



**RESOLUTION OF THE GOVERNING BODY OF THE  
THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD INDIAN RESERVATION**

*A Resolution Entitled: "The Adoption of the Three Affiliated Tribes Cemeteries Code, approved and codified as Title VIII, Chapter 16."*

**WHEREAS,** The Mandan Hidatsa and Arikara Nation, also known as the Three Affiliated Tribes ("MHA Nation" or "Tribes"), having accepted the Indian Reorganization Act of June 18, 1934, the authority under said Act, and having adopted a Constitution and By-laws (the Constitution) under said Act, and

**WHEREAS,** Pursuant to Article III, Section 1 of the Constitution, the Tribal Business Council is the governing body of the MHA Nation; and

**WHEREAS,** The Constitution authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the MHA Nation and of the enrolled members thereof; and

**WHEREAS,** Pursuant to Article VI, Section 5(1) of the Constitution, the Tribal Business Council has the power to adopt Resolutions regulating the procedures of the Tribal Business Council, its agencies, and officials; and

**WHEREAS,** The Tribes have identified a need for enacting a Cemeteries Code ("Code"), to manage and maintain existing cemeteries, expand cemeteries, and to create new cemeteries on the Reservation; and

**WHEREAS,** The Tribes' purpose in enacting the Code is to ensure orderly burial and maintenance of cemeteries, as well as ensuring protection and preservation of all cemeteries within the boundaries of the Fort Berthold Indian Reservation; and

**WHEREAS,** The scope of this Code includes, but is not limited to, the establishment of standards for protection and preservation of cemeteries on the Reservation, planning the location and development of expansions and new cemeteries, and the maintenance of a Computerized Management Information System with regard to the cemeteries; and

**WHEREAS,** The proposed Code has gone through all necessary readings and public comment period as required by Tribal law; and

**WHEREAS,** Based on review and discussion of the proposed Cemetery Code, it is the considered decision of the Tribal Business Council that such Code is necessary and shall be approved and adopted in the best interests of the Tribes and the enrolled members thereof.

**NOW, THEREFORE, BE IT RESOLVED,** that the Tribal Business Council of the Three Affiliated Tribes hereby approves the attached Cemeteries Code, which shall be

**CEMETERIES CODE**

**THREE AFFILIATED TRIBES  
OF THE  
FORT BERTHOLD INDIAN RESERVATION**

**TITLE 8, CHAPTER 16**

Enacted on October 12, 2022, Resolution 22-234-FWF

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## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **SECTION 8-16-1.01. TITLE**

This Code shall be known as the “Cemeteries Code of the Three Affiliated Tribes of the Fort Berthold Indian Reservation.” The Three Affiliated Tribes is also known as the Mandan, Hidatsa, and Arikara Nation.

### **SECTION 8-16-1.02. DECLARATION OF NEED**

On June 28, 1876, the Arikara, Mandan, and Hidatsa Tribes provided to the American Board of Foreign Missions the land they needed for their buildings and cemeteries and the Tribes also granted a request to use their influence and authority to protect the board and their missionaries in their endeavors. The churches and families developed many cemeteries on the Fort Berthold Reservation until 1952, when the Garrison Dam forced the relocation of all the graves that were located within the flood plain of the dam. This resulted in ten church and eight family reinterment cemeteries on the Reservation.

The Mandan, Hidatsa, and Arikara Tribal Council declares that there is a need to ensure orderly burial and maintenance of cemeteries within the boundaries of the Reservation. Uncontrolled and unplanned use of land and property for cemeteries may threaten the fundamental basis and purpose of the creation of the Reservation. The Tribal Council also declares that there is a need to develop a computerized management system to help Tribal members locate their ancestors and to ensure that all cemeteries are properly managed, preserved, and protected. This Code defines the policies and procedures to manage and maintain existing cemeteries, expand cemeteries, and to create new cemeteries on the Reservation.

### **SECTION 8-16-1.03. PURPOSE**

The purpose of this Code is to protect and preserve all cemeteries on the Reservation. Further, it is the intent of this Code to set forth the administrative procedures, regulations, standards and protocols for the planning and construction of new cemeteries and the enlargement of existing cemeteries, and to ensure that all standards set forth in Tribal codes are met to protect the public health, safety and welfare of the residents of the Reservation. The main focus of this Code is to promote orderly development of cemeteries, while being sensitive to the sacred cultural values and traditions of the Tribes.

### **SECTION 8-16-1.04. SEVERABILITY**

If any provision, part or parts of this Code or the application thereof to any person or circumstance is held unconstitutional or invalid, the same shall not affect the validity of the remaining portions of this Code.

### **SECTION 8-16-1.05. SCOPE OF THE CODE**

The scope of this Code includes but is not limited to: (1) the establishment of standards for the protection and preservation of TAT-managed and non-TAT managed cemeteries on the Reservation; (2) the location and development of expansions to such cemeteries; (3) the location and development of new cemeteries on the Reservation; and (4) support a department within the Tribes that will provide and manage a computerized Management Information System with regard to cemeteries. It is also intended that this Code address the needs and requirements for compliance with such federal acts as: the Antiquities Act of 1906, the National Historic Preservation Act, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, and other applicable acts.

## SECTION 8-16-1.06. DEFINITIONS

- A. The following definitions are applicable to all parts of this Code. Words defined in this Code include the following meanings; words used in the present tense include the future; and the word “shall” is mandatory and not discretionary.
1. “Access” means the right to cross between public and private property allowing pedestrians and vehicles to enter and leave property.
  2. “Allotment” means, for purposes of this Code, an individual parcel of land which is or was held in trust by the United States Government for either an individual Indian or the Tribal government (also known as Tribal tracts).
  3. “BIA” means the U.S. Department of Interior Bureau of Indian Affairs.
  4. “Botanist” means any person employed by the TAT or BIA to identify and protect native plants on the Reservation.
  5. “Cemetery” or “Cemeteries” means any place, dedicated or not, used, or intended to be used, for the permanent interment of human remains.
  6. “Cemetery Director” or “Director” is the person employed by the TAT who supervises the Cemetery Restoration Department, and acts as the authority to manage the on-Reservation cemeteries, coordinate cemetery needs, and assist Tribal members, and is the official Sexton in regards to applicable regulations.
  7. “Cemeteries Management Team” means a team of Tribal employees and others delegated by the Chief Executive Officer (CEO) of the TAT to work on issues of cemetery management and protection.
  8. “Cemetery Records” means public and vital record documents of a decedent. These records may include copies or originals of: Death Certificates, Birth Certificates, Obituaries, news articles, Final Disposition Authorization Form, IGSS, and others.
  9. “Cemetery Restoration Department” or “CR” means the Tribal department that provides, among other things, grave opening and closing, cemetery maintenance, fencing, and marker placement for TAT- managed cemeteries.
  10. “Cemetery Trust Funds” means the definition given in Section 8-16-2.04 of this Code.
  11. “Conditional Use” means a land use described at Section 8-16-3.02 permitted or denied at the discretion of the Cemetery Director.
  12. “Cremation” is the act of reducing the remains of a deceased individual to ashes or “cremains” through burning the body.
  13. “Enrollment Office” means the office of the Three Affiliated Tribes of the Fort Berthold Indian Reservation which maintains the Tribal Membership Rolls.
  14. “Final Disposition Authorization” means the form routinely used to permit burials and filed with state vital statistics departments.
  15. “Funeral Assistance Benefits” means the assistance provided by the Tribe to Tribal members with funeral expenses and costs, supplies, planning, grave markers, etc.
  16. “Funeral Service Provider” is any business, group or individual that provides a service for a funeral. The term does not include cooks, servers, singers, drummers, speakers, clergy, pallbearers, and musicians.

17. “Funerary Objects” means any item that has been placed intentionally at the time of death, or later, with or near the individual human remains as part of the death rite or ceremony of a culture.
18. “Geographic Information Systems” or “GIS” means the Tribal department or the office within a Tribal department tasked with providing services such as maps, geoprocessing, analysis, parcel fabrication, GPS field work, UAV, geocoding, buffer, stake locations, building inspections, data querying, developing apps, droning, and graphs using the latest GIS equipment and software. It may provide available services to and assists all Tribal departments and segment offices with regard to irrigation projects, farm and pasture leasing, ranges, home-sites, missing individuals on the Reservation, cemetery locations, housing development, identification of cultural sites, 911 addresses, and countless other Tribal projects.
19. “Human remains” or “remains” mean the body of a deceased person in any stage of decomposition or after cremation.
- 20.. “Individual Grave Marker Survey Sheet” or “IGSS” means a form that is filled out during survey of a cemetery that describes the condition of a memorial stone or grave marker, and the condition of the grave.
21. “Interment” or “burial” means the disposition of human remains by cremation, inurnment, entombment, or burial beneath the ground.
22. “Land Acquisition Program” means the Tribal program within the Natural Resources Department or other designated Department that purchases land for the Three Affiliated Tribes for Tribal interests.
23. “Native Plant Nursery” means any TAT program or enterprise that grows and sells native plants.
24. “Natural Resources Committee” or “NRC” means the Committee authorized to implement elements of the Land Use Plan and Code, and to recommend changes in planning policies, procedures, laws or statutes to the Tribal Council.
25. “Non-member” means anyone who is not an enrolled member of the Three Affiliated Tribes of the Fort Berthold Indian Reservation.
26. “North Dakota Department of Human Services Center for Health Statistics” means the North Dakota State department charged with receiving, maintaining, and archiving vital records.
27. “On-reservation” means lands within the exterior boundaries of the Fort Berthold Indian Reservation, which is subject to the jurisdiction of the Three Affiliated Tribes.
28. “Owner” means the owner of the title to real property or the beneficial owner of trust land or the registered owner as shown on the Deed located in the county clerk’s records. It does not mean an interest created for security purposes.
29. “Parking area” means a durable, permanently surfaced and marked area, excluding paved areas necessary for access, for the parking of a motor vehicle.
30. “Reservation” means the Fort Berthold Indian Reservation.
31. “Road” or “Street” means a public or private way created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land, excluding a private way created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.
32. “Sexton” means the person employed as the Cemeteries Director and authorized to sign

the Final Disposition Authorization prior to interment of a body in an on-Reservation cemetery.

33. "Three Affiliated Tribes of the Fort Berthold Indian Reservation", "Tribes", or "TAT" means the government of the Fort Berthold Indian Reservation established pursuant to the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Indian Reservation.
34. "Tribal Council" means the elected body which constitutes the governing body of the Three Affiliated Tribes of the Fort Berthold Indian Reservation.
35. "Tribal Historic Preservation Office" or "THPO" means the Tribal office with responsibility for compliance with the National Historic Preservation Act on the Reservation. It manages the Tribal program that protects, manages, and preserves the Tribe's archaeological and cultural resources.
36. "Tribal Member" means an individual enrolled as a member of the TAT.
37. "Tribal Planning and Grants Office" means the Tribal office responsible for, among other things, researching grant opportunities for the Tribe and communicating such opportunities to potentially interested Tribal programs/departments/entities.
38. "Tribal Veterans Service Office" means the Tribal office responsible for oversight of services to Tribal veterans.
39. "Tribe" or "Tribes" or "Tribal" means the Three Affiliated Tribes of the Fort Berthold Indian Reservation, a federally recognized Indian tribe, also known as the Mandan, Hidatsa, Arikara Nation.

## **SUBCHAPTER 2. CEMETERY OPERATIONS**

### **SECTION 8-16-2.01. TAT MANAGED CEMETERIES**

- A. The TAT manages several cemeteries within the boundaries of the Fort Berthold Reservation. All services provided by the TAT are subject to the resources available to the TAT. The TAT intends to expand these cemeteries to provide space for future Tribal member interments and intends to provide a computerized management system that maintains appropriate forms to simplify the application process for funeral services, mapping and inventory of the cemeteries, digging graves, performing maintenance services for the cemeteries, plans for future expansion and other services. The TAT will also be working with the BIA and allotment owners to acquire the land for expansions and to provide legal access to other cemeteries on allotments in the near future.
- B. The TAT allows the interment of TAT members and their immediate families in TAT-managed cemeteries. Immediate family includes children, parents, grandparents, grandchildren, siblings, spouses, uncles and aunts, great uncles and aunts, nieces and nephews, great nieces and nephews, and first cousins. Children and grandchildren include children of blood, legally adopted children, or children who were raised within the home of a TAT member. Spouses consist of legally married couples, including couples married pursuant to Title V, Chapter 5 of the Family Law Code (concerning traditional, common-law and licensed marriages, and unmarried, domestic partners).

### **SECTION 8-16-2.02. CEMETERY DIRECTOR**

- A. The Cemetery Director is employed by the TAT to supervise the Cemetery Restoration Department and:
  1. Administers and enforces this Code and other Tribal and applicable federal laws and related policies and procedures for cemeteries on the Fort Berthold Reservation;

2. May assist Tribal members with limited funeral and burial arrangements consistent with Tribal Policies and Procedures related to funerals and burials;
  3. Acts as the Tribal Sexton to sign and accept the Final Disposition Authorization for all remains to be interred within the boundaries of the Reservation, forwarding a copy of the signed Final Disposition Authorization to the Tribal Enrollment Office and the North Dakota Department of Human Services Center for Health Statistics within 10 days, and maintains a copy of such document on file at the Director's office;
  4. Maintains, archives, and updates all Reservation cemetery records for Tribal members and non-members interred on-Reservation, and TAT cemetery plat maps;
  5. Ensures that the cemetery records and maps comply with all applicable public records and privacy laws;
  6. Assists in identifying a suitable location for new interments within TAT-managed cemeteries;
  7. Assists Tribal members and the general public in locating relatives and others buried in cemeteries within the Reservation;
  8. Assists the Tribal Veterans' Services Director in locating the graves of U.S. veterans in cemeteries within the Reservation, and directs families of veterans to the Tribal Veterans' Services Office;
  9. Seeks funding for TAT cemetery operations, maintenance and improvements;
  10. Schedules for cemetery maintenance and needs, and identifies training opportunities for cemetery maintenance employees and volunteers;
  11. Maintains a list of religious contacts for funerals, grief counseling, cemetery access, and other public requests;
  12. Maintains and promotes the Cemetery Trust Fund;
  13. Provides free temporary markers to Tribal members;
  14. Conducts activities in line with the role as Cemetery Director in conjunction with the aforementioned duties mentioned above.
- B. The Director is not responsible for funeral arrangements. These are the sole responsibility of the family or other responsible parties. The Director will assist the Cemetery Restoration Department in identifying a suitable location for a new interment in a TAT-managed cemetery. The family must choose an alternate interment site when a problem is encountered with their primary selected site. When a placement decision is made, the Director will begin an IGSS, assign a number to the plot and burial, and will notify CR of the family's decision. The Director will coordinate marking the intended plot space with CR.
- C. Cemetery Restoration Department will monitor all ground disturbances and notify the Director if a problem occurs with the plot. If any cultural feature is found during grave digging, all construction will stop at that location, the Director will be notified, and a decision will be made between CR and the Director as to where and when to begin digging again. The Director will notify the THPO of the cultural feature and that plot will be noted on the cemetery map. If the feature is an unmarked grave the Director will mark it with a temporary marker and assign an IGSS file and number.

### SECTION 2.03. CEMETERY RESTORATION DEPARTMENT

The Cemetery Restoration Department shall maintain TAT-managed cemeteries, provide grave



opening and closing, marker placement, weed eradication, fencing operations, rodent control, tree maintenance, and other duties. CR also monitors the opening of new graves to ensure that cultural or archaeological resources are not disturbed. If any cultural or archaeological resources are found during grave opening, CR shall halt all ground disturbance and notify the Director. The Director will notify the THPO. If this area is to be left undisturbed, an alternate site, chosen by the family of the decedent and marked by the Director, will be opened.

#### SECTION 8-16-2.04. CEMETERY TRUST FUND

Since the TAT does not charge for cemetery care and maintenance, interments, marker placement, etc., the Director may set-up, promote and manage a charitable fund for these duties with the assistance of the Tribal Finance Department. Funds may be received as gifts, donations, and other contributions.

#### SECTION 8-16-2.05. CEMETERY PROTECTION, SURVEYS AND RESEARCH

- A. No one, except the THPO, may conduct surveys or research at TAT cemeteries, for any purpose besides family history, without a written permit from the Director and approval from the Cemetery Restoration Department; however, the ultimate authority for this purpose is the Tribal Council.
- B. The Director may, from time to time, issue written regulations regarding the management and care of cemeteries. Any such written rules must be consistent with this Code and cannot amend or contradict the terms of this Code. Any such written rules must also be reviewed and approved by the CR before going into effect. The Director may use signage at the cemeteries informing visitors of whom to contact with concerns or of specific rules but only after approval by the CR.

#### SECTION 8-16-2.06. ROADS AND MOTORIZED VEHICLES

- A. Entry into TAT managed cemeteries will be through gated areas only. Fence cutting or breaching, or vandalism at any Tribal cemetery will be considered destruction of Tribal or Federal property, as applicable, and may be prosecuted to the full extent of the law. Vehicle parking is available adjacent to the cemeteries and along roads within some cemeteries. Vehicles must remain on roads and designated parking areas unless otherwise permitted by the Director for cemetery maintenance or burial purposes.
- B. No person may drive a motorized vehicle off-road within cemetery boundaries without prior authorization by the Cemetery Director. No person shall drive a vehicle at a speed greater than ten miles per hour within a cemetery boundary. All drivers will use caution and restrict any excessive noise while in a cemetery.

#### SECTION 8-16-2.07. LIVESTOCK

With the exception of horse processions for funeral services, livestock (i.e., horses, cattle, sheep, etc.) are not permitted in TAT-managed cemeteries. Animals are not permitted to be buried within TAT-managed cemeteries, unless authorized by the CR. For the purpose of adhering to cultural practices, horses associated with a funeral may be buried in an adjoining plot if it was the desire of the decedent.

#### SECTION 8-16-2.08. INTERMENTS

The TAT recognizes and respects the individual's desire, or the family's desire as the case may be, to determine how the individual will be interred. Consequently, the TAT will not restrict the way a decedent is buried on the Reservation in the following ways: No restriction will be placed on whether or not a decedent is cremated, embalmed, confined in a coffin or container, or whether a liner will be required for a grave. No memorial stone or marker is required in a TAT-owned cemetery, nor is there a restriction on what type of memorial stone to use. Temporary markers are available free to Tribal members by contacting the Cemetery Restoration Department.

## SECTION 8-16-2.09. DISINTERMENTS

- A. If interred remains or cremains are to be exhumed for the purpose of removal as a result of dissolution of the cemetery, movement to another cemetery for reburial, official investigation by law enforcement or authorized officials, or other reasons, a disinterment permit and a written plan for disinterment must be filed at the Director's Office by the person with the right to control such disposition, and the Director shall notify the THPO and CR. All Letters of Authority, including state administrative letters, and non-TAT Tribal court orders shall not be enforced without a valid order from the TAT Tribal Court recognizing such foreign orders/letters.
- B. The right to control the disposition of a decedent's remains shall be by an individual of sound mind who is 18 years of age or older in accordance with the following priorities below:
1. the named individual indicated by the decedent, in a written statement notarized by a notary public in good standing in the State of ND, prior to death;
  2. the legal spouse of the decedent at the time of death;
  3. the oldest natural or legally adopted son or daughter of the decedent 18 years of age or older, then the next oldest, etc.;
  4. either natural or legally adopted parent of the decedent;
  5. the oldest natural or legally adopted brother or sister of the decedent 18 years of age or older, then the next oldest, etc.;
  6. a legal guardian of the decedent at the time of death;
  7. a person in the next degree of kindred to the decedent;
  8. the personal representative of the estate of the decedent;
  9. the person nominated as the personal representative of the decedent in the decedent's last will or Power of Attorney;
  10. a public health officer with proper legal authority.
- C. If the applicant seeks disinterment without a valid court order, the Director and the applicant will meet with the CR to discuss the disinterment. Non-court, non-foreign ordered disinterment permits, disinterment plans, and any notarized letters or forms of authority shall be submitted by the Director to the CR for approval. Upon approval or as the result of a valid Tribal court order, the Director will assist the applicant in implementation of any disinterment plans. Upon disinterment of the remains or cremains, the Director or licensed Funeral Service Provider will check the I.D. tag, and file a change of location in the records of the decedent and with the North Dakota Department of Human Services Center for Health Statistics within 10 days of reinterment.
- D. The TAT does not fund disinterment of remains or cremains. All costs involved in filing the disinterment permit, exhuming, transport, and reinterment of the remains or cremains shall be the responsibility of the individual or entity with the right to control disposition and who has requested the disinterment.

## SECTION 8-16-2.10. CREMATIONS AND CREMAINS

- A. Cremated human remains or cremains are a sanitary natural substance. However, many Tribal members oppose cremation and cremains because of cultural standards regarding the practice of burning a body. The TAT recognizes the desire of an individual and that person's family to do what they feel is right for them. All cremains on the Reservation may be buried or scattered

in a plot within a TAT-managed, religious organization-owned, or private family cemetery. It is up to the wishes of the family and/or decedent whether the cremated remains will be interred within a vessel or grave liner, or with a tule mat, buckskin, blanket, or other wrapping.

- B. Prior to disposition in a cemetery or elsewhere on the Reservation, the Director must be presented with the cremation I.D. tag and shall make a notation in the cemetery file or on a Reservation map showing the location where the decedent's remains will be interred or scattered. A plot in a TAT-owned cemetery may be divided to include more than one set of cremains. Tribal members may have access to the map showing where cremains have been interred or scattered in order to avoid such areas when engaged in traditional, subsistence or cultural activities.

#### SECTION 8-16-2.11. DISPOSITION OF INFANT REMAINS

Infant remains deserve the same respect as any other decedent remains on the Fort Berthold Indian Reservation. The family or legal guardian of the infant may inter these remains within a plot in a TAT-owned cemetery as long as the infant qualifies under the guidelines of eligibility in Section 8-16-2.01. All other rules and policies in this Code apply also to infant remains. A plot within a TAT-owned cemetery may be divided to include infant remains.

#### SECTION 8-16-2.12. FENCING AND WEED ERADICATION

- A. The Director will work with the Cemetery Restoration Department on prioritizing fencing needs for all cemeteries. If needed, the CR will request additional funds for cemetery maintenance from the Tribal Council.
- B. The Director will work with any available Tribal botanists, any existing TAT native plant nursery, CR and others to identify native plants that may be used to provide cover for the cemeteries and require minimal water or maintenance. A planting plan and budget for the project will be submitted to the Tribal Council. Grant funds may be solicited to fund the project.
- C. The Director shall develop annual plans for weed eradication and cemetery maintenance subject to approval by Natural Resources Committee and CR, and further approval and funding by the Tribal Council.

#### SECTION 8-16-2.13. MARKER PLACEMENT AND REPAIR

The Director will identify and prioritize markers that are in need of repair, replacement, or cleaning. All marker repair and resetting will first be approved by the family of the deceased, if family members are known and available. Marker cleaning will be conducted annually, approximately on May 1<sup>st</sup>. Workshops to learn marker repair, cleaning and resetting may be arranged through the TAT, and the cost for this training and supplies may be funded through TAT grants or other avenues.

### **SUBCHAPTER 3. ESTABLISHMENT AND EXPANSION OF CEMETERIES**

#### SECTION 8-16-3.01. ZONING

Cemeteries within the external boundaries of the Reservation are permitted in several zones, subject to the requirements of the Tribe's Land Use Plan and Code.

#### SECTION 8-16-3.02. CONDITIONAL USE PERMIT

- A. Development of any new cemetery, expansion of an existing cemetery or conversion of

cemeteries listed in Section 8-16-3.03 on the Reservation must have a Conditional Use Permit issued through the Cemetery Director and shall meet certain requirements listed in the Land Use Plan and Code. A map of the cemetery, the names and burial information for any people known to be buried in the cemetery, and a copy of any other cemetery information will be housed with the Director.

- B. All new cemeteries, expansion of existing cemeteries and conversion of cemeteries, listed in Section 8-16-3.03 below, are subject to the approval of the Director, THPO, NRC, and CR.
- C. The Director, with the input of the CR, may adopt regulations that are consistent with the language of this Code, the Land Use Plan and Code, and other applicable laws, to govern the maintenance of private cemeteries with the intent to protect the health, safety and welfare of Reservation residents.

#### SECTION 8-16-3.03. TYPES OF CEMETERIES

- A. There are currently twenty-one known public cemeteries and several family cemeteries within the exterior boundaries of the Fort Berthold Indian Reservation, the Old Scouts Cemetery, repatriated graves, and other yet unknown burial sites. The cemeteries fall under different ownership categories and type:
  - 1. Owned and managed by a religious organization (10);
  - 2. Private or family-owned (exact number unknown);
  - 3. Tribally-owned repatriated or archaeological;
  - 4. Tribally-owned Old Scouts Cemetery.
- B. Church Cemeteries. Currently, ten cemeteries within the Reservation are owned by religious organizations. These cemeteries are historic and in need of expansion. The religious organizations have full responsibility over any interment within their cemeteries. The TAT will assist as requested in the maintenance and management of these cemeteries.
- C. Private and Family-Owned Cemeteries. There are several cemeteries located on private land allotments. It is the responsibility of the owners of the cemeteries to fence and maintain their cemeteries. Even though these are family-owned and privately managed cemeteries, further expansion or additions to the cemeteries must comply with the provisions of this Code and all other applicable Codes and regulations of the TAT. If the owners are unable to care for their cemetery or require assistance to obtain access, such owners may petition the TAT to include their cemeteries as TAT-managed.
  - 1. Once land is dedicated as a cemetery, it remains sacred and unusable for any other purpose to future owners of the property. Cemetery placement and burials must comply with this Code and other applicable Tribal laws and regulations and be respectful of Tribal cultural norms and values with regard to interment of bodies near homes and waterways.
  - 2. Property upon which existing family cemeteries are located are subject to the following with regard to sales: All real estate contracts must disclose and identify any cemeteries existing within the confines of the property. No one may sell cemetery lots or plots within a private or family cemetery on the Reservation.
- D. Unrecorded or Archaeological Matters. The TAT manages a cemetery for the repatriated burials. Other burials may be inadvertently found during ground-disturbance or natural erosion. If burials are inadvertently uncovered within the boundaries of the Reservation, Section 6 of the *Policy and Procedures Manual for the Repatriation of Ancestral Human Remains and Funerary Objects*, as amended or superseded, will apply. The minimum required procedures of all inadvertent discoveries of ancestral remains and funerary

objects are as follows:

1. All ground-disturbing activity is to be halted in the immediate area.
2. All in-situ human remains and/or burials must be reported immediately to the Tribal Historic Preservation Office and the Fort Berthold Tribal Police Department.
3. No parts of human remains and/or funerary objects or artifacts shall be handled, removed, collected or photographed without direct supervision and approval of the THPO, or as otherwise authorized in writing by the Cultural Resources Committee or the Tribal Council.

#### **SUBCHAPTER 4. MANAGEMENT OF CEMETERIES**

##### **SECTION 8-16-4.01. CEMETERIES MANAGEMENT TEAM**

In order to accommodate current levels of burial activity and facilitate future growth and access, the TAT CEO may appoint a Cemeteries Management Team to address issues that arise for the cemeteries under TAT management. This team shall consist of Tribal employees from various Tribal programs and departments, including, but not limited to, Tribal Historic Preservation Office, Planning and Grants Office, Land Acquisition Program, Enrollment Office, Cemetery Restoration Department, an ex-officio member from the Realty Department of the Bureau of Indian Affairs, and any interested volunteer Tribal members, who will meet on an annual basis, or as otherwise needed, to address and resolve issues concerning cemeteries managed by the TAT and others. The Director will work with this team. The Director and/or Cemeteries Management Team shall seek funding for its tasks through the Tribe or the Bureau of Indian Affairs as well as through grant proposals and other appropriate available means.

##### **SECTION 8-16-4.02. CEMETERY MAINTENANCE AND EXPANSION**

- A. All cemeteries on the Reservation require care, maintenance, expansion, documentation, and similar attention. This Code sets forth responsibilities as follows, subject to available Tribal resources:
  1. The Director shall identify and establish the boundaries of all the TAT-managed cemeteries to ensure they are correct;
  2. The Director shall identify and record all existing graves, markers, and features within the cemeteries and create a searchable database of this information;
  3. The Director, with the assistance of the THPO, shall seek to identify through oral histories the location of unknown and unmarked graves;
  4. The Director, with the assistance of the Cemetery Restoration Department and Geographic Information Systems (GIS), shall survey and map open spaces in each cemetery through ground penetrating radar and record any anomalies identified;
  5. The Director and CR shall plot open grave areas for future use;
  6. The Director, with the assistance of the Tribe's Land Acquisition Program, shall negotiate with land owners for the purpose of access road construction and, with the assistance of CR, construct access roads to and within cemeteries;
  7. The Director, with the assistance of the Tribe's Land Acquisition Program, shall plan for and purchase land for future interments;
  8. CR shall maintain and construct fences;

9. CR shall clean, repair, and reset headstones and markers;
10. The Director and CR shall develop maintenance schedules for each cemetery, at least biannually;
11. CR shall eradicate weeds and landscape with native plants.

#### SECTION 8-16-4.03. MAPPING EXTERIOR BOUNDARIES

- A. The Director shall identify the exterior boundaries of all TAT-managed cemeteries through appropriate research, pedestrian surveys and the use of a global positioning system (GPS) or GPS receivers. The Director may use a professional land surveyor. The Director shall record the boundaries and the recordation shall be kept within the Cemetery Restoration Department. CR may move existing cemetery fences to better match the legal location as determined by GPS and surveys.
- B. The Director, where practical, may use ground penetrating radar to ascertain if any disturbed ground exists outside of the current fence lines, with such information added to the cemetery map and given a number corresponding to the cemetery or grave on the IGSS (if known).
- C. Geographic Information Systems (GIS) will create a map for each cemetery using the GPS and radar information to include recorded burials with their identification numbers, open areas for plotting new graves, roads and parking areas. GIS shall provide copies of the maps to the Director and the Tribe's Public Works Department.

#### SECTION 8-16-4.04. MAPPING AND RECORDING BURIALS

- A. The Director shall record the graves at each cemetery through visual identification and recording and match with any prior cemetery surveys.
- B. The Director shall create an IGSS for each grave and take digital photographs of each grave marker face and any permanent grave feature, such as a fence or sculpture. The Director shall give each grave a unique identification number that includes lot or row and space. Graves that are unmarked or have lost their temporary identification information may have a temporary marker installed if the family wishes to have one installed.
- C. The Director shall place the IGSS information into a database or spreadsheet for use by Tribal Enrollment, and CR. All such information may only be used by family members of the decedents, and the TAT.
- D. The Director may use mortuary information to help identify unmarked graves or graves with damaged or unreadable markers, as well as information gained from discussions with Tribal elders and family members. The Director shall give unidentified graves a number and create an IGSS file for each one.
- E. As funding allows, the Director may provide more permanent markers for graves with temporary markers, or with badly worn or incomplete identification due to the weathering or destruction of temporary markers.

#### SECTION 8-16-4.05. PLOTTING NEW GRAVES

- A. Open areas will first be examined with ground penetrating radar to reduce the potential of impacting buried cultural items, relics, artifacts and the like. They will then be plotted on the map as open areas for burial, or for grave access.
- B. Access areas will be designated for roadways, causeways, parking and cul-de-sacs, and maintenance. These will be identified as such on the cemetery map, and no interments will be placed there.

#### SECTION 8-16-4.06. PLANNING CEMETERY ACCESS AND EXPANSION

- A. The Cemetery Restoration Department and TAT Roads Department shall develop a plan for automobile accessibility to each TAT-managed cemetery. Because of the rural aspect to some of the cemeteries, there may still be difficulty with accessibility due to weather and road conditions. The TAT will attempt to facilitate access to TAT-managed cemeteries for families whenever possible.
- B. Planning for vehicular access to cemeteries and expansion areas of TAT-managed cemeteries will be conducted by the Director upon consultation with the owners of the cemeteries, the Tribal Department of Transportation, and other interested entities.

### **SUBCHAPTER 5. DISPUTES**

#### SECTION 8-16-5.01. MEDIATION

All disputes with the Cemetery Director over matters not covered by Section 8-16-5.02 of this Chapter, and under the Director's control or direction, may be referred to the CEO for mediation by the CEO or one or more of her/his designees for this purpose. Such mediation shall be in good faith and shall be completed as quickly as possible, as circumstances merit, and not more than thirty (30) days after the submission of a written complaint/claim to the CEO.

#### SECTION 8-16-5.02. APPEALS

All appeals of final administrative decisions made by the Cemetery Director or the Chief Executive Officer, regarding the issuance of permits, formal adoption of plans, regulations or rules, made or adopted pursuant to this Code, may be referred to the Tribal Council for resolution.

#### SECTION 8-16-5.03. SOVEREIGN IMMUNITY

Nothing in this Code shall be interpreted as waiving the sovereign immunity of the TAT or its officials, officers, or employees.



codified as Title VIII, Chapter 16 of the Tribal Code of the Three Affiliated Tribes, to be effective immediately as provided by Tribal Law.

**BE IT FINALLY RESOLVED**, that the Chairman is hereby authorized to execute such documents and take such further actions as are necessary to carry out the terms and intent of this Resolution.

**CERTIFICATION**

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 12<sup>th</sup> day of October, 2022, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 1 member not voting, and that said Resolution has not been rescinded or amended in any way.

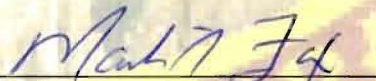
Chairman  Voting.  Not Voting.

Dated this 12<sup>th</sup> day of October, 2022.

**ATTEST:**



Executive Secretary Fred Fox  
Tribal Business Council  
Three Affiliated Tribes



Tribal Chairman, Mark N. Fox  
Tribal Business Council  
Three Affiliated Tribes