

TITLE XXXIII

(38)

**PALEONTOLOGY RESOURCE
CODE**

Ordinance No. 312-07

Standing Rock Sioux Tribal Code of Justice



Resolution No. 053-15

**Approved
February 3, 2015**

BY

Standing Rock Sioux Tribal Council

RESOLUTION NO. 053-15

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[j] and 1[m] is empowered to manage, protect and preserve the property of the Tribe and the wildlife and natural resources of the Standing Rock Reservation and to engage in any business that will further the economic development of the Tribe and its members; and

WHEREAS, the Standing Rock Sioux Tribe established a Paleontology Department in 2007 by approving a Paleontology Code [Title 38]; and

WHEREAS, the **TITLE XXXVIII PALEONTOLOGICAL RESOURCE CODE** was amended as of November 2014 to remove Section 38-602 – Advisory Paleontology Committee, to add Section 38-706 – New Discoveries and make various small changes or corrections;

NOW THEREFORE BE IT RESOLVED, that pursuant to the powers vested in the Standing Rock Sioux Tribal Council under Article IV, Section 1 of the Amended Constitution of the Standing Rock Sioux Tribe, the foregoing **Ordinance No 312-07, TITLE XXXVIII PALEONTOLOGICAL RESOURCE CODE**, be and the same is hereby approved; and

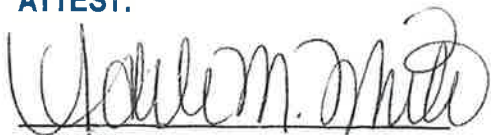
BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of 17 members, of whom 16 constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held on the 03rd day of **FEBRUARY, 2015**, and that the foregoing resolution was duly adopted by the affirmative vote of 14 members, with 0 opposing, and with 2 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

DATED THIS 03rd DAY OF FEBRUARY, 2015.

ATTEST:



Adele M. White, Secretary
Standing Rock Sioux Tribe


Dave Archambault II, Chairman
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

ORDINANCE NO. 312-07

BE IT FURTHER RESOLVED, that **TITLE XXXVIII. PALEONTOLOGICAL RESOURCES CODE** , of the Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby approved.

[ATTACHED PAGES]

TABLE OF CONTENTS

**TITLE XXXVIII
Pages 1-27**

RESOLUTION NO. 725-11

NOW THEREFORE BE IT RESOLVED, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under Article IV, Section 1 of the Amended Constitution of the Standing Rock Sioux Tribe, the foregoing Ordinance No. 318-11, **TITLE XXXVIII PALEONTOLOGICAL RESOURCES CODE**, be and the same is hereby approved; and

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

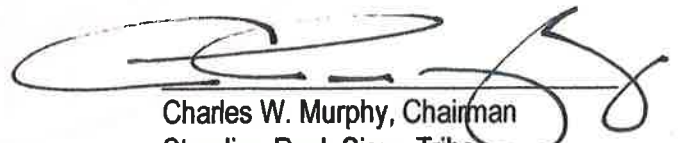
CERTIFICATION

We, the undersigned, Chairman and Secretary of the Tribal Council do hereby certify that the Tribal Council is composed of **[17]** members of whom **17** constituting a quorum, were present at a meeting, thereof, duly and regularly called, noticed, convened and held on the **01st** day of **NOVEMBER, 2011**, and that the foregoing resolution was adopted by the affirmative vote of **9** members, with **6** opposing, and with **2** not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.**

DATED THIS 01st DAY OF NOVEMBER, 2011.

ATTEST:


Adele M White, Secretary
Standing Rock Sioux Tribe


Charles W. Murphy, Chairman
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Meeting Date 11-01-2011
Motion No. 47

RESOLUTION NO. 355-07

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[a], 1[c], 1[h], and 1[j], is authorized to negotiate with Federal, State and local governments and others on behalf of the tribe; is further authorized to promote and protect the health, education and general welfare of the members of the Tribe; and

WHEREAS, paleontological resources have important educational, commercial and cultural values; and

WHEREAS, the Standing Rock Sioux Tribe seeks to protect and develop our paleontological resources for the benefit of the Tribe; and

WHEREAS, there is no federal code specifically governing paleontological resources; and

NOW THEREFORE BE IT RESOLVED, that the Standing Rock Sioux Tribe approves the Paleontological Resource Code for inclusion in the Tribal Code of Justice; and

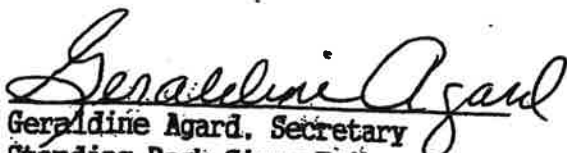
BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.


CERTIFICATION

We, the undersigned, Chairman and Secretary of the Tribal Council do hereby certify that the Tribal Council is composed of [17] members, of whom 13 constituting a quorum, were present at a meeting, thereof, duly and regularly, called, noticed, convened and held on the 2nd day of AUGUST, 2007, and that the foregoing resolution was duly adopted by the affirmative vote of 12 members, with 0 opposing, and with 1 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 2nd DAY OF AUGUST, 2007

ATTEST:


Geraldine Agard, Secretary
Standing Rock Sioux Tribe


Ron His Horse Is Thunder, Chairman
Standing Rock Sioux Tribe

[Official Tribal Seal]

TITLE XXXVIII

PALEONTOLOGICAL RESOURCE CODE

Chapter 1. General Provisions.....page 1

Chapter 2. Definitions.....page 3

Chapter 3. Applicability of the Paleontology Code.....page 7

Chapter 4. Ownership.....page 8

Chapter 5. Responsibilities of the Bureau of Indian Affairs.....page 9

Chapter 6. Tribal Authority and Responsibility.....page 10

Chapter 7. Non-Disclosure/Confidentiality.....page 10

Chapter 8. Notification.....page 12

Chapter 9. Permitting.....page 13

Chapter 10. Land Uses.....page 16

Chapter 11. Land Exchanges.....page 18

Chapter 12. Law Enforcement.....page 18

Chapter 13. Elements of Criminal and Civil Violations.....page 19

Chapter 14. Criminal Violations.....page 19

Chapter 15. Civil Remedies.....page 22

Chapter 16. Severability.....page 24

Chapter 17. Adoption.....page 25

TITLE XXXVIII.

PALEONTOLOGICAL RESOURCE CODE

Chapter 1. General Provisions

38-101. Title.

This Title may be cited as the Paleontological Resource Code.

38-102. Findings.

The Standing Rock Sioux Tribe (hereinafter “Tribe”) finds and declares:

- (a) The United States Congress has not enacted federal legislation providing for the management, preservation, and protection of paleontological resources on federal lands, including land held in trust for federally-recognized Tribes;
- (b) That U.S. Court of Appeals for the Eight Circuit has addressed the federal government’s role and responsibility with regard to the handling of paleontological resources on lands located within the exterior boundaries on an Indian Reservation in the matter of *Black Hills Institute of Geological Research, Inc. v. United States Department of Justice*, 12 F.3d 737, 742 (8th Cir. 1993). Paleontological Resources located on trust lands are held in trust by the federal government for and on behalf of Indians and the Tribe;
- (c) In order to protect paleontological resources located within the exterior boundaries of the Standing Rock Sioux Indian Reservation, it is necessary to enact this Ordinance to protect the paleontological resources located on the Reservation.
- (d) Pursuant to the Constitution of the Standing Rock Sioux Tribe, Article IV, Sections: (a) . . . “to advise and consult with the representatives of all governmental agencies on all activities which may affect the Standing Rock Sioux Tribe”; (c) “To promote and protect the health, education and general welfare of the members of the Tribe. . .”; (h) “to authorize and direct subordinate boards, committees or tribal officials, to administer the affairs of the Tribe and to carry out the directives of the Tribal Council”; (j) “ to manage, protect and preserve the property of the Tribe”;

and, (n) “to tax and regulate the activities of all persons on the Reservation as permitted by law . . .”

- (e) Significant paleontological resources have been located within the Standing Rock Sioux Indian Reservation;
- (f) Paleontological resources have scientific, economic, recreational, and cultural value;
- (g) Paleontological resources are an important tribal asset that must be managed and developed for the short and long term benefit of the Tribe;
- (h) Paleontological resources are non-renewable resources that, when damaged, stolen, lost, or eroded, are irreplaceable;
- (i) Paleontological resources are increasingly endangered because of their commercial value.

38-103. Purpose.

The purposes of this Code are:

- (a) To secure for the present and future benefit of the Tribe and its members, the protection and development of paleontological resources that are within the exterior boundaries of the Standing Rock Indian Reservation;
- (b) To delineate the authority of the Tribe regarding paleontological resources occurring within the exterior boundaries of the Standing Rock Indian Reservation;
- (c) To provide tribally-controlled laws, policies and procedures for the management of paleontological resources;
- (d) To provide a law or policy for coordinating with the Bureau of Indian Affairs on paleontological resources occurring within the exterior boundaries of the Standing Rock Indian Reservation;
- (e) To create Tribal statutes in addition to existing state and federal statutes for civilly prosecuting whoever damages or steals Tribal paleontological resources or trespasses on Tribal paleontological sites.
- (f) To specify the law enforcement authority who will investigate, detain individuals, seize property used in violation of Tribal law, arrest and/or exclude and remove from the reservation[†] of whoever damages or steals Tribal paleontological resources or who trespasses on paleontological sites.
- (g) To create a Tribally Chartered non-profit Institute of Natural History;

- (h) To authorize the establishment of a museum, field camp(s), fossil laboratory, fossil inventory and the associated administrative office shall be known as the Paleontology Department.

38-104. Management Objectives.

The management objectives of this Code are to:

- (a) Create the Tribal Paleontology Department for managing Tribal paleontological resources and create the Standing Rock Sioux Tribe Institute of Natural History (SRST INH) for the purpose of preserving and promoting Tribal paleontological resources;
- (b) Locate, evaluate, and protect paleontological resources within the exterior boundaries of the reservation;
- (c) Facilitate the appropriate scientific, educational, and developmental uses of the Tribe's paleontological resources;
- (d) Ensure that proposed land uses do not inadvertently damage or destroy important paleontological resources;
- (e) Foster public awareness and appreciation of the Tribe's paleontological resources;
- (f) Specify the authorities within the Tribal government responsible for implementing and enforcing the Paleontology Resource Code;
- (g) Provide civil penalties in addition to or instead of criminal prosecution for whoever steals or damages a paleontological resource or trespasses on a paleontological site.
- (h) Establish a museum, field camp(s), fossil laboratory, fossil inventory and associated administrative office.

Chapter 2. Definitions

38-201. Paleontological Resource.

- (a) A "paleontological resource" ("fossil" or "fossil resource") is defined as the organic and/or mineral remains of an extinct species or extinct species, including traces or imprints of said organisms, which have been preserved by natural processes within geologic contexts. Geologic context includes both the primary, bedrock context of a paleontological resource and secondary contexts arising from erosion of fossil resources from primary

contexts. The following are not considered to be fossils and are exempted from this Code:

- (1) Organic remains such as coal, oil or gas that are primarily used as fuel;
 - (2) All human remains; and
 - (3) All organic remains occurring in archaeological contexts.
- (b) A “vertebrate paleontological resource” is defined as type of paleontological resource deriving from an organism with skeletal elements that included vertebra.
- (c) A “paleontological resource site” is defined as a location with paleontological resources. The boundary of such site shall be determined by:
- (1) The presence of paleontological resources as evidenced by specimens found in surface exposures; and
 - (2) A buffer zone surrounding exposed remains sufficient to provide protection for exposed resources.

The boundary of a paleontological resource site may be revised as new or more refined data becomes available.

38-202. Excavate.

The term "excavation" means to expose by digging, blasting, drilling, prying, hammering, or other subsurface disturbance of the natural position of material at a paleontological resource site.

38-203. Accredited Paleontologist.

“Accredited Paleontologist” means an individual with:

- (a) Formal education resulting in at least a masters degree from an accredited institution in paleontology, or geology, anthropology, biology, botany, or zoology if the major emphasis is in paleontology; or
- (b) Equivalent paleontological training and experience including at least twenty-four (24) months under the guidance of a professional paleontologist who meets qualification (a), providing increased professional responsibility duties similar to those in qualification (a); and

- (c) Demonstrated experience in collecting, analyzing, and reporting paleontological data; and
- (d) Demonstrated experience in planning, equipping, staffing, organizing, supervising crews performing paleontological surface collections or excavations; and
- (e) Demonstrated experience in carrying paleontological projects to completion or publication of theses, research reports, scientific papers, or similar documents.

38-204. Land.

“Fossils” and relationship to the “Land,” “Land” and various types of land are defined as follows:

- (a) Fossils are “an ‘ingredient’ comprising part of the ‘solid material of the earth.’” That is, fossils are “a component part of the land, just like the soil, the rocks, and whatever other naturally-occurring materials make up the earth.” *Black Hills Institute of Geological Research, Inc. v. United States Department of Justice*, 12 F.3d 737, 742 (8th Cir. 1993);
- (b) Land is defined as “that which is or includes the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.” *Reynard v. City of Caldwell*, 55 Idaho 342, 42 P.2d 292, 296 (Idaho 1935);

38-205. Tribal Lands.

The term “Tribal Lands” shall mean all those lands owned by the Standing Rock Sioux Tribe. Tribal Land owned by the Tribe includes Tribal Trust Land, Tribal Fee Land and allotted land in which the Tribe has a beneficial ownership interest. Tribal lands also includes those lands held by a Tribally Chartered Corporation created pursuant to Tribal law or an Indian Corporation chartered under section 17 of the Act of June 18, 1934, and includes:

- (c) “Tribal land, trust land, Indian land” means the surface estate of land or any interest held by the U.S. in trust for the Tribe or land reserved for BIA administrative purposes when it is not immediately needed for such purposes.
- (d) “Tribal fee land” (“Deeded land”) is land purchased under the name of the Standing Rock Sioux Tribe and not in trust status;

- (e) “Allotted land” is land held in trust by the United States for an individual tribal member or members, which may include the Tribe.
- (f) “Fractionated interest” is the percentage beneficial interest held by an individual tribal member or the Tribe in a tract of allotted land.
- (g) “Deeded land” (“fee land”) is land within the exterior bounds of the Standing Rock Indian Reservation, title to which is held by an individual, the Tribe or a non-federal or state entity.
- (h) Case law [*Black Hills Institute of Geological Research, et al. v. United States Department of Justice*, 12 F.3d 737, 741 (8th Cir. 1993)] has determined that a paleontological resource is an interest in the land within the meaning of land in the Indian Reorganization Act § 4, 25 U.S.C.A. § 483, 25 CFR § 166.4.

38-206. Non-Tribal Land.

The term “Non-tribal land” means all other lands located within the exterior boundaries of the Standing Rock Sioux Indian Reservation that are not Tribal Lands. Non-tribal land is land located within the exterior boundaries of the Standing Rock Sioux Indian Reservation which the Tribe has no beneficial interest or ownership interest. These lands may include fee land or trust land owned by non-Indians, Indians, tribal members and others.

38-207. Standing Rock Sioux Indian Reservation.

For the purpose of this Code, the exterior boundaries of the Standing Rock Indian Reservation are those defined by the Act of March 2, 1889, § 3, 25 Stat. 888.

38-208. Person.

The term "persons" means an individual, corporation, partnership, trust, institution, association, or any other private entity, public entity or an officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

38-209. Indian.

For the purpose of this Code, an “Indian” shall be deemed to be

- (a) any individual of Indian descent who is a member of any recognized Indian Tribe now under Federal jurisdiction; and
- (b) any governmental entity of the Standing Rock Sioux Tribe.

38-210. Trust Land.

The term "Trust Land" includes all land located within the exterior boundaries of the Standing Rock Sioux Indian wherein the U.S. holds in trust status for the benefit of the Tribe or individual Indian.

Chapter 3. Applicability of the Paleontology Code

38-301. Applicability of the Notice of Intent Provision.

Since the collection or excavation of a paleontological resource or access to a paleontological resource may require a determination of whether the site to be collected or excavated is Tribal Land, a Notice of Intent, as specified in Chapter 8 of this Code must be filed with the Paleontology Department prior to access, collection or excavation. The Notice of Intent shall be on a form prescribed by the Paleontology Department. The Notice of Intent shall apply to the following lands:

- (a) All allotted or trust land in which the Tribe holds a fractionated interest;
- (b) All deeded or land owned in fee-simple that is Tribal Land and
- (c) All federally-owned land not held in trust.

38-302. Applicability to Tribal Land

All provisions of this Code including Permitting (Chapter 9), Law Enforcement (Chapter 12), and Criminal and Civil prosecution (Chapters 13 and 14) shall apply to Tribal Lands.

The owners of Non-Tribal land can petition the Tribe to have the provisions of this Ordinance apply to their land. The petition shall be on a Form prescribed by the Tribal Paleontology Department and must include a legal description of the land and the tract number.

Chapter 4. Ownership

38-401. Ownership.

- (a) The Tribe is the sole beneficial owner of all paleontological resources located on Tribal land.
- (b) The Tribe has a beneficial interest in paleontological resources proportional to the Tribe's fractionated interest on allotted land.

38-402. Loss of Trust Status.

- (a) Once legally severed from trust land, the trust status of a paleontological resource is terminated. "Legally severed" means that:
 - (1) The Bureau of Indian Affairs has approved by permit the removal of the fossil resource from the geologic context; and
 - (2) Where the land is Tribal trust land, land in which the tribe holds a fractionated interest, or Tribal fee land, the Tribe has approved by permit the removal of the fossil resource from the geologic context.
- (b) Paleontological resources that are removed from Tribal land or trust lands without BIA or Tribal approval retain their trust status.
- (c) Because fossils by case law are legally considered to be part of the land (see 38-501) and because issuing of Tribal and BIA permits allows a fossil to be removed from trust status, the Tribe has a right of first refusal when there is an application to terminate the trust status of an interest in the land [American Indian Probate Reform Act of 2004 (PL 108-656) Section 217(f)], the BIA must:
 - (1) Notify the Tribe in advance of issuing a paleontology permit on trust land within the exterior boundaries of the Standing Rock Indian Reservation; and
 - (2) If the Tribe indicates that the right of first refusal may or will be exercised, the BIA shall develop procedures that allow the Tribe to exercise this right.

Chapter 5. Responsibilities of the Bureau of Indian Affairs

38-501. Responsibilities of the Bureau of Indian Affairs.

The authority and responsibility of the Bureau of Indian Affairs (BIA) to manage paleontological resources on trust land within the Standing Rock Indian Reservation is established by case law [*Black Hills Institute of Geological Research, et al. v. United States Department of Justice*, 12 F.3d 737, 741 (8th Cir. 1993)]. The court held that fossils on trust land are an interest in the land and as such the beneficial owner of land must secure prior approval of Secretary of Interior in order to sell or otherwise alienate the resource [Indian Reorganization Act § 4, 25 U.S.C.A. § 464. and 25 U.S.C. A. § 483]. Paleontological resources on trust lands are trust resources.

As trustee of Indian lands and the paleontological resources that are an interest in that land it is the responsibility of the BIA to:

- (a) Determine ownership of trust lands including any paleontological resources on those lands; and
- (b) Review all transactions, conveyances, or contracts involving paleontological resources on trust lands; and
- (c) Evaluate the potential for the presence or absence of fossils on trust lands involved in land sales or trades; and
- (d) Determine whether fossils on trust land have significant monetary value that will affect land value; and
- (e) Provide reasonable protection from theft or man-caused destruction of paleontological resources on trust land; and
- (f) Provide law enforcement services in the event of theft or intentional destruction of fossils on trust lands; and
- (g) Provide the Tribe the opportunity to exercise its right of first refusal when there is an application to terminate the trust status of a paleontological resource (see 38-402).

38-502. BIA-Tribal Coordination.

The Tribe shall implement this Code in concert with the trust responsibilities of the Bureau of Indian Affairs.

Chapter 6. Tribal Authority and Responsibility

38-601. Tribal Paleontology Department.

The Paleontology Department will be responsible for the management and development of the Tribe's paleontology resources. The authority of the Tribal Paleontology Department supersedes and replaces that granted to the THPO in Title XXXII of the Tribe's Code of Justice. The Paleontology Department shall consist of an Accredited Paleontologist as defined in Section 38-203 and such administrative staff or personnel as deemed necessary for the continued operations of the Department.

38-603. Administrative Responsibility of the Tribal Paleontology Department

The Tribal Paleontology Department shall exercise the following administrative functions:

- (a) Maintain permanent records of paleontological resources on the Standing Rock Indian Reservation including site forms and reports, permits, and signed confidentiality forms; and
- (b) Shall store paleontology records in a secure, locked facility; and
- (c) Issue permits to institutions, organizations, or individuals;
- (d) Monitor the Tribe's paleontological sites; and
- (e) Monitor excavations of paleontological sites; and
- (f) Coordinate with federal and Tribal law enforcement on events affecting paleontological resources; and
- (g) Coordinate with the BIA on routine matters concerning administration of paleontological resources; and
- (h) Solicit guidance from professional paleontologist(s) as needed.

Final signatory authority for paleontology permits shall be with the Tribal Chairman.

Chapter 7. Non-Disclosure/Confidentiality

38-701. Confidentiality of Information about Paleontological Resources.

The Tribal Paleontology Department is hereby authorized to withhold information concerning the nature and location of all paleontological resources occurring on Tribal Lands within the exterior boundaries of the Standing Rock Indian Reservation from the

public if the Tribal Paleontology Department or the Tribal Council determines that such disclosure would:

- (a) Create an unreasonable risk of harm, theft, or destruction of the resource or object; or
- (b) Cause a significant invasion of privacy; or
- (c) Endanger any cultural resource, traditional cultural property, burial, or sacred site.

38-702. Disclosure of Sites on Allotted Land.

The Tribal Paleontology Department is not authorized to disclose other than to the BIA, the location of any paleontological resources on Tribal Land unless a majority of the allotment owners have approved the disclosure.

38-703. Release of Confidential Information.

In general, information about specific locations will be divulged to individuals, institutions, or agencies only if:

- (a) The individual, institution, or agency is responsible for the protection, management, or excavation of paleontological resources; and
- (b) The individual, institution, or agency has signed a confidentiality statement; and
- (c) Disclosure is authorized in writing by the Tribal Paleontology Department.

To obtain permission to access the paleontology site records, the individual, institution or agency shall submit a written request to the Tribal Paleontology Department and the Tribal Paleontology Department makes a determination that disclosure will not adversely affect the interests of the Tribe.

38-704. Confidentially Form.

All individuals, institutions or agencies must sign a confidentiality form before being giving access to paleontology files on a Form prescribed by the Tribal Paleontology Department. When an institution or agency is involved the lead investigator or federal line office must sign the form.

38-705. Publication of Confidential Information.

Publication of specific site locations, including publication in theses, is prohibited if such publication would create an unreasonable risk of harm, theft, or destruction of the resource.

To obtain permission to publish information about paleontological resources, the individual, institution or agency shall submit a written request to the Tribal Paleontology Department on a Form prescribed by the Tribal Paleontology Department.

38-706. New Discoveries.

In the event that a significant paleontological discovery is made on Tribal lands, the paleontology department shall use discretion in providing location information until such time that the new fossil discovery can be kept in a secure location.

The paleontology director will provide the Tribal Council with various options regarding the options and disposition of the new fossil discovery with a preferred recommendation. The recommendation shall be based on but not limited to the following criteria; scientific value; monetary value; intrinsic value, potential business opportunities and partnerships; media; and other revenue generating options. Based on information provided, the Tribal Council will decide upon the best strategy to manage the new fossil discovery.

Chapter 8. Notification

38-801. Notice of Intent to Excavate or Collect.

Any person collecting, excavating fossils or seeking access to paleontological resources within the exterior boundaries of the Standing Rock Indian Reservation on Tribal lands shall provide the following information to the Tribal Paleontology Department:

- (a) The person(s) responsible for the collection or excavation.
- (b) The date(s) on which the collection or excavation will occur.
- (c) The legal location of the land on which the collection or excavation will occur.
- (d) The access route that will be used to reach the collection or excavation location.

The Tribal Paleontology Department must verify the above information, including field verification. The purpose of such verification is to determine whether Tribal Lands are involved.

Chapter 9. Permitting

38-901. Permitting.

The Tribal Paleontology Department is responsible for issuing permits to any person or persons conducting any type of paleontological investigation on Tribal Land within the exterior bounds of the Standing Rock Indian Reservation.

- (a) To be valid the permit must be signed by the authorized representative of the Tribal Paleontology Department and on a Form prescribed by the Tribal Paleontology Department.
- (b) All persons must have a valid paleontological resource permit prior to engaging in any fieldwork. In addition, the individual or entity seeking to obtain a permit must provide to the Tribal Paleontology Department verification of credentials of the individual or entity seeking to obtain a permit. Permits will only be issued to individuals or entities who meets the definition of an Accredited Paleontologist as defined in this Code. Any person engaging in searching for, surveying, collecting, or excavating a paleontological resource without a valid permit is subject to prosecution under relevant Tribal, State and/or Federal laws.
- (c) Applications for a permit should be sent to the Tribal Paleontology Department, P.O. Box D, Fort Yates, ND 58538.

38-902. Permit Examination.

Personnel of the Tribal Paleontology Department, the THPO, any officer of the Standing Rock Sioux Fish and Wildlife Conservation Department or any other designated officer of the Standing Rock Sioux Tribe may at any time examine the permit(s) of any persons(s) claiming privileges referred to in this Code that are authorized and regulated pursuant to this Code.

38-903. General Permit Conditions

The following general conditions apply to all permits.

- (a) All permits require a legal description including the tract or allotment number for which the permit is issued.
- (b) The location of each collected and/or excavated fossil must be recorded and the information permanently stored with the paleontology department.
- (c) On Tribal trust and fee land all collected and/or excavated fossils remain the property of the Tribe unless there is a written contract specifying other disposition.
- (d) On allotted land the Tribe retains ownership proportional to the Tribe's fractionated interest of all collected and/or excavated fossils unless there is a written contract specifying other disposition.
- (e) If specified in the permit, the permittee may retain temporary possession of the fossils for purposes of scientific study for the duration specified on the permit.
- (f) When the permittee retains temporary possession, the fossils must be curated in a repository approved by the Tribe.
- (g) The permittee shall reclaim all land disturbed by collection or excavation.
- (h) The permittee must sign a confidentiality statement.
- (i) Possession of a permit entitles the permittee to cross Tribal trust land but does not entitle the permittee to cross allotted land in which there is not a Tribal fractionated interest without the consent of allottees or the BIA acting on behalf of the allottees.
- (j) Paleontological resources may be covered by sediment containing cultural resources or may occur in locations with human burials, Traditional Cultural Properties (TCPs), or sacred sites. The THPO office shall determine whether cultural resources, burials, TCPs, or sacred sites are present. In general, paleontological collection will not be allowed in locations with intact, subsurface deposits of cultural resources, with burials, with TCPs, or with sacred sites.

38-904. Survey and Limited Collection Permit.

The permit will be issued to expedite broad ranging survey or reconnaissance work needed to identify fossil localities for scientific research, inventory, or economic development. Limited collection is allowed under this permit when:

- (a) A fossil is in danger of being lost through erosion or is in danger of being looted, or;
- (b) A fossil sample is needed to aid in the identification of the type of fossil(s) present in the location; and,
- (c) No more than one square meter (1 m²) of surface will be disturbed when a fossil is removed.
- (d) Removal does not endanger fossils in a subsurface context.

38-905. Plant and/or Invertebrate Fossil Permit.

This permit will be issued to persons requesting permission to collect plant fossils or invertebrate fossils. This permit will not be issued when the plant/invertebrate fossils occur in a location with vertebrate fossil remains. The Tribe reserves the right to place other restrictions on permits pertaining to localities that have exceptional scientific or commercial value.

38-906. Vertebrate Fossil Permit.

A vertebrate fossil permit will be issued to persons requesting permission to collect vertebrate fossils only if:

- (a) An accredited paleontologist submits the application and directs the fieldwork;
- (b) The permittee has entered into a contractual agreement with the Tribe and/or allottee stipulating the final disposition of collected remains;
- (c) The permit application must have a scope of work that specifies:
 - (1) A legal description of the location of the excavation;

- (2) The planned duration of the excavation with beginning and ending dates; and
- (3) A schedule for preparing the fossils once they are removed from the field; and
- (4) The facility in which the fossils will be housed during preparation and study; and
- (5) The time needed to scientifically study the collected specimens.

38-907. Revocation of a Permit.

- (a) The Tribal Paleontology Department may revoke a permit if the permittee has:
 - (1) Failed to begin work authorized under the permit, without good cause; or
 - (2) Failed to diligently prosecute work authorized under the permit; without good cause; or
 - (3) Failed to comply with tribal law or any condition of the permit.
 - (4) Failed to comply with policies and procedures of the Paleontology Department.
- (b) The revocation notice to the permittee must state the reason for the revocation.
- (c) The revocation notice must be sent by certified mail with return receipt requested.
- (d) Upon receipt of the notice, the permittee has ten (10) days to respond or provide adequate documentation to comply with the permit.

Chapter 10. Land Uses

38-1001. Survey Requirements.

Many types of construction projects involve subsurface impacts that could adversely impact paleontological resources. As part of the cultural resource inventories conducted by the THPO, the THPO shall add the following information to the inventory report:

- (a) The presence or absence of bedrock surface exposures in the project's area of potential effect.
- (b) If bedrock is exposed, the presence or absence of fossils.

- (c) If fossils are present, whether they are plant, invertebrate, or vertebrate.
- (d) A recommendation as to whether the project will damage scientifically or commercially valuable fossils.

In addition to the cultural resources inventory, the Tribal Paleontology Department shall be contacted by the THPO in order to conduct a Paleontological Resource Inventory.

38-1002. Presence of Plant and/or Invertebrate Fossils.

Generally plant and invertebrate fossils do not have to be avoided by land development projects. However, there may be situations where an evaluation by an accredited paleontologist is needed. If there appears to be an exceptional situation, the Tribal Paleontology Department shall require that an investigation by an accredited paleontologist be conducted. All costs for this investigation will be borne by the contractor.

38-1003. Presence of Vertebrate Fossils.

If vertebrate fossils are present in a project's area of disturbance, these finds must be assessed by an accredited paleontologist to determine their significance and commercial value. Vertebrate fossils that are scientifically significant or have a value exceeding \$100 must either be avoided by the project or professionally removed prior to construction. All costs incurred in removing fossil remains are to be borne by the contractor.

38-1004. Inadvertent Discoveries.

This section supersedes Code of Justice, § 32-1501. When remains of vertebrate fossils are uncovered during a construction project, work must stop in the immediate vicinity of the fossil find, steps must be taken to protect the discovery, and the Tribal Paleontology Department immediately contacted. The Tribal Paleontology Department shall consult with an accredited paleontologist to determine what steps need to be taken to secure and recover the fossil find.

Chapter 11. Land Exchanges

38-1101. Prohibited Exchanges.

Upon the recommendation of the Tribal Paleontology Department the Tribal Council may prohibit the exchange of any tribal tract containing paleontological resources and may prohibit any exchange involving tracts of land with bedrock exposures of strata known to contain significant paleontological resources. The latter include but are not limited to the Hell Creek Formation. The BIA shall be notified in writing of such prohibitions.

Chapter 12. Law Enforcement

38-1201. Detention Authority.

Any Tribal law enforcement officer or any designated enforcement officer of the Standing Rock Sioux Fish and Wildlife Conservation Department may detain without warrant any person when there is “probable cause” that the person has trespassed on a paleontological resource site or has damaged or stolen a paleontological resources in violation of this Code.

38-1202. Search of Vehicles, Receptacles, and Other Containers.

Any designated enforcement officer of the Standing Rock Sioux Fish and Wildlife Conservation Department, Tribal law enforcement officer, or other specifically authorized law enforcement officer may, because of the high likelihood of damage to fossils as well as the potential loss of evanescent evidence, conduct warrantless searches based upon “probable cause” of any conveyance, vehicle, receptacle, container or other similar device which he/she has reason to believe contains evidence of violations of this Code.

38-1203. Confiscation of Paleontological Resources Illegally Obtained.

Any designated enforcement officer of the Standing Rock Sioux Fish and Wildlife Conservation Department or any other law enforcement officer of the Standing Rock Sioux Tribe is hereby authorized to seize any and all paleontological resources when there is “probable cause” that the resource was illegally obtained or that may now be

illegally in the possession of any person. The Tribal Court, upon a showing of probable cause, shall issue a warrant authorizing the seizure of any paleontological resource obtained in a manner contrary to this Code

38-1204. Seizure of Vehicles, Receptacles, and other Property.

Any Tribal Conservation Officer, Game Warden, Agency or Tribal Law Enforcement Officer, or other specifically authorized law enforcement officer is hereby authorized to seize with or without search warrant issued by the Tribal Court based upon probable cause, any property, articles, items, or materials which he/she has reason to believe was utilized or held with an intent to use in a manner contrary to this Code. The Tribal Court, upon showing of probable cause, shall issue an *in-rem*² warrant authorizing seizure any property, articles, items, or materials used or held with intent to use in a manner contrary to this Code.

Chapter 13. Elements of Criminal and Civil Violations

38-1301. Elements.

A person may be prosecuted in a court of competent jurisdiction in criminal and/or civil proceedings if the violation includes the following elements:

- (a) It involves a paleontological resource or paleontological resource site; and
- (b) The violation occurs on Tribal Land or Non-Tribal Land within the exterior boundaries of the Standing Rock Indian Reservation; and
- (c) The violation involves an act prohibited by this Code; and
- (d) The person acted without valid permits or failure to file Notification of Intent from the Standing Rock Sioux Tribe and/or the BIA; and
- (e) The person who committed the violation acted knowingly.

Chapter 14. Criminal Violations

38-1401. Prohibited Acts.

- (a) No person shall remove, damage or excavate any paleontological resources on Tribal Land, without a permit issued by the Tribal Paleontology Department or

- (b) Trespass on a paleontological resource site on Tribal Land within the exterior bounds of the Standing Rock Indian Reservation without:

Authorization in the form of a valid permit issued by the Standing Rock Sioux Tribe pursuant to the requirements of this Code; and

- (1) a permit issued by the Bureau of Indian Affairs.

- (c) Violation of this Section shall be considered a Class B misdemeanor.

38-1402. Applicable Statutes.

Whoever removes, damages, or excavates paleontology resources or trespasses on a paleontological resource site located on trust land or Tribal fee land without authorization in the form of a valid permit or permits may be prosecuted and/or sued for damages under one or more of the following laws in a court of competent jurisdiction.

- (a) Tribal Laws: Whoever removes or damages paleontology resources on trust land without authorization in the form of valid permit or permits may be prosecuted and/or sued for damages under one or more of the following tribal laws:
 - (1) Any Indian who removes by theft a paleontological resource located on trust land or Tribally-owned fee land located within the exterior boundaries of the Standing Rock Indian Reservation may be prosecuted in Tribal Court under §4-604 (Theft) of the Tribe's Code of Justice.
 - (2) Any Indian person who intentionally or recklessly damages a paleontological resource located on trust land or Tribally-owned fee land located within the exterior boundaries of the Standing Rock Indian Reservation without a valid permit or permits may be prosecuted in Tribal Court under §4-606 (Criminal Mischief) of the Tribe's Code of Justice.
 - (3) Any Indian person who knowingly trespasses on a paleontological resource site located on trust land or Tribally-owned fee land located within the exterior boundaries of the Standing Rock Indian Reservation without valid permit or permits may be prosecuted in Tribal Court under §4-603 (Criminal Trespass) of the Standing Rock Sioux Tribe's Code of Justice.
 - (4) Any person who commits the tort of conversion by removing a paleontological resource located on trust land or Tribally-owned fee land

located within the exterior boundaries of the Standing Rock Indian Reservation may be sued for actual and punitive damages, attorneys fees and court costs;

(5) Any person who negligently or recklessly damages a paleontological resource located on trust land or Tribally-owned fee land located within the exterior boundaries of the Standing Rock Indian Reservation without a valid permit or permits may be sued for actual and punitive damages, attorneys fees and court costs; and

(6) Any person who knowingly trespasses on a paleontological resource site located on trust land or Tribally-owned fee land located within the exterior boundaries of the Standing Rock Indian Reservation without valid permit or permits may be sued for actual and punitive damages, attorneys' fees and court costs.

(b) Federal Statutes. Whoever removes or damages paleontology resources on trust land without authorization in the form of valid permit or permits may be prosecuted by the United States under one or more (the list is not exhaustive) of the following federal statutes:

(1) 18 U.S.C.A § 641, Theft of Government Property (felony prosecution if the value of the property exceeds \$1000).

(2) 18 U.S.C.A § 1163, Embezzlement and Theft from Indian Tribal Organizations (felony prosecution if the value of the property exceeds \$1000).

(3) 18 U.S.C.A § 1361, Destruction of Government Property (felony prosecution if the damage exceeds \$1000).

(c) Federal and State Statutes Applicable to Tribal Fee Land. Whoever removes or damages paleontology resources on Tribal fee land without authorization in the form of a permit may be prosecuted under one of the following federal and state statutes:

(1) 18 U.S.C.A § 1163, Embezzlement and Theft from Indian Tribal Organizations (felony prosecution if the value of the property exceeds \$1000).

(2) North Dakota Century Code Title 12.1-23.02, Theft of Property.

- (3) South Dakota Codified Laws 22-30A-1, Theft, or 22-30A-17, Grand Theft, if the value of the property exceeds \$1000.

Chapter 15. Civil Remedies

38-1501. Trespass on Paleontology Sites.

Whoever knowing that he or she is not permitted or privileged to do so

- (a) enters or remains in a paleontological resource site where notice against trespass is given by:
 - (1) actual communication to the defendant; or
 - (2) posting in a manner reasonably likely to come to the attention of intruders; or
 - (3) fencing or other enclosure manifestly designed to exclude intruders; or
- (b) intentionally allows livestock to occupy or graze a fenced paleontology site

is guilty of trespass.

The Tribal Court shall have the power and jurisdiction in a civil proceeding to hold liable any individual trespassing on a paleontology resource site without a valid permit. Whoever is found liable of trespass shall be subject to forfeiture of property as specified in 38-1403 of this Code, may be sued for actual and punitive damages, attorneys' fees and court costs, or may be excluded from Tribal lands, if they are non-members of the Tribe.

38-1502. Liability.

Any person removing, appropriating, excavating, injuring, disturbing, harming or destroying any paleontological resource on trust or fee lands subject to Tribal jurisdiction within the exterior bounds of the Standing Rock Indian Reservation or damages trust land in any of the aforementioned activities without authorization in the form of a valid permit(s) is subject to a civil proceeding in Tribal Court. Whoever is found liable by a preponderance of the evidence, of removing, appropriating, excavating, injuring, disturbing, harming or destroying any paleontological resource on trust land within the exterior bounds of the Standing Rock Indian Reservation or damaging trust land while engaged in any of the aforementioned activities without authorization in the form of a valid permit(s) or failure to file a Notice of Intent shall be fined by the Court in an amount commensurate with the value of the paleontological resource and/or the damage to the property from which the resource was obtained. In addition, where appropriate, the

Court may impose punitive damages and attorney fees and Court costs as deemed appropriate by the Court.

38-1503. Forfeiture of Property.

The Tribal Court shall have the power and jurisdiction to file a civil action against any property, articles, items, or materials proven in any court of law to have been unlawfully obtained, used or held in violation of the Standing Rock Code of Justice.

In case it appears upon the sworn affidavit of the officer making the seizure that any articles seized were not in the possession of any person, and that the owner thereof is unknown, the Tribal Court shall have the power and jurisdiction to forfeit such articles so seized upon a hearing duly held after service of summons describing the articles seized, upon the unknown owner by publication in any newspaper of general circulation in Corson and Sioux Counties. The summons shall run two consecutive weeks and shall give the owner fifteen (15) days from the date of the legal publication to appear before the court and contest the forfeiture.

Any property, articles, items, or materials seized under the provisions of this Code unless forfeited by order of the Court, shall be returned to the owner where the owner has been identified to the satisfaction of the Court, after completion of the case, and the fines and damages, if any, have been paid.

Any property, articles, items, or materials seized under the provisions of this Code that have been forfeited by order of the Court shall become the property of the Standing Rock Sioux Tribe.

38-1504. Grazing Permits.

The holder of a grazing permit on a range unit on Tribal or Non-Tribal Land is specifically prohibited from removing, damaging or excavating any paleontological resource occurring within the bounds of that unit or allowing any other person to do so. If the permittee observes that the grazing unit has been used for any unlawful purpose in violation of this Code, the permittee shall immediately report this violation to the BIA and to the Tribal Paleontology Department.

A grazing permit can be cancelled by the BIA pursuant to the procedures in 25 CFR §§ 166.703 through 166.707 if:

- (a) The permittee has used, caused, or allowed to be used any part of the grazing unit for prohibited acts as defined in 38-1401 of this Code; or
- (b) The permittee has failed to report violations of this Code to the BIA.

In any action filed in the Tribal Court for a violation of this Code, the privilege of grazing on Tribal Land may be restricted, revoked or limited.

38-1505. Agricultural Leases.

The holder of an agricultural lease is specifically prohibited from removing, damaging or excavating any paleontological resource occurring within the bounds of the leased area or allowing any other person to do so. If the holder of a lease observes that the leased area has been used for any unlawful purpose in violation of this Code, the permittee shall immediately report this violation to the BIA and to the Tribe.

An agricultural lease can be cancelled by the BIA pursuant to the procedures in 25 CFR §§ 162.250 through 162.256 if:

- (a) The lessee has used, caused, or allowed to be used any part of the leased area for prohibited acts as defined in 38-1401 of this Code; or
- (b) The lessee as failed to report violations of this Code that occurred on the leased area to the BIA.

Chapter 16. Severability

38-1601. Severability.

If any section or provision of this Code is held to be invalid, the remaining sections or provisions of this Code shall remain in full force and effect.

38-1602. Repeal of Inconsistent Ordinances.

All prior inconsistent ordinances or codes or portions thereof relating to paleontological resources, specifically sections of Title IX and Title XXXII are hereby repealed when this Code is approved and adopted by the Tribal Council.

Chapter 17. Adoption

38-1701. Adoption.

The Paleontological Resource Code shall be adopted when approved by resolution by the Standing Rock Sioux Tribal Council. The approval resolution shall be attached hereto.

