

STATE LAND UTILIZATION CODE

Bay Mills Indian Community

- 1.01 **Purpose.** This Code is enacted to implement the Inland Consent Decree entered by the United States District Court for the Western District of Michigan on November 2, 2007, in *United States v. Michigan*, Case No. 2:73 CV 26, as it applies to treaty-reserved hunting, trapping, fishing and gathering activities applicable to State-owned lands located in the 1836 Treaty Ceded Territory.
- 1.02 **Relationship to Conservation Code and other Tribal Ordinances.**
- a. This Code is not intended to repeal or replace any provision of the Tribe's Conservation Code. This Code is intended to supplement the Conservation Code for the purpose of authorizing or governing the exercise of treaty-reserved wild plant gathering rights applicable to State-owned lands. It is not intended to apply to the exercise of any other treaty-reserved usufructuary right that is authorized or governed by the Conservation Code.
- b. This Code is not intended to repeal or replace any provisions of the Tribe's Off-Reservation National Forest Gathering Code, which continues to exclusively apply to the exercise of treaty-reserved wild plant gathering rights on National Forest land, pursuant to the Memorandum of Understanding with the U.S. Forest Service executed on October 27, 1998, as it has from time to time been thereafter amended.
- c. Unless otherwise specifically indicated in this Code, it is the intent of this Code that the provisions of the Conservation Code that generally govern the conduct of tribal members exercising treaty rights applicable to the Ceded Territory shall apply to tribal members exercising treaty-reserved off-reservation gathering rights on State-owned land.
- 1.03 **Severability and Non-Liability.** If any section, provision or portion of this Code is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Code shall not be affected thereby. The Tribe further asserts immunity on its part and that of its agencies, employees and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this Code.
- 2.01 **Definitions.** Except for the specific terms defined in this section, terms in this Code shall have the same definitions as provided in the Conservation Code of the Bay Mills Indian Community. The following terms, wherever used in this Code, shall be construed as follows:
- a. "Gather" or "Gathering" means to take or acquire or attempt to

take or acquire possession of any wild plant or part thereof.

b. "Wild Plant" means any undomesticated species, or part thereof, of the plant and fungi kingdoms occurring in the natural ecosystem, but, for the purposes of this Code, excludes wild rice.

3.01 Gathering Regulated; General Requirements.

a. Identification card; general permit. No member shall gather any wild plant on State-owned land without possessing a valid harvesting permit. Unless specified otherwise in this ordinance, the member's picture tribal identification card shall constitute the required permit.

b. Use of plant material. No member may use for commercial purposes plants or other natural resources gathered on State-owned land except as specifically authorized by this ordinance.

c. Mineral extraction prohibited. No member may excavate or mine sand, gravel or other minerals on State-owned land unless such activity is conducted in conformity with applicable Michigan law.

d. Threatened and endangered species harvest prohibited. No member may gather, collect, or be in possession of parts obtained from State-owned land of any threatened or endangered species, except that a member may harvest a plant listed as threatened or endangered for personal use for medicinal, ceremonial or subsistence purposes unless prohibited by federal law.

3.02 Harvest Monitoring and Reporting. No member to whom any permit has been issued under this ordinance shall fail or refuse to provide harvest information when requested by the Conservation Enforcement Department, or any other person authorized to enforce this ordinance, including staff of the Great Lakes Indian Fish and Wildlife Commission.

4.01 Enforcement. Any provision of this ordinance may be enforced by the Conservation Enforcement Department, wardens of the Great Lakes Indian Fish and Wildlife Commission, and any person authorized to enforce the provisions of Chapters III and IV of the Tribe's Conservation Code.

4.02 Citation Issuance. Any person authorized by Section 4.01 to enforce the provisions of this ordinance may issue a citation to any member whose conduct is regulated herein, upon reasonable belief that such member has violated or breached a provision of this ordinance.

4.03 Enforcement Actions. Any person authorized by Section 4.01 to enforce the provisions of this ordinance is empowered to do the following:

- a. Detain for inspection and inspect any package, crate, box or other container, including its contents and all accompanying documents or tags, at reasonable times.
 - b. Execute any process for enforcement of the provisions of this ordinance.
 - c. Search any place reasonably related to gathering activity, with or without a warrant, as authorized by state law.
 - d. Seize and hold subject to the order of the Tribal Court any alleged contraband or property which such person reasonably believes may be needed as evidence in connection with the institution of proceedings in Tribal Court or any property otherwise authorized to be seized by the provisions of this ordinance.
- 4.04 **Seized Items.** Any wild plant which is seized in connection with cases referred to Tribal Court for prosecution shall be turned over to the Tribal Court for disposition. No seized wild plant shall be returned to a convicted violator, the violator's immediate family, or other member of the gathering party.
- 4.05 **Penalties.** Any person who violates this ordinance shall be liable as follows:
- a. For any violation, a civil remedial forfeiture of not more than \$5,000.00;
 - b. For any violation, a revocation or suspension of off-reservation State-owned land gathering privileges for a period of time within the discretion of the Tribal Court.
 - c. For any violation, the Tribal Court may order a natural resources assessment not to exceed 75% of the amount of the civil remedial forfeiture; and
 - d. For any violation, appropriate court costs within the discretion of the Tribal Court.
- 4.06 **Civil Damages.** In addition to any other penalty allowed by this ordinance, the Tribal Court may award to the Tribe, or, in addition to an action to impose penalties, the Tribe may bring a civil action for recovery of, damages against any person unlawfully gathering or having unlawfully in possession any wild plant taken from State-owned land. The sum assessed for damages for each wild plant shall not be less than the amount stated in this section:
- a. Any endangered or threatened species protected under this ordinance: \$875.00.
 - b. Any wild plant for which a fair market value can be established: the fair market value.
 - c. Any other wild plant: \$17.50.

- 4.07 **Enhancement of Forfeiture and Penalties.** Upon conviction of a member for a violation of this ordinance, when such person has been convicted of a previous violation of this ordinance within a period of one (1) year, the Tribal Court may enhance any civil remedial forfeiture or other penalty as the Tribal Court deems appropriate.
- 4.08 **Parties to a Violation.**
- a. Principal. Whoever is concerned in the commission of a violation of this ordinance shall be deemed a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.
- b. Definition. A person is concerned in the commission of the violation if the person:
1. Directly commits the violation;
 2. Aids or abets the commission of it; or
 3. Is a party to a conspiracy with another to commit it, or advises, hires, counsels or otherwise procures another to commit it.
- 4.09 **Harvesting after Revocation or Suspension.** No person whose off-reservation State-owned land wild plant gathering privileges have been revoked or suspended pursuant to Section 4.05(b) shall gather any wild plant on State-owned land during the term of such revocation or suspension.
- 5.01 **Maple Sap and Sugar Bushes; Permit Required.** No member shall gather maple sap on State-owned land without a permit valid for the specific and designated tribal sugar bush site, which shall be carried at all times when engaged in sugar bush operations.
- 5.02 **Designated Tribal Sugar Bush Defined.** A designated tribal sugar bush is a specific site identified by the Tribe and the Michigan Department of Natural Resources, or by the Department in conjunction with any other Tribe which is a member of the Chippewa-Ottawa Resource Authority.
- 5.03 **Contents of Sugar Bush Permit for State-Owned Land.** The Conservation Enforcement Department may issue the following permits for a Designated Tribal Sugar Bush on State-owned land:
- a. A one-time or occasional, as opposed to annual, Sugar Bush Permit, which specify the time period during which sugar bush operations may occur, and limited to no more than twelve (12) trees; and
 - b. An annual Sugar Bush Permit, specifying the permit's duration,

the number of trees and trees per acre that can be tapped, the specific designated sugar bush upon which the member may harvest maple sugar, and the number, if any, temporary structures that the member may erect while engaged in sugar bush operations.

- 5.04 **Sugar Bush Harvesting Restrictions.** While engaged in sugar bush operations on State-owned land, a member shall not:
- a. Use tubing;
 - b. Construct new trails or roads to access a sugar bush; and
 - c. Construct a permanent structure.
- 5.05 **Temporary Structure Removal.** If a temporary structure is authorized by a member's Sugar Bush Permit, the structure must be removed prior to the expiration date of the Permit.
- 5.06 **Sale of Maple Sugar and Syrup.** A member may offer for sale and engage in sales of maple sugar and maple syrup produced by the member from a designated sugar bush on State-owned land.
- 6.01 **Firewood; Permit Required.** No member may collect firewood from State-owned land without a Firewood Permit valid for that location issued by the Conservation Enforcement Department, and which shall be carried at all times when engaged in firewood collection.
- 6.02 **Firewood Permit Number and Content.** No more than one (1) Firewood Permit per household may be issued annually by the Conservation Enforcement Department. Each permit shall be issued for five (5) standard (pulp) cords per permit.
- 6.03 **Firewood Harvesting Restrictions.** Each Firewood Permit shall contain the following restrictions:
- a. The cutting or gathering of live trees is prohibited;
 - b. Firewood collection is limited to those trees which are dead and down;
 - c. No firewood may be collected by a member within a State timber sale contract area without the written permission of the timber sale contractor to the collection;
 - d. No tree marked with paint may be cut or gathered;
 - e. Hemlock and cedar trees may not be cut or gathered, except in accordance with Section 7.02(f) of this Ordinance; and
 - f. No firewood collected or gathered from State-owned land may be sold.

- 7.01 **Conifer Boughs; Permit Required.** No member may collect conifer boughs from State-owned land without a Conifer Bough Permit valid for that location issued by the Conservation Enforcement Department, and which shall be carried at all times when engaged in conifer bough collection.
- 7.02 **Conifer Bough Harvesting Restrictions.** While engaged in conifer bough harvesting on State-owned land, a member shall not:
- a. Collect conifer boughs within 20 feet of the edge of roads, designated trails, or streams;
 - b. Create or establish a new trail or road to access coniferous trees;
 - c. Cut down a tree for the purpose of gathering conifer boughs;
 - d. Remove boughs from a tree less than 12 feet in height;
 - e. Remove boughs from the upper half of a tree;
 - f. Gather or cut cedar or hemlock boughs, except for personal medicinal or ceremonial uses, and only with express authorization for such harvest contained in the Conifer Bough Harvest Permit; and
 - g. Collect conifer boughs for commercial uses, except for use in making traditional handicraft items.
- 8.01 **Black Ash, Basswood and Ironwood; Permit Required.** No member may collect black ash, basswood or ironwood from State-owned land without a Black Ash, Basswood and Ironwood Permit valid for that location issued by the Conservation Enforcement Department, and which shall be carried at all times while engaged in collection of these species.
- 8.02 **Commercial Use.** No black ash, basswood or ironwood collected or gathered from State-owned land may be sold; provided that a member may utilize these materials in making traditional handicraft items which are offered for sale.
- 9.01 **White Birch Bark; Permit Required.** No member shall collect white birch bark from State-owned land without a White Birch Bark Permit valid for that location issued by the Conservation Enforcement Department, and which shall be carried at all times while engaged in collection of birch bark.
- 9.02 **Birch Bark Harvesting Restrictions.** While engaged in the collection of white birch bark on State-owned land, a member shall not:
- a. Collect white birch bark from live trees within 33 feet of the edge of roads or designated trails; and

- b. Collect white birch bark for commercial use; provided that a member may utilize bark in making traditional handicraft items which are offered for sale.
- 10.01 **Ground Vegetation and Shrubs.** A member may harvest or collect any other plant and products thereof without first obtaining a permit for this activity; such plants specifically include wild berries, mushrooms, pine cones, nuts, and fruits. Any plant and product so collected in modest levels may be sold by the member.
- 11.01 **Camping on State Land.** Any member who camps on State land shall comply with the following requirements:
- a. State Park developed campsite and State Forest campground. General camping registration procedures of the Michigan Department of Natural Resources, including payment of camping fees, and all other applicable rules and regulations.
 - b. Dispersed camping on State Forest land. Unless the area is specifically closed to all camping by order of the Director of the Michigan Department of Natural Resources, a member may camp on any State Forest land, provided that:
 - 1. The member's campsite is at least one-half mile away from a State Forest campground or the boundary of a State Park; and
 - 2. The member posts a cost-free DNR camping permit on the site and follows the State's land use rules.
- 11.02 **Fees for Use of State Park and Public Access Site.** A member engaged in the exercise of a right to hunt, trap, fish, or gather (as such is defined in the Inland Consent Decree of November 2, 2007), or engaged in a related activity, need not pay any entrance, use or launch fee in a State Park or at a public access site on lands owned or managed by the Michigan Department of Natural Resources and which constitutes the only public access to a lake or stream segment, on the following conditions:
- a. The member displays his/her tribal identification card to any representative of the Department of Natural Resources who seeks payment of a fee;
 - b. The member is in possession of a valid vehicle access placard or sticker issued by the Tribe, and displays the document in the window of the member's vehicle; and
 - c. The member complies with all applicable rules and regulations for the access site.
- 11.03 **State Park Regulation Enforcement.** State park rangers are authorized to enforce applicable State park regulations against a tribal member within State parks.
- 12.01 **Placement of Temporary Structures on State-owned Land**

Regulated. No member may place a structure on State-owned land except as provided in this ordinance, or as otherwise authorized by the Tribe's Conservation Code and implementing regulations, or by applicable State law.

- 12.02 **Structures of Processed or Manmade Material.** Excluding hunting blinds, no member shall construct any structure on State-owned land from non-native, processed materials, such as dimensional lumber, plywood, siding or roofing; provided that canvas tarps and similar materials may be utilized on temporary structures if removed from the site after use.
- 12.03 **Structures of On-Site, Native Material.** A member may construct a temporary structure, on State forest land under the following conditions:
- a. A temporary structure of not more than 100 square feet may be erected when constructed solely of on-site native materials and for which a dispersed camping permit has been issued by the Conservation Enforcement Department.
 - b. A temporary structure of more than 100 square feet may be erected when constructed solely of on-site native materials and for which a dispersed camping permit has been issued by the Conservation Enforcement Department in consultation with and concurrence by the local Department of Natural Resources forest manager.
- 12.04 **Structure Use Duration.** No member shall leave a temporary structure on State Forest lands for more than 15 days unless having first obtained the written approval for doing so from the Conservation Enforcement Department, which shall not be issued without the concurrence of the Michigan Department of Natural Resources local forest manager.
- 12.05 **Structure Removal.** Any temporary structure constructed by a member on State Forest land shall be completely dismantled and removed from the site after use.