

# NOTTAWASEPPI HURON BAND OF THE POTAWATOMI REAL PROPERTY ACQUISITION CODE

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## **SEC. 101. TITLE**

THE TITLE OF THIS CODE SHALL BE THE REAL  
PROPERTY ACQUISITION CODE.

## **SEC. 102. PURPOSE**

THE PURPOSE OF THIS CODE IS TO PROVIDE A LEGAL FRAMEWORK FOR THE ACQUISITION OF REAL PROPERTY BY THE TRIBE TO ASSURE COMPLIANCE WITH APPLICABLE TRIBAL PLANS FOR THE ACQUISITION AND USE OF LAND, TO COMPLY WITH RELEVANT PROVISIONS OF THE SMALL BUSINESS LIABILITY RELIEF AND BROWNFIELDS REVITALIZATION ACT BEING HB 2869 OF 2001 (BROWNFIELDS REVITALIZATION ACT) AND, WHEN APPROPRIATE, TO FACILITATE THE EVENTUAL TRANSFER OF LEGAL TITLE OF REAL PROPERTY TO BE HELD IN TRUST FOR THE TRIBE BY THE UNITED STATES.

## **SEC. 103. DEFINITIONS**

FOR THE PURPOSES OF THIS CODE, THE FOLLOWING DEFINITIONS WILL BE USED:

- a) ALL APPROPRIATE INQUIRIES- THE PROCESS OF EVALUATING A PROPERTY'S ENVIRONMENTAL CONDITIONS AND ASSESSING POTENTIAL LIABILITY FOR ANY CONTAMINATION IN ACCORDANCE WITH THE REQUIREMENTS PRESCRIBED IN 40 C.F.R. PART 312.
- b) BROWNFIELD SITE- REAL PROPERTY, THE EXPANSION, REDEVELOPMENT, OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OF A RECOGNIZED ENVIRONMENTAL CONDITION, INCLUDING ANY HAZARDOUS SUBSTANCE, POLLUTANT OR CONTAMINANT.
- c) CONTAMINANT- A CONTROLLED SUBSTANCE AS DEFINED IN SECTION 102 OF THE CONTROLLED SUBSTANCES ACT (21 U.S.C. 802); PETROLEUM OR A PETROLEUM PRODUCT; ANY SUBSTANCE IDENTIFIED BY THE ENVIRONMENTAL DEPARTMENT OF THE TRIBE AS ESTABLISHED BY TRIBAL ORDINANCE OR PURSUANT TO SECTION 302 OF THE EPCRA, A CHEMICAL DETERMINED TO BE HAZARDOUS PURSUANT TO 29 C.F.R. SEC. 1919.1200(C) OF THE OSHA HAZARD COMMUNICATION STANDARD.
- d) CONTIGUOUS PROPERTIES- TWO PARCELS OF LAND HAVING A COMMON BOUNDARY LINE. CONTIGUOUS DOES NOT INCLUDE CORNER CONTIGUITY, WHEN PARCELS OF LAND ONLY HAVE ANGLE POINTS IN COMMON.

- e) ENCUMBRANCE – MEANS A LIMITATION ON THE TITLE OF REAL PROPERTY, SUCH AS A CLAIM, LIEN, EASEMENT, CHARGE OR RESTRICTION ON USE OF ANY KIND.
- f) ENVIRONMENTAL PROFESSIONAL- MEANS A STAFF PERSON WITHIN THE TRIBE’S ENVIRONMENTAL DEPARTMENT WHO MEETS THE STANDARDS FOR “ENVIRONMENTAL PROFESSIONALS” DEFINED IN 40 C.F.R. PART 312, WHO IS DESIGNATED BY THE TRIBE TO CONDUCT THE REAL ESTATE SURVEY OF ANY REAL PROPERTY BEING EVALUATED FOR POTENTIAL ACQUISITION, AND WHO IS RESPONSIBLE FOR COMPLETING THE REAL ESTATE SURVEY FORM AND PERFORMING A PHASE I ENVIRONMENTAL SITE ASSESSMENT CONSISTENT WITH CURRENT ASTM STANDARDS. THE STAFF PERSON DESIGNATED TO PERFORM THE FUNCTIONS OF THE ENVIRONMENTAL PROFESSIONAL SHALL, AT ALL TIMES, POSSESS SUFFICIENT SPECIFIC EDUCATION, TRAINING AND EXPERIENCE NECESSARY TO EXERCISE PROFESSIONAL JUDGMENT TO DEVELOP OPINIONS AND CONCLUSIONS REGARDING CONDITIONS INDICATIVE OF RELEASES OR THREATENED RELEASES ON CONTAMINANTS ON PROPERTY THE TRIBE IS EVALUATING FOR POTENTIAL ACQUISITION.
- g) GROUNDWATER- SUBSURFACE WATER THAT OCCURS NATURALLY WITHIN AN AQUIFER AND IS AVAILABLE OR POTENTIALLY AVAILABLE FOR USE BY THE TRIBE.
- h) REAL ESTATE SURVEY FORM- THE DOCUMENT TO BE USED BY THE ENVIRONMENTAL PROFESSIONAL BEFORE EVERY TRIBAL LAND PURCHASE AS A SCREENING TOOL FOR ASSESSMENT OF THE PROSPECTIVE PROPERTY TO DETERMINE WHETHER ANY CONTAMINATION EXISTS AND WHETHER THE LAND IS SUITABLE FOR ITS INTENDED USE.
- i) RESERVATION – MEANS THE PINE CREEK RESERVATION AND ANY OTHER LANDS WHICH THE UNITED STATES HOLDS IN TRUST FOR THE BENEFIT OF THE TRIBE AND WHICH HAVE BEEN ACKNOWLEDGED AS RESERVATION LANDS BY PROCLAMATION OF THE SECRETARY.
- j) SECRETARY – MEANS THE SECRETARY OF THE DEPARTMENT OF THE INTERIOR OR HIS/HER AUTHORIZED REPRESENTATIVE.
- k) TRIBE-THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI INDIANS.
- l) TRUST TRANSFER – THE ACT OR PROCESS BY WHICH THE SECRETARY ACQUIRES TITLE TO REAL PROPERTY TO BE HELD IN TRUST BY THE UNITED STATES ON BEHALF OF THE TRIBE.

**SEC. 201. LAND ACQUISITION PROCEDURES**

- A. THE TRIBAL COUNCIL SHALL HAVE RESPONSIBILITY FOR APPROVING ACTIONS NECESSARY TO ACQUIRE REAL PROPERTY WHICH MEETS THE TRIBE’S CURRENT AND FUTURE NEEDS FOR HOUSING, COMMUNITY

DEVELOPMENT, GOVERNMENT FACILITIES AND INFRASTRUCTURE, PROTECTION OF HISTORIC AND CULTURAL RESOURCES, ENVIRONMENTAL PROTECTION, AND ECONOMIC DEVELOPMENT.

- B. THE IDENTIFICATION OF PROPERTIES MEETING THE TRIBE'S CURRENT AND FUTURE NEEDS WILL BE GUIDED BY THE OVERRIDING GOAL OF REBUILDING A RESERVATION LAND BASE TO PROVIDE A SUSTAINABLE HOMELAND FOR FUTURE GENERATIONS OF TRIBAL CITIZENS. THE IDENTIFICATION OF REAL PROPERTIES FOR ACQUISITION SHALL ALSO CONFORM TO THE GUIDELINES AND PRIORITIES CONTAINED IN ANY LAND ACQUISITION AND USE PLANS ADOPTED BY THE TRIBAL COUNCIL.
- C. NOT LESS THAN ANNUALLY, IN CONJUNCTION WITH THE BUDGET PLANNING PROCESS, THE TRIBAL COUNCIL SHALL IDENTIFY PRIORITIES FOR LAND ACQUISITION TO BE CONSIDERED IN THE COMING FISCAL YEAR. IN IDENTIFYING AND ESTABLISHING PRIORITIES FOR LAND ACQUISITION, THE TRIBAL COUNCIL SHALL REVIEW THE PRIORITIES FOR CONSISTENCY WITH ANY LAND ACQUISITION AND USE PLANS AND MAY CONSIDER THE RECOMMENDATIONS FROM SENIOR PROFESSIONAL STAFF AND TRIBAL CITIZENS. TO THE EXTENT PRACTICAL, LAND ACQUISITION PRIORITIES ESTABLISHED BY THE TRIBAL COUNCIL SHALL ATTEMPT TO DEFINE THE FUNCTIONS OR USES FOR WHICH LAND IS NEEDED, THE DESIRED CHARACTERISTICS (I.E. SIZE, ACCESS, EXISTING ZONING, ETC.) AND WHETHER IT IS ANTICIPATED THAT THE LAND WILL BE TRANSFERRED INTO TRUST.
- D. PROPOSALS FOR EVALUATION OF SPECIFIC PARCELS OF PROPERTY FOR POTENTIAL ACQUISITION SHALL BE PRESENTED TO THE PLANNING AND LAND USE COMMITTEE FOR INITIAL ASSESSMENT BEFORE BEING BROUGHT TO THE TRIBAL COUNCIL FOR PRELIMINARY EVALUATION. THE PRELIMINARY EVALUATION SHALL IDENTIFY THE FOLLOWING INFORMATION:
  1. A MAP SHOWING THE LOCATION OF THE PROPERTY, INCLUDING ITS PROXIMITY TO LANDS CURRENTLY OWNED BY, OR HELD IN TRUST FOR, THE TRIBE;
  2. A DETAILED DESCRIPTION AND, IF AVAILABLE, PHOTOGRAPHS OF THE PROPERTY, INCLUDING ANY IMPROVEMENTS LOCATED ON THE PROPERTY, AND THE CURRENT USE OF THE PROPERTY;
  3. A PRELIMINARY ASSESSMENT FROM THE TRIBE'S ENVIRONMENTAL PROFESSIONAL AS TO THE LIKELIHOOD THAT THE PROPERTY IS A BROWNFIELD SITE AND WHETHER THE REAL ESTATE SURVEY DESCRIBED IN SECTION 301 (C) SHOULD BE COMPLETED BEFORE SUBMITTING AN OFFER TO PURCHASE;
  4. THE ESTIMATED PURCHASE PRICE FOR THE PROPERTY, TOGETHER WITH AN ESTIMATE OF OTHER EXPENSES (I.E.

ENVIRONMENTAL INSPECTIONS; SURVEY; ETC.) NECESSARY TO COMPLETE ACQUISITION OF THE PROPERTY;

5. DESCRIPTION OF THE PROPOSED USE OF THE PROPERTY, INCLUDING:
  - i. AN EXPLANATION OF THE NEED FOR PROPERTY,
  - ii. WHETHER THE PROPOSED USE IS AUTHORIZED BY CURRENT LOCAL ZONING REGULATIONS, AND,
  - iii. IF APPLICABLE, HOW THE PROPERTY MEETS PRIORITY NEEDS IDENTIFIED IN ANY LAND ACQUISITION AND USE PLANS ADOPTED BY THE TRIBE;
6. A DESCRIPTION OF ANY ALTERNATIVE PARCELS THAT WERE EVALUATED OR CONSIDERED TO ACCOMMODATE THE USE, OR MEET THE NEEDS, IDENTIFIED; AND
7. THE RECOMMENDATION OR COMMENTS OF THE PLANNING AND LAND USE COMMITTEE AS TO WHETHER THE TRIBE SHOULD PURSUE THE ACQUISITION OF THE PROPERTY.

THE TRIBAL COUNCIL MAY, IN ITS DISCRETION, REQUEST THAT ADDITIONAL DUE DILIGENCE BE PERFORMED PRIOR TO BEGINNING THE FORMAL PROCESS TO SUBMIT AN OFFER TO PURCHASE ANY REAL PROPERTY. FURTHER, THE TRIBAL COUNCIL MAY, IN ITS DISCRETION, WAIVE THE PROCEDURES DESCRIBED IN THIS SECTION

IF THE CIRCUMSTANCES REQUIRE EXPEDITED ACTION BY THE TRIBE OR IF THE CIRCUMSTANCES REQUIRE EXTRAORDINARY MEASURES TO PROTECT THE TRIBE'S INTEREST IN A PARTICULAR PIECE OF PROPERTY; PROVIDED THAT THE TRIBAL COUNCIL SHALL MAKE BE RESPONSIBLE FOR COMPILING THE INFORMATION DESCRIBED IN PARAGRAPHS (1) THROUGH (6) OF THIS SECTION.

## **SECTION 202. PROCEDURAL REQUIREMENTS FOR LAND ACQUISITION**

- A. IF THE TRIBAL COUNCIL DETERMINES THAT ACQUISITION OF A PARCEL OF PROPERTY SHOULD BE PURSUED, THE TRIBAL COUNCIL MAY AUTHORIZE THE PREPARATION OF AN OFFER TO PURCHASE THE PROPERTY.
- B. PRIOR TO PRESENTATION OF ANY OFFER TO PURCHASE REAL PROPERTY TO THE OWNER OF THE PROPERTY, THE TRIBAL COUNCIL WILL, IN CONSULTATION WITH APPROPRIATE STAFF DEVELOP A PLAN OUTLINING THE STEPS THAT WILL NEED TO BE TAKEN TO COMPLETE ACQUISITION OF THE PROPERTY. THAT PLAN WILL CONSIDER THE EXTENT TO WHICH SPECIFIC DUE DILIGENCE WILL BE REQUIRED, WHICH MAY INCLUDE: A BOUNDARY SURVEY, PROPERTY INSPECTIONS,

APPRAISAL, AND ENVIRONMENTAL INQUIRIES.

- C. PRIOR TO PRESENTATION OF A WRITTEN OFFER TO PURCHASE TO THE OWNER OF THE PROPERTY, THE TERMS OF THE OFFER SHALL BE REVIEWED WITH AND APPROVED BY MOTION OF THE TRIBAL COUNCIL.
- D. ALL WRITTEN OFFERS TO PURCHASE REAL PROPERTY SHALL BE CONTINGENT UPON SATISFACTORY COMPLETION AND ACCEPTANCE OF INSPECTIONS AND OTHER DUE DILIGENCE IDENTIFIED IN THE PLAN DEVELOPED FOR ACQUISITION OF THE PARCEL AND SHALL GIVE THE TRIBE A REASONABLE AMOUNT OF TIME TO COMPLETE THE DUE DILIGENCE. AT A MINIMUM, EVERY OFFER TO PURCHASE REAL PROPERTY SHALL BE CONTINGENT UPON THE TRIBAL COUNCIL'S APPROVAL OF THE FOLLOWING:
  - 1. A TITLE EXAMINATION OF THE PROPERTY TO BE PURCHASED.
  - 2. COMPLETION OF THE ENVIRONMENTAL INSPECTIONS NECESSARY TO SATISFY THE ALL APPROPRIATE INQUIRIES REQUIREMENTS DESCRIBED IN SECTION 301 OF THIS CODE, WHICH SHALL, AT A MINIMUM, INCLUDE A PHASE I ENVIRONMENTAL SITE ASSESSMENT CONDUCTED BY AN ENVIRONMENTAL PROFESSIONAL IN ACCORDANCE WITH CURRENT ASTM AND OTHER APPLICABLE INDUSTRY STANDARDS.
  - 3. IF THE TRIBAL COUNCIL ANTICIPATES SUBMITTING A TRUST TRANSFER FOR THE PROPERTY, A SURVEY SHALL BE COMPLETED IF THE PARCEL TO BE ACQUIRED CANNOT BE DESCRIBED BY AN ALIQUOT LEGAL DESCRIPTION.
- E. UPON THE COMPLETION OF ALL NECESSARY DUE DILIGENCE, A SUMMARY OF THE RESULTS OF THE INSPECTIONS AND ASSESSMENTS SHALL BE PRESENTED TO THE TRIBAL COUNCIL, TOGETHER WITH A RECOMMENDATION WHETHER TO PROCEED WITH ACQUISITION OF THE PARCEL ON THE TERMS PROPOSED IN THE OFFER. IF APPROPRIATE UNDER THE CIRCUMSTANCES, THE REPORT MAY RECOMMEND THAT THE TRIBE RESCIND THE OFFER, OR PRESENT A COUNTER-OFFER IF A REDUCTION IN PURCHASE PRICE OR OTHER CONTINGENCIES IS WARRANTED.
- F. IF THE TRIBAL COUNCIL DETERMINES TO PROCEED WITH ACQUISITION OF THE PARCEL THE FINAL PURCHASE AGREEMENT SHALL BE RATIFIED BY RESOLUTION OF THE TRIBAL COUNCIL.

**SEC. 301. ALL APPROPRIATE INQUIRIES PROCEDURES.**

- A. WITHIN 7 DAYS OF THE IDENTIFICATION OF REAL PROPERTY BEING

CONSIDERED FOR ACQUISITION, THE PLANNING AND LAND USE COMMITTEE SHALL PROVIDE WRITTEN NOTIFICATION TO THE DESIGNATED ENVIRONMENTAL PROFESSIONAL OF THE TRIBE'S INTEREST IN THE PROPERTY AND THE INTENDED FUTURE USE OF THE PROPERTY.

- B. WITHIN 14 DAYS AFTER NOTIFICATION, THE ENVIRONMENTAL PROFESSIONAL SHALL CONDUCT A SITE VISIT TO THE PROPERTY WITH THE INTENT OF MAKING A PRELIMINARY ASSESSMENT OF THE PROPERTY IN TERMS OF RECOGNIZABLE ENVIRONMENTAL CONDITIONS FOR INCLUSION IN THE PRELIMINARY EVALUATION PRESENTED TO THE TRIBAL COUNCIL IN SECTION 201(D).
- C. IF, THE TRIBAL COUNCIL DETERMINES THAT ADDITIONAL EVALUATION OF THE POTENTIAL FOR THE PRESENCE OF RECOGNIZABLE ENVIRONMENTAL CONDITIONS IS WARRANTED BEFORE PROCEEDING WITH PREPARATION OF AN OFFER TO PURCHASE A SPECIFIC PARCEL OF PROPERTY, THE ENVIRONMENTAL PROFESSIONAL SHALL, WITHIN 30 DAYS OF NOTIFICATION, PREPARE THE REAL ESTATE SURVEY FORM AND PRESENT A COPY TO THE TRIBAL COUNCIL OR ITS DESIGNEE AS WELL AS PUT IN WRITING AN ASSESSMENT OF THE SUITABILITY OF THE PROPERTY FOR THE INTENDED FUTURE USE.
- D. IF THE TRIBAL COUNCIL ELECTS TO PROCEED WITH PRESENTING AN OFFER TO PURCHASE A PARCEL OF PROPERTY, THE TRIBAL COUNCIL SHALL DIRECT THE ENVIRONMENTAL PROFESSIONAL TO CONDUCT, OR ARRANGE TO HAVE CONDUCTED, ALL INSPECTIONS NECESSARY TO SATISFY THE "ALL APPROPRIATE INQUIRES" REQUIREMENTS WITHIN THE TIME PERIOD SPECIFIED IN THE OFFER THE PURCHASE. TO SATISFY THAT REQUIREMENT, THE ENVIRONMENTAL PROFESSIONAL SHALL CONDUCT A PHASE 1 ENVIRONMENTAL SITE ASSESSMENT WHICH SATISFIES THE REQUIREMENTS OF THE CURRENT ASTM STANDARD DESIGNATED PRACTICE E 1527-05 FOR ENVIRONMENTAL SITE ASSESSMENTS. THIS ASSESSMENT WILL INCLUDE, BUT NOT BE LIMITED TO:
  - 1. INTERVIEWS WITH PAST AND PRESENT OWNERS, OPERATORS AND/OR OCCUPANTS OF THE PROPERTY;
  - 2. REVIEWS OF HISTORICAL SOURCES;
  - 3. SEARCHES FOR RECORDED ENVIRONMENTAL LIENS;
  - 4. REVIEWS OF FEDERAL, STATE, AND LOCAL GOVERNMENT RECORDS, WASTE DISPOSAL RECORDS, UNDERGROUND STORAGE TANK RECORDS AND HAZARDOUS WASTE HANDLING;

5. VISUAL INSPECTION OF THE PROPERTY AND OF ADJOINING PROPERTIES;
6. KNOWLEDGE OF THE PROPERTY OWNER;
7. RELATIONSHIP OF THE PURCHASE PRICE TO THE VALUE OF THE PROPERTY IF THE PROPERTY WAS NOT CONTAMINATED;
8. COMMONLY KNOWN INFORMATION ABOUT THE PROPERTY THAT CAN BE REASONABLY OBTAINED;
9. DEGREE OF OBVIOUSNESS OF THE CONTAMINATION AND THE LIKELIHOOD OF DETECTION BY REASONABLE INVESTIGATION.
10. AN OPINION RENDERED BY THE ENVIRONMENTAL PROFESSIONAL AS TO THE PRESENCE OR LACK OF RECOGNIZED ENVIRONMENTAL CONDITIONS, AND PREPARATION OF A SIGNED REPORT OF FINDINGS BY THE ENVIRONMENTAL PROFESSIONAL.

E. IF THROUGH THE COMPLETION OF A PHASE I ENVIRONMENTAL SITE ASSESSMENT, IT IS DETERMINED THAT RECOGNIZED ENVIRONMENTAL CONDITIONS ARE PRESENT, THEN A PHASE II ENVIRONMENTAL SITE ASSESSMENT SHALL BE CONDUCTED TO DETERMINE THE GENERAL EXTENT AND DEGREE OF THE ENVIRONMENTAL IMPAIRMENTS.

F. IF THE TRIBAL COUNCIL PROCEEDS WITH ACQUISITION OF A PARCEL WHICH IS DETERMINED TO HAVE RECOGNIZED ENVIRONMENTAL CONDITIONS, A BASELINE ENVIRONMENTAL ASSESSMENT SHALL THEN BE CONDUCTED WITHIN 45 DAYS OF PROPERTY PURCHASE TO SERVE AS INDEMNIFICATION FROM LIABILITY FOR THE ENVIRONMENTAL IMPAIRMENTS.