustees, Chief Executive, Commissioner of Finance, Band Assembly, and their designees;

(3) prepare or oversee the preparation of annual and quarterly financial statements showing in reasonable detail the Association's assets and liabilities and the results of its operations, and cooperate with the Secretary of the Association in making such statements available in accordance with paragraph 8(3)(iv) above;

(4) deposit all funds and other financial assets of the Association with the Band's Office of Management and Budget;

(5) receive or cause to be received, and give or cause to be given, receipts for moneys paid to or on behalf of the account of the Association;

(6) request the Commissioner of Finance to disburse, or cause to be disbursed, all funds of the Association as may be directed by the Board, taking proper vouchers for such disbursements;

(7) render to the Trustees, whenever they may require, accounts of all transactions engaged in as Treasurer and accounts showing the financial condition of the Association; and

(8) have such other powers and duties as the Board may prescribe.

(g) Other Officers; Delegation. The Board may appoint other Officers as it considers necessary or appropriate. These Officers shall have powers and duties as the Board may prescribe. In case of the unavailability or disability of any Officer, the Board may from time to time temporarily delegate his or her powers or duties to another Officer or Trustee.

(h) Compensation. The Officers shall serve with compensation as provided by the Association's By-laws.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

### **§ 3009. Employees**

(a) Management of Cemetery. Employees of the Band's Community Development Public Works Department ("Public Works") shall oversee the operation of the Cemetery, however, the Board may hire a Cemetery Manager to oversee the operation of the Cemetery in accordance with this Ordinance. The Cemetery Manager may be hired for such term, and on particular terms and conditions, as the Board considers necessary or appropriate to serve the best interests of the Association. Public Works or the Cemetery Manager shall not be a member of the Board. Public Works or the Cemetery Manager shall report to the members of the Association at the Association's annual membership meeting, and shall report to the Board at each regular and special meeting of the Board.

(b) Other Employees. The Board may hire other employees as it considers necessary or appropriate to serve the best interests of the Association, on terms and conditions it considers appropriate.

(c) Right to Terminate. The Board may terminate an employee who is not an employee of Public Works, with or without cause, but the termination shall be without prejudice to the contract rights, if any, of the person so terminated.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

### **§ 3010. Operations**

- (a) Source of Funds. The Association shall have three sources of funds:
- (1) burial fees collected under paragraph 3(c) above;
  - (2) gifts and donations, which shall be tax deductible to the maximum extent permitted by law; and

(3) membership fees collected from non-Band Member Association members under paragraph 4 above.

(b) Deposit and Expenditure of Funds. All funds of the Association shall be deposited with the Office of Management and Budget and maintained in a separate, earmarked account for the Association. The Association, in consultation with the Commissioner of Finance, shall use a portion of its funds to establish a permanent trust fund for the benefit of the Association, which shall also be managed by the Office of Management and Budget and held in a separate, earmarked account for the Association. The Commissioner of Finance will disburse the Association's funds on behalf of the Association when requested to do so in accordance with paragraph 8(g)(vi) above, provided that no funds will be disbursed for any purpose other than the authorized purposes of the Association under this Ordinance. The Association's funds shall not be used or obligated by the Band or any other person or entity for any other purpose.

(c) Authority to Sign or Endorse Written Instruments. All checks, drafts, other orders for the payment of money, notes or other evidence of indebtedness, and securities or other valuable instruments, issued in the name of or payable to the Association, and all written contracts of the Association, shall be signed or endorsed on behalf of the Association by the Officer(s) and employee(s) the Board may designate by written resolution. No Officer or employee of the Association shall have power to bind the Association by contract or otherwise unless authorized to do so by this Ordinance or by the Board.

(d) Fiscal Year. The Board shall determine the fiscal year of the Association.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

### **§ 3011. By-Laws**

The Board may adopt, amend, or repeal by-laws of the Association, provided that the by-laws may not contain provisions inconsistent with the provisions of this Ordinance or applicable law.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016

## § 3012. Regulation of the Cemetery

(a) Upon its acquisition by the Association, the use of the Cemetery shall be subject to the regulations in this section.

(b) The Cemetery shall be open to the public from two hours before sunrise until two hours after sunset, provided that these hours may be modified by the Association. With the exception of officers or employees of the Association, who the Association has authorized to be on the premises during closed hours, it shall be unlawful to be on the premises of the Cemetery except when it is open to the public. It shall also be unlawful to engage in any activities on the premises of the Association other than those normally associated with burials, visitation of grave sites, memorial services, or upkeep and maintenance of the Cemetery. The Association shall post notice of these provisions in a conspicuous place at or near the entrance to the Cemetery. A person who violates a provision of this paragraph shall be guilty of a civil and criminal trespass under Band law.

(c) No person shall open a grave without first obtaining permission from the Association. A person applying for permission to open a grave shall submit an application to the Association at least twenty-four hours before the opening. A person in charge of opening a grave shall be responsible for closing the grave and leaving the gravesite in good condition.

(d) Headstones and other markers must be placed inside gravesites and in accordance with any directives of the Association regarding such placement.

(e) Flowers placed in the Cemetery must be placed in non-breakable containers within a gravesite.

(f) No hedges, fences, walls, curbing, railings, or other similar structures may be placed around a gravesite or elsewhere within the Cemetery without approval in writing from the Association.

(g) Any person who violates any provision in paragraphs c, d, e, or f above shall be guilty of a civil offense, punishable by a civil penalty of not less than \$100 and not more than \$500, and shall be liable to the Association for the costs of removing or relocating any offending item and any damages caused by such item, together with the Association's reasonable attorneys' fees, all as determined by the Mille Lacs Band Court of Central Jurisdiction.

### Historical and Statutory Notes

**Source:** Band Ordinance 41-16

**Code Revision:** The Band Assembly adds Chapter 4 §§ 3001-3012, Band Ordinance 41-16, passed by Band Assembly on July 26, 2016, approved by the Chief Executive on August 31, 2016