February 3, 1999

TO: Tribal Council
FR: Bronco LeBeau, Preservation Officer

RE: Proposed amendment to Ordinance No. 57(a) and the proposed regulations for the Cultural Resources Protection Act

Ladies and Gentlemen of the CRST Tribal Council; Honorable Tribal Chairman; Madam Secretary. The Cultural Preservation Officer has drafted a proposed amendment to Ordinance No. 57(a) and regulations for the Cultural Resources Protection Act of the Cheyenne River Sioux Tribe. On Monday February 1, 1999 during the CRST Wolakota Committee meeting these proposals were presented and discussed in committee. A motion with a second was made to approve of the proposed amendment and the regulations. I am providing for your review and consideration copies of the two drafts and I am requesting that the full CRST Tribal Council now review the two drafts and duly adopt them during the regular session for February 1999.

Sincerely,

Sebastian (Bronco) LeBeau
Preservation Officer

cc. Tribal Council
What does Amendment (b) for Ordinance No. 57(a) do?

Amendment (b) amends Ordinance No. 57(a). Between January of 1995 to January of 1999 the Cultural Preservation Office has expanded and grown into its own functioning tribal program. Its duties and responsibilities have increased to include, preservation, repatriation, THPO responsibilities and archives. Amendment (b) if it is passed by the tribal council further defines the tribes Cultural Resources Protection Act and recognizes the expanded duties and responsibilities of the Cultural Preservation Office and its assumption of SHPO responsibilities from the State of South Dakota and the administering of the tribal archives.

NOTES
AMENDMENT (b)
for Ordinance No. 57(a)

To amend Ordinance No. 57(a) to make improvements to the Cultural Resources Protection Act of the Cheyenne River Sioux Tribe.

SECTION 1. Short Title References.
(a) SHORT TITLE—this amendment may be cited as “Ordinance #57(a) Amendment (b)”.  

SECTION 2. Findings.
There are no amendments to the section. 

SECTION 3. Policy.
Part (d)—
(1) is amended by striking “Mandate” and inserting “Encourage”.

SECTION 4. Definitions.
There are no amendments to the section. 

SECTION 5. Cultural Preservation Office.
Part (a)—
(1) by adding the following new sub-part:
“(i) The Cultural Preservation Officer will supervise all assigned personnel to the Office.”; and
(2) by adding the following new sub-part:
“(ii) Duties of the Cultural Preservation Officer— are those duties as they are defined in the regulations for the Cultural Resources Protection Act pertaining to ‘Preservation’ and ‘Repatriation’ activities and responsibilities undertaken on behalf of the Cheyenne River Sioux Tribe.”.

Part (l)—
(1) by striking “shall also be” and inserting “is”;
(2) by adding the following new sub-part:
“(i) The Cultural Preservation Office is responsible for managing the ‘Tribal Archives’. The ‘Archives’ can be utilized as a temporary holding facility for the human remains and cultural items repatriated to the tribe. The ‘policy and procedures’ for accessioning, recording, storing, preserving, and curating all tribal records and documents will be developed and implemented by the Tribal Archivist in coordination with the Tribal Secretary Office, the Central Records Department, and the CRST Administration.”;

(3) by adding the following new sub-part:
“(ii) Duties of the Tribal Archivist — we those duties as they are assigned by the Tribal Secretary pertaining to ‘Archival Practices’, ‘Preservation’ and ‘Repatriation’.”; and
Section 5 of the Historic Preservation Act of the Cheyenne River Sioux Tribe is further amended by inserting the following new Part:

(1) "(d) The Office is responsible for the administration of all Tribal Historic Preservation Officer duties and responsibilities that are assumed under the 'National Historic Preservation Act' by the Cheyenne River Sioux Tribe. The Cultural Preservation Officer by tribal resolution, Resolution No. 4a-98-CR, is the 'THPO' designee for the tribe until at such time the, CRTT Tribal Council, by resolution designates a different individual. The 'THPO' is authorized to issue all necessary tribal permits as defined in Section 7 of Ordinance #57(a) and in Ordinance #57(a) Amendment (b)."; and

(2) 'Part (d)--- by adding the following new sub-part:

"(i) duties of the 'THPO'--- are those duties as they are defined in the regulations for the Cultural Resources Protection Ad pertaining to 'Preservation' and 'Repatriation' activities and responsibilities managed by the Cultural Preservation Office on behalf of the Cheyenne River Sioux Tribe."

SECTION 6. Cheyenne River Sioux Museum.
Paragraph—

(1) by striking the entire second sentence in the paragraph.

SECTION 7. Tribal Work Permits for the surveying and examination of Historical, Archaeological and Paleontological Sites; Gathering of Objects; Regulation.

Part (a)—

(1) by striking “Topographical”;
(2) by inserting a period after “Cultural Preservation Officer”;
(3) by striking the remainder of the sentence; and
(4) by inserting the following sentence “Survey Permits may also be issued by the CRST THPO.”.

Part (b)—

(1) by striking the period after “Cultural Preservation Officer” and inserting "and/or the CRST THPO.");
(2) by striking "Officer from the third sentence and inserting “Office”;
(3) by inserting after Cultural Preservation Officer in (1) “and/or CRST ‘THPO’”; and
(4) by adding the following new sub-part:

"(i) Tribal Exhumation Permits for grave sites will be issued under this section of the Act but only in conjunction with the permittee receiving Tribal Council approval to exhume a identified grave site."

Part (c)—

(1) by striking the period after Cultural Preservation Officer and inserting "and/or the CRST ‘THPO’.");
(2) by striking "Officer from the third sentence and inserting “Office”; and
(3) by inserting after Cultural Preservation Officer in (1) "and/or the CRST ‘THPO’.

SECTION 8. Suspension and Revocation of Permits.
Part (a)—
(1) by inserting after Cultural Preservation Officer in the first, second and third sentence “and/or the CRST ‘THPO’.”
Part (b)—
(1) by inserting after Cultural Preservation Officer “and/or the CRST ‘THPO’.”
Part (c)—
(1) by inserting after Cultural Preservation Officer “and/or the CRST ‘THPO’.”

Part (a)—
(1) by adding the following new sub-part:
"(l) Penalties —
“(1) If the commercial or cultural value of the resources involved and the cost of restoration and repair of such resources exceeds the sum of $500, such person shall be subject to a civil fine of not more than $20,000.";
“(2) In the case of a second or subsequent such violation upon conviction for assessment of civil penalty by the Tribal Court, such person shall be fined not more than $100,000.";
“(3) The criminal prosecution of an individual caught trafficking in the cultural resources of the Cheyenne River Sioux Tribe shall be done in the appropriate federal court."; and
(2) by adding the following new sub-part:
“(ii) The Cultural Preservation Officer and the CRST ‘THPO’ are empowered by the CRST Tribal Council to present charges of a violation(s) of the Cultural Resources Protection Act of the Cheyenne River Sioux Tribe by any individuals and/or entities to the CRST Legal Department for prosecution."

SECTION 10. Assessment of Actual and Punitive Damages.
There are no amendments to this section.

SECTION 11. Severability.
There are no amendments to this section.
What do the proposed tribal regulations do?

The proposed regulations implement the Cultural Resources Protection Act of the Cheyenne River Sioux Tribe. The regulations define Ordinance No. 57, No. 57(a) and the proposed Amendment (b). The regulations define section by section what the Act's purpose and applicability is. It defines what is a cultural resource of the tribe. It establishes what the responsibilities and duties of the Cultural Preservation Office are even taking into account the Office's new role pertaining to the tribal archives and the THPO program. And it specifies the procedures and penalties for tribal permits.

NOTES
CULTURAL RESOURCES PROTECTION ACT OF THE CHEYENNE RIVER SIOUX TRIBE REGULATIONS—
Ordinance #57, Ordinance #57(a), Ordinance #57(a) Amendment (b)

Subpart A— Introduction
Sec.
1, 2, 3 Purpose and applicability.

Subpart B— Cultural Resources
Sec.
4 Definitions.

Subpart C— Cultural Preservation Office
Sec.
5, 6 Responsibilities and Duties.

Subpart D— Authority
Sec.
7, 8, 9 Regulation and Penalties.

Subpart E— General
Sec.
10, 11 Damages and Severability.

Subpart A— Introduction

(A) Purpose. These regulations wry out the provisions of the Cultural Resources Protection Act of the Cheyenne River Sioux Tribe of 1992 (Ordinance #57) and of 1995 (Ordinance #57(a)) and of 1999 (Ordinance #57(a) Amendment (b)). These regulations develop a systematic process for the Cheyenne River Sioux Tribe through regulation of its civil jurisdiction over all member and non-member residents of the reservation to regulate the preservation and protection of its cultural resources on all tribal lands.
(B) **Applicability.** These regulations pertain to the findings of the Cheyenne River Sioux Tribe as those findings are described in Section 2 of Ordinance #57 and Ordinance #57(a).

1. **Policy** — It is the policy of the Cheyenne River Sioux Tribe to regulate its Cultural Resources Protection Act on all tribal lands in accordance with those stipulations as described in Section 3 of Ordinance #57, Ordinance #57(a) and as amended in Part (d) by Ordinance #57(a) Amendment (b).

   (a) Where appropriate the Cheyenne River Sioux Tribe in accordance with applicable federal laws will utilize that federal policy towards the preservation and protection of cultural resources discovered on all federal lands within the exterior boundaries of the reservation.

**Subpart B— Cultural Resources**

(A) **Definitions.** The definitions of:

1. **Tribal lands** means — all lands which are owned by the tribe that are within the exterior boundaries of the reservation.

2. **Tribal cultural resources** means — cultural resources identified on tribal lands are as defined in Section 4 Definitions of Ordinance #57(a). However the recognition of a tribal cultural resource is solely at the discretion of the Cheyenne River Sioux Tribal Council.

3. **Tribal Council** means — the governing body of the Cheyenne River Sioux Tribe.

   (a) At its convenience the CRST Tribal Council can by resolution recognize any property type on all tribal lands within the exterior boundaries of the reservation as constituting a tribal cultural resource.

   (b) At its convenience the CRST Tribal Council can by resolution choose not to recognize any property type on all tribal lands within the exterior boundaries of the reservation as constituting a tribal cultural resource.

4. **Tribal Secretary** means — the Office of the CRST Tribal Secretary.

5. **Cultural Preservation Office** means — the Office of the CRST Cultural Preservation Officer.

6. **Cultural Preservation Officer** means — the individual hired by the tribe that is
responsible for administering the preservation and repatriation activities of the tribe.

(7) **Tribal Archives** means — the facility owned by the Cheyenne River Sioux Tribe that **functions** as the storage facility housing tribal records and cultural items.

(8) **Tribal Archivist** means — the individual hired by the tribe that is directly responsible for **accessioning**, recording, storing, preserving, and **curating** all tribal records and cultural items held in the archives.

(9) **Tribal Historic Preservation Officer** means — the individual **designated** by tribal resolution that is responsible for managing 'SHPO' responsibilities.

(10) **Tribal Archaeologist** means — the individual hired by the tribe that will **conduct** archaeological services on behalf of the tribe and its programs.

(11) **Cheyenne River Sioux Museum** means — the facility operated by the Cheyenne River Sioux Tribe for the purpose of displaying significant cultural items to the general public.

(12) **Federal lands** means — any land other than tribal lands that are controlled or owned by the United States Government which are within the exterior boundaries of the reservation.

(13) **Superior or Civil Court** means — the Tribal **Courts**.

**Subpart C — Cultural Preservation Office**

(A) **Responsibilities.** The CRST Cultural Preservation Office is:

(1) Supervised by the CRST Tribal Secretary.

(2) The **tribal entity** that is **responsible** for regulating **Ordinance #57**, **Ordinance #57(a)** and **Ordinance #57(a) Amendment (b)** on behalf of the Cheyenne River Sioux Tribe.

(a) The Office is the primary **tribal entity** for **consultation** with all appropriate tribal, federal, and state entities in all matters pertaining to the preservation and protection of the cultural resources of the tribe. However the Office is not the only tribal entity to require consultation from tribal, federal, and state governments in matters where the cultural resources or the traditional cultural interests of the tribe are concerned outside of the exterior **boundaries** of the reservation. At its discretion the Tribal **Council**, or the Tribal Chairman, may designate at **their convenience** any other tribal entity to represent the tribe in a consultation process.
(3) The tribal entity that is responsible for administering to all of the repatriation activities with a museum and/or federal agency that is undertaken on behalf of the Cheyenne River Sioux Tribe in accordance with the Native American Graves Protection And Repatriation Act of 1990, and the National Museum of the American Indian Act of 1989. Such responsibilities include but may not be limited too:

(a) receive and review museum and/or federal agency summaries and inventories of human remains and cultural items that are affiliated with the Cheyenne River Sioux Tribe and consulting with the same.

(i) when required by the inter-tribal Memorandum of Agreement to represent the repatriation interests of the MOA membership as those interests are defined within the MOA document.

(ii) write for and administer any National Park Service NAGPRA documentation grant(s) and/or repatriation grant(s) on behalf of the tribe.

(b) conduct museum and/or federal agency collection reviews.

(c) write a repatriation request(s) to a museum and/or federal agency for the return of human remains and cultural items that are affiliated with the Cheyenne River Sioux Tribe.

(d) retrieve human remains and cultural items repatriated from a museum and/or federal agency.

(e) turn over all repatriated human remains and cultural items for disposition to the authorized tribal disposition entity.

(4) The tribal entity that is responsible for managing the Tribal Archives until at such a time the Tribal Archives is established as its own tribal program.

(5) The tribal entity that is responsible for assuming and administering 'SHPO' responsibilities from the State of South Dakota on behalf of the tribe and establishing the CRST Tribal Historic Preservation Office program.

(B) Duties. For the Cultural Preservation Officer are:

(1) To regulate Ordinance #57, Ordinance #57(a) and Ordinance #57(a) Amendment (b).

(a) investigate, identify and record cultural resources.
(b) issue work permits as **prescribed** in Ordinance #57(a) Section 7 (a),(b),(b)(i),(c).

(c) **make** and publish regulations for the Ordinance and its amendments.

(d) revoke work permits for cause as prescribed in Ordinance #57(a) Section 8(a).

(e) present charges as prescribed in Ordinance #57(a) Amendment (b) Section 9(a)(ii).

(f) **to consult** with all entities concerning CRST preservation interests.

(g) **supervise** all CRST personnel assigned to the Office.

   (i) those duties related to preservation as **assigned** by the Tribal Secretary.

   (ii) those duties related to preservation as assigned by the Tribal **Chairman**.

   (iii) those duties related to preservation as assigned by the Tribal **Council**.

(2) To administer the repatriation activities of the tribe.

   (a) to **act** as the tribes primary NAGPRA/Repatriation **representative**.

      (i) to **consult** with all entities **concerning** CRST Repatriation interests.

   (b) to set repatriation **procedures** for the tribe.

      (i) to **write** for NAGPRA related **grants**.

      (ii) to **administer** all NAGPRA related **grants**.

   (c) to **carry out** the procedures for repatriation as provided in Subpart (C)(3) of these regulations.

(3) To manage the Tribal Archives as provided in Subpart (C)(4) of these regulations.

(4) To manage the Tribal Historic Preservation Office program and its ‘**SHPO**’ responsibilities assumed from the State of South Dakota.

   (a) to be the tribes designated THPO until as provided in Section 5 Part (d) of Ordinance #57(a) Amendment (b).

   (b) to administer THPO **responsibilities** according to the CRST - NPS Memorandum of Agreement.

(C) **Duties.** For the Tribal Archivist:

   (I) To **carry out** all duties as those duties are assigned by the Tribal Secretary **pertaining** to Archival **Practices**, Preservation, and Repatriation.

(D) **Duties.** For the Tribal Historic Preservation Officer (THPO):
(1) In conjunction with the Cultural Preservation Officer to regulate Ordinance #57, Ordinance #57(a), and Ordinance #57(a) Amendment (b).

(a) investigate, identify, and record cultural resources.
(b) issue work permits as prescribed in Ordinance #57(a) Section 7(a),(b),(b)(i),(c).
(c) revoke work permits for cause as prescribed in Ordinance #57(a) Section 8(a).
(d) present charges as prescribed in Ordinance #57(a) Amendment (b) Section 9(a)(ii).
(e) consult with all entities concerning CRST preservation interests.

(2) To carry out those THPO responsibilities as the responsibilities are defined in the CRST - NPS Memorandum of Agreement.

(a) to consult with all appropriate entities on all CRST THPO interests.

(E) Museum. [Reserved]

Subpart D — Authority

(A) Regulation. Permits

(1) Archaeological survey permits — are issued to conduct archaeological surveys within the exterior boundaries of the reservation.

(a) violation of permit condition(s) are cause for revocation.

(2) Archaeological excavation permits — are issued to conduct the excavation of a pre-historic and/or historic archaeological site within the exterior boundaries of the reservation.

(a) violation of permit condition(s) are cause for revocation.

(3) Exhumation permits — are issued only in conjunction with tribal council approval to disinter a known grave site within the exterior boundaries of the reservation.

(a) violation of permit condition(s) and/or Tribal Council action are cause for revocation.

(4) Paleontological permits — are issued to conduct the excavation and examination of a paleontological site within the exterior boundaries of the reservation.

(a) violation of permit condition(s) are cause for revocation.

(B) Penalties. Charges made against any individuals and/or entities who are in violation of
Ordinance #57, Ordinance #57(a) and Ordinance #57(a) Amendment (b) can be presented by the Cultural Preservation Officer and/or the Tribal Historic Preservation Officer to the CRST Legal Department for prosecution. If convicted in tribal court or the appropriate federal court violators can be fined:

1. first violation — not to exceed $10,000 or pending cost of restoration exceeding $500 not to exceed $20,000.
2. second violation — not to exceed $100,000.
3. trafficking — prosecuted in federal court.

Subpart E — General

(A) Damages. The assessment of actual and punitive damages are left to the desecration of the proper court.

(B) Severability. Pending a finding that any provision of Ordinance #57, Ordinance #57(a) and Ordinance #57(a) Amendment (b) is held invalid by the Courts of the Cheyenne River Sioux Tribe, these are the regulations implementing said Ordinance and amendments.
CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 12, constituting a quorum, were present at the Regular March Session of the Tribal Council, March 4, 1999; and that the foregoing amendments to Ordinance No. 57a were duly adopted at the March session of the Tribal Council by an affirmative vote of 12 for, 0 against, 1 not voting and 2 absent.

[Signature]
Colette LeBeau Iron Hawk, Secretary
Cheyenne River Sioux Tribe