

**FOND DU LAC BAND OF THE MINNESOTA CHIPPEWA TRIBE**

**ORDINANCE #02/15, AS AMENDED**

**LEASES OF TRUST LAND**

Adopted by Resolution #1166/15 of the Fond du Lac Reservation Business Committee on June 3, 2015.

Amended by Resolution #1212/15 of the Fond du Lac Reservation Business Committee on July 8, 2015.

Amended by Resolution #1170/17 of the Fond du Lac Reservation Business Committee on May 10, 2017

Amended by Resolution #1009/18 of the Fond du Lac Reservation Business Committee on January 2, 2018.

Amended by Resolution #1211/18 of the Fond du Lac Reservation Business Committee on July 31, 2018.

Amended by Resolution #1229/18 of the Fond du Lac Reservation Business Committee on August 14, 2018

## TABLE OF CONTENTS

CHAPTER 1	AUTHORITY; PURPOSE; SCOPE .....	1
CHAPTER 2	DEFINITIONS .....	3
CHAPTER 3	LEASES.....	5
CHAPTER 4	ENVIRONMENTAL REVIEWS .....	14
CHAPTER 5	ENFORCEMENT .....	18
CHAPTER 6	EFFECTIVE DATE, AMENDMENTS, SEVERABILITY .....	22
	CERTIFICATION .....	22

**FOND DU LAC BAND OF THE MINNESOTA CHIPPEWA TRIBE**

**ORDINANCE #02/15, AS AMENDED**

**LEASES OF TRUST LAND**

---

**CHAPTER 1  
AUTHORITY; PURPOSE; SCOPE**

---

**Section 101 Authority**

This Ordinance is enacted by the Fond du Lac Reservation Business Committee pursuant to the inherent sovereign authority of the Fond du Lac Band of the Minnesota Chippewa Tribe, as reserved under the Treaty of LaPointe, 10 Stat. 1109, and as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; under Article VI of the Revised Constitution of the Minnesota Chippewa Tribe; under Section 302 of the Minnesota Chippewa Tribe Revised Land Ordinance #2; and under the common law of the United States.

**Section 102 Purpose**

The Fond du Lac Reservation Business Committee finds that a Leases of Trust Land Ordinance is necessary to govern the lease of real property held in trust by the United States for the Fond du Lac Band of Lake Superior Chippewa.

The Ordinance shall be liberally interpreted and construed to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”), 15 U.S.C. § 415, by establishing a process which will not require the approval of the Secretary of the Interior if the lease is executed pursuant to the terms of this Ordinance. Nothing in this Ordinance is intended to expand the authority or responsibility of the Secretary of the Interior beyond that provided for under applicable federal statutes or regulations. The purposes of this Ordinance are accordingly:

- a. To establish uniform policies and procedures for the use of Tribal trust land;
- b. To promote the efficient use of Tribal trust land;
- c. To promote home ownership and access to credit for Band members;
- d. To ensure that interests in Band lands can be easily identified; and
- e. To protect the Band’s long-term interests in its lands.

**Section 103 Scope**

- (a) This Ordinance applies to
  - (1) Leases, subleases, and assignments of Tribal trust land;
  - (2) Mortgages of leasehold interests involving Tribal trust land; and
  - (3) Amendments to the leases, subleases, assignments, and mortgages referred to in subparagraphs (a)(1) and (a)(2) of this Section;

made for any lawful purpose, including but not limited to, for agricultural purposes, business purposes, educational purposes, governmental purposes, recreational purposes, residential purposes, religious purposes, and wind and solar resource purposes.

- (b) This Ordinance does not apply to:
  - (1) Leases of land held in trust or restricted status for an individual Indian;
  - (2) Leases of any tract, or interest therein, in which the United States holds title to the tract or interest in trust for the benefit of the Minnesota Chippewa Tribe.
  - (3) Leases of fee land, whether or not in restricted status;
  - (4) Mortgages of Tribal trust lands or fee lands; or
  - (5) Mineral leases.

**Section 105 No Waiver of Sovereign Immunity**

Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

---

## CHAPTER 2 DEFINITIONS

---

### Section 201 Definitions

For the purposes of this Ordinance, the following definitions shall apply:

- (a) **“Agricultural purposes”** means the purposes of farming, haying, raising livestock, or similar agricultural uses.
- (b) **“Assignment”** means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of lessee’s rights, and assumes all or some of the lessee’s obligations, under a lease.
- (c) **“Band”** means the Fond du Lac Band of the Minnesota Chippewa Tribe, also known as the Fond du Lac Band of Lake Superior Chippewa.
- (d) **“Business purposes”** means commercial purposes and use by for-profit and nonprofit organizations.
- (e) **“Educational purposes”** means the purposes of delivering educational services.
- (f) **“Governmental purposes”** means the purposes of delivering government services by the Band or conducting Band governmental functions.
- (g) **“Land Information Department”** means the Land Information Department in the Band’s Resource Management Division.
- (h) **“Lease”** means a written contract, between the Band and a lessee, whereby the lessee is granted a right to possess Band land, for a specified purpose and duration. The lessee’s right to possess will limit the Band’s right to possess the leased premises only to the extent provided in the lease.
- (i) **“Leasehold mortgage”** means a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.
- (j) **“Livestock”** means those animals commonly associated with a farm or performing work in an agricultural setting. Such animals include horses, donkeys, mules, cattle, sheep, poultry, swine, goats and other animals typically associated with a farm, ranch, or stable.
- (k) **“LTRO”** means the Land Titles and Records Office of the Bureau of Indian Affairs within the United States Department of Interior.

- (l) **“Premises”** means any portion of tribal trust land, as described in any lease, and any common areas and grounds appurtenant thereto.
- (m) **“Public”** for the purposes of Chapter 4 of this Ordinance means the enrolled members of the Band, individuals who live or work on Tribal trust land, and/or business entities or other institutions that are engaged in programs or activities on Tribal trust land that have a definable, concrete interest that may reasonably be affected by a proposed lease.
- (n) **“Recreational purposes”** means the purposes of camping, fishing, hunting, ATV use, snowmobile use, constructing and maintaining seasonal dwellings (such as cabins and hunting shacks), or similar recreational uses.
- (o) **“Reservation”** means the Fond du Lac Indian Reservation.
- (p) **“Reservation Business Committee”** means the duly elected governing body of the Band.
- (q) **“Residential purposes”** means the purposes of constructing or maintaining a residential house which the lessee will use as his or her primary residence.
- (r) **“Resource Management Division”** means the Band’s Resource Management Division.
- (s) **“Restoration and reclamation plan”** means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for a project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.
- (t) **“Significant Effect on the Environment”** means a substantial, or potentially substantial, adverse change in the environment, including air, water, minerals, flora, fauna, ambient noise, cultural areas, and objects of historic, cultural or aesthetic significance.
- (u) **“Sublease”** means a written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the lease.
- (v) **“Tribal trust land”** means any tract, or interest therein, in which the United States holds title to the tract or interest in trust for the benefit of the Band.
- (w) **“Wind and solar resource purposes”** means the purposes of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity: (1) For resale on a for-profit or non-profit basis; (2) To a utility grid serving the public generally; or (3) To users within the local community (e.g., on and adjacent to the Reservation).

---

**CHAPTER 3  
LEASES**

---

**Section 301 Application of Other Laws**

This Ordinance shall not relieve a lessee's burden to comply with all other applicable laws, including all other Band ordinances that are not inconsistent with this Ordinance.

**Section 302 Mandatory Lease Provisions**

Every lease must:

- (a) Describe the land being leased with a description of sufficient detail to meet the recording requirements of the LTRO;
- (b) State the parties to the lease;
- (c) State the term of the lease;
- (d) State the effective date of the lease;
- (e) State the purpose of the lease and authorized uses of the leased premises (i.e., agricultural, business, governmental, recreational, residential, or wind and solar resource purposes);
- (f) State how much rent is due;
- (g) State who receives rent;
- (h) State what form of payment is acceptable;
- (i) State whether any late payment charges or special fees apply, including the rate of interest to be charged if the lessee fails to make timely payments;
- (j) State the following: "If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.";
- (k) State whether any due diligence requirements apply;
- (l) State whether a performance bond is required and the form of bond that is acceptable;
- (m) State any insurance requirements;

- (n) Address whether permanent improvements may be constructed; address ownership of improvements; identify the party or parties responsible for constructing, operating, maintaining, and managing improvements; and address removal of improvements;
- (o) State any mitigation measures or reclamation and restoration plan required as a result of the environmental review process;
- (p) State whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective, and how disputes regarding adjustments will be resolved;
- (q) State that a timber cutting permit is required before timber may be cut on the leased land;
- (r) State whether livestock may be kept on the land (if the lease is for residential or recreational purposes, the lease must state that no livestock may be kept on the land);
- (s) State that the lessee shall not encroach onto neighboring property and that ongoing trespass onto neighboring property shall be grounds for cancellation of the lease;
- (t) State that the lessee holds the United States and the Band harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises;
- (u) State that the lessee indemnifies the United States and the Band against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Band for liability or cost arising from the Bands' negligence or willful misconduct.
- (v) State that if historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact BIA and the tribe with jurisdiction over the land to determine how to proceed and appropriate disposition;
- (w) List other laws and ordinances applicable to the lease;
- (x) State that the lease is subject to cancellation in accordance with the enforcement procedures contained in Chapter 5 of this Ordinance; and
- (y) State any other negotiated remedies for lease cancellation or termination.

- (z) State the respective addresses at which the lessee and the lessor respectively agree to accept all notifications, including any required service of process, relating to the lease and the process by which the parties can update such addresses if needed.

**Section 303 Additional Requirements for Agricultural Leases**

- (a) All lessees of leases for agricultural purposes are required to manage the land in accordance with any agricultural resource management plan developed by the Band.
- (b) Appropriate stipulations or conservation plans must be developed and incorporated in all leases for agricultural purposes.

**Section 304 Terms of Leases**

- (a) Leases for residential, recreational, governmental, educational, and religious purposes may have a term not to exceed 75 years; and
- (b) Leases for business, agricultural, and wind and solar resource purposes may have a term not to exceed 25 years with an option to renew for up to two (2) additional terms, each of which may not exceed 25 years.

**Section 305 Applying for a Lease**

- (a) A potential lessee must submit a lease application to the Land Information Department.
- (b) The lease application must identify the lessee, the type of lease requested, the parcel of land requested, and any additional information required by policies approved by the Reservation Business Committee.
- (c) The Land Information Department is responsible for processing the lease applications, for providing reasonable assistance to potential lessees, and for coordinating with other Band departments to ensure that all necessary approvals are obtained before the lease is transferred to the Reservation Business Committee for review. If the Land Information Department determines that the lease application submitted is incomplete, it shall inform the applicant of the deficiencies in the application and permit the applicant to remedy such deficiencies.
- (d) The Land Information Department shall process lease applications in a timely manner, but there will be no mandatory timeframe for processing lease applications.

**Section 306 Land Descriptions**

- (a) Leases shall contain legal descriptions based on metes and bounds, rectangular or lot and block systems based on the Public Land Survey System.
- (b) If a legal description is already available for the requested parcel, the existing legal description may be used.
- (c) If a legal description is unavailable or the Land Information Department determines that the existing legal description is inadequate, the Land Information Department shall obtain a site survey and a legal description.
- (d) A potential lessee may be required to pay for the cost of preparing the legal description, regardless of whether the legal description was already available.

**Section 307 Zoning Review**

A potential lessee must submit plans of development and construction schedules to the Land Information Department. The plans of development and construction schedules must be sufficient to conduct a zoning review in accordance with applicable law.

**Section 308 Improvements**

All leases shall require the lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the lease.

- (a) Lessee, at lessee's expense or as otherwise provided in the lease, may construct improvements under a lease if the lease specifies, or provides for the development of:
  - (i) a plan that describes the type and location of any improvements to be built by the lessee; and
  - (ii) a general schedule for construction of the improvements.

The lease shall not allow for any construction or development of improvements unless the lessee has first obtained any required permits or other approvals required under the Band's Land Use Ordinance, #02/07, or other applicable Band law.

- (b) Lessee shall provide the Band written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.
- (c) When requested by the Band or otherwise required in the lease, lessee shall further provide the Band, in writing, an updated schedule for construction.

- (d) Failure of the lessee to comply with these requirements will be deemed a violation the lease and may lead to cancellation of the lease pursuant to Chapter 5 of this Ordinance.
- (e) Improvements to the premises shall become the property of the Band unless otherwise provided for in the lease. If improvements will be removed, the lease shall specify, unless waived by the Band, the maximum time allowed for such removal, the lessee's responsibility for such removal, and the lessee's obligations to restore and reclaim the property to conditions acceptable to the Band.
- (f) A lessee may develop equity value in the improvements, and sell its interest in the lease based on the equity value. The Band has a right of first refusal to purchase the interest.
- (g) Improvements may be subject to taxation by the Band.

**Section 309 Environmental Reviews Required**

Unless exempted from this requirement under this Ordinance, the Band shall not approve a lease until the proposed lease has completed the environmental review process under Chapter 4 of this Ordinance. Leases approved and executed without complying with this section shall be invalid.

**Section 310 Fair Market Lease Value**

- (a) The Fair Market Lease Value shall be determined using one of the following appraisal methods:
  - (i) The Fair Market Lease Value shall be determined by an appraisal or equivalent procedure performed by the Band using the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by similar methodology as approved by the Band and deemed to be in the best interests of the Band.
  - (ii) Alternatively, the Fair Market Lease Value shall be determined by an appraisal performed by a licensed appraiser using the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal.
- (b) No lease may be approved for less than the present Fair Market Lease Value as set forth in the appraisal, unless the Band determined such action is in the best interests of the Band.
- (c) An appraisal log reporting the methods of appraisal and value shall be attached to every lease, unless Fair Market Lease Value payments are waived by the Band.

- (d) A lease may be structured at a flat lease rate.
- (e) A lease may be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center or mall, or the lessee generates over \$1,000,000.00 annually in gross receipts.
- (f) A lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- (e) The lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
- (g) Leases may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.
- (h) Leases may be amended to allow for lease rate adjustments.
- (j) The Band shall keep written records of the basis used in determining the fair market lease value, as well as the basis for adjustments. These records shall be presented to the lessee for its review and acceptance or non-acceptance and included in any lease file.

**Section 311 Insurance Requirements**

- (a) A lessee shall provide insurance necessary to protect the interests of the Band and in amounts sufficient to protect all insurable improvements on the premises.
- (b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the lease.
- (c) The Band and the United States must be identified as additional insured parties.
- (d) The Band may waive this requirement if the Band determines it is in the best interests of the Band. The waiver may be revoked at any time if the waiver ceases to be in the Band's best interest.

**Section 312 Performance Bonds**

- (a) Unless waived in writing by the Band in accordance with this Ordinance, the lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the lease. Such bond shall be for the purpose of securing the lessee's contractual obligations under the lease and shall guarantee:

- (i) The annual lease payment;
  - (ii) The estimated development cost of improvements; and
  - (iii) Any additional amount necessary to ensure compliance with the lease.
- (b) The Band may waive the bond requirement, or reduce the amount, if doing so is in the best interests of the Band. The Band shall maintain written records of the waivers and reductions.
- (c) The performance bond may be in one of the following forms:
- (i) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (ii) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (iii) Negotiable Treasury securities; or
  - (iv) A surety bond issued by a company approved by the U.S. Department of the Treasury.

**Section 313 Subleases, Assignments, Amendments, and Leasehold Mortgages**

- (a) Subleases, assignments, amendments, or leasehold mortgages of any lease shall be by written consent of the Reservation Business Committee and lessee, unless otherwise provided herein.
- (b) The lease may authorize subleases and assignments, in whole or in part, without approval from the Band, provided a copy of the sublease or assignment is provided to the Band and the following conditions, where applicable, are met and stated in the lease:
- (i) There is no event of default under the lease or this Ordinance;
  - (ii) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;
  - (iii) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and
  - (iv) The lessee shall not be relieved or released from any of its obligations under the lease.

This Section 313(b) in no way relieves the parties from carrying out their duties under the lease, which may contain additional restrictions and conditions.

- (c) The lease may authorize mortgages of the leasehold interest for the purpose of financing to develop and improve the premises subject to approval by the Band.
- (d) If a sale or foreclosure of the lessee's business or assets occurs and the leasehold mortgagee is also the purchaser, the leasehold mortgagee may assign the lease without approval of the Band or lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the leasehold mortgagee, approval by the Band is required and the purchaser must agree in writing to be bound by all terms and conditions of the lease.

**Section 314 Supporting Documentation for Reservation Business Committee Review**

To be considered for authorization by the Reservation Business Committee, the following documentation must be produced in support of a lease:

- (a) A draft lease that contains the minimum provisions identified in Section 302 and, if the lease is for agricultural purposes, the terms set forth in Section 303;
- (b) Plans of development and construction schedules as required by Section 307, Section 308, and applicable Band law; and
- (c) Reports, surveys, and site assessments needed to facilitate compliance with the environmental review as required by Section 404 and applicable Band law.
- (d) Evidence of insurability covering the scope of necessary insurance under Section 311.
- (e) Any additional documentation the Land Information Department deems relevant to the Reservation Business Committee's review.

**Section 315 Lease Approvals**

- (a) All leases, amendments, assignments, subleases, and leasehold mortgages under this Ordinance must be approved by a resolution of the Reservation Business Committee;
- (b) Leases must be signed by the Chair and Secretary/Treasurer of the Reservation Business Committee;

- (c) Leases must be signed by the lessee.

**Section 316 Recording of Leases**

- (a) All leases and lease documents must be recorded in the Band's land recording system, which is maintained by the Land Information Department;
- (b) All leases and lease documents, except residential subleases approved pursuant to this Ordinance, must be provided to the Bureau of Indian Affairs for recording.

---

## CHAPTER 4 ENVIRONMENTAL REVIEWS

---

### **Section 401 Environmental Review Required**

Unless a lease is exempt from the environmental review process under Section 402, the Band shall not approve a lease until the environmental review process pursuant to this Chapter has been completed with respect to the lease. Leases approved and executed without compliance with this Chapter shall be invalid and void ab initio.

The Resource Management Division shall be responsible for making threshold determinations under this Chapter and for conducting the environmental review process. The Resource Management Division may charge a reasonable fee for conducting the environmental review process.

### **Section 402 Threshold Determination**

- (a) If the Resource Management Division determines that the lease approval by its nature would not have a Significant Effect on the Environment, the leasing decision is exempt from additional requirements of the environmental review process in sections 404 to 406 of this Ordinance.
- (b) If the Resource Management Division determines that the lease approval might be expected to have a Significant Effect on the Environment, the Resource Management Division shall fulfill the requirements of the environmental review process.

### **Section 403 Categorical Exclusions**

- (a) The following types of leases do not individually or cumulatively have a significant effect on the environment and therefore, except as provided in subsection 403(b), are categorically excluded from the environmental review process in sections 404 to 406.
  - (i) Approval of a lease for residential use of an existing housing unit, including any associated improvements, access roads and utilities; and
  - (ii) Approval of a lease for five (5) acres or less of contiguous land for construction and residential use of a single structure of one to four dwelling units and any associated improvements, access roads and utilities.
- (b) Notwithstanding subsection 403(a), the Resource Management Division shall follow the procedures set forth in section 404 to 406 if it determines that extraordinary circumstances exist under which the residential use of the premises may, individually or cumulatively,

have a significant effect on the environment, including without limitation, as set forth below:

- (i) Substantial controversy on environmental grounds; or
- (ii) Presence of cultural resources or historic properties.

**Section 404 Environmental Review Process**

- (a) Unless a lease is exempt from the environmental review process, the Resource Management Division must cause to be prepared before the approval of the lease a comprehensive and adequate tribal environmental report, analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a report and is a matter of public record or is otherwise publically available need not be repeated in its entirety in the report, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the report shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The report shall provide detailed information about the Significant Effects on the Environment that the lease is likely to have, and must include a detailed statement setting forth all of the following:
  - (i) A description of the physical environmental conditions in the vicinity of the proposed lease, including the environmental setting and existing baseline conditions, as they exist at the time the notice of preparation is issued;
  - (ii) All Significant Effects on the Environment of the proposed lease;
  - (iii) In a separate section:
    - (1) Any Significant Effect on the Environment that cannot be avoided if the lease is executed;
    - (2) Any Significant Effect on the Environment that would be irreversible if the lease is executed; and
    - (3) Any mitigation measures or restoration and reclamation plan proposed, recommended, or required.
- (b) In addition to the information required pursuant to subdivision (a), the tribal environmental report must also contain a statement indicating the reasons for determining that various effects of the proposed lease on the off-reservation environment are not significant and consequently have not been discussed in detail in the report. In the report, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

**Section 405 Notice of Completion**

- (a) Within no less than thirty (30) days following the completion of a draft tribal environmental report, the Resource Management Division shall post a notice of completion and a copy of the draft report on its website. The notice of completion shall include all of the following information:
  - (i) A brief description of the proposed lease and lease-related activities, such as any anticipated improvements;
  - (ii) The location of the proposed lease;
  - (iii) An address where copies of the draft report are available; and
  - (iv) Notice of a period of thirty (30) days during which the Resource Management Division will receive comments on the draft report.
- (b) In addition, the Resource Management Division will provide public notice by at least one of the procedures specified below:
  - (i) Publication of the draft report in a newspaper of general circulation in the area affected by the proposed lease, with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.
  - (ii) Posting of the draft report in the offices of the Band with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

**Section 406 Response to Public Comments and Final Report**

After the thirty (30) day comment period has ended, the Resource Management Division will review all comments received from the public. Prior to the approval and execution of the lease, the Resource Management Division will provide written responses to relevant and substantive public comments on any Significant Effects on the Environment arising as a result of the proposed lease and proposed or recommended mitigation measures addressing any such effects. The Resource Management Division will also prepare a final tribal environmental report. The Resource Management Division's written responses will be posted in the offices of the Band with a notice to the public.

**Section 407 Application of the Tribal Environmental Policy Ordinance**

- (a) Leases approved under this Ordinance are exempt from the requirements of the Band's Tribal Environmental Policy Ordinance, Fond du Lac Ordinance #05/10.

- (b) Notwithstanding Subsection 407(a), the Resource Management Division may follow the procedures in the Tribal Environmental Policy Ordinance in reviewing leases under this Ordinance, provided that the minimum standards for environmental review contained in this Ordinance are followed.

---

## CHAPTER 5 ENFORCEMENT

---

### **Section 501 General Enforcement Authority & Lease Compliance Monitoring**

- (a) The Band shall have all powers necessary to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with this Ordinance. This includes the power to enter the leased premises at a reasonable time after providing reasonable notice.
- (b) The Resource Management Division is responsible for monitoring lease compliance and for recommending lease enforcement actions consistent with this Ordinance.
- (c) Nothing in this Chapter precludes the Band or a lessee or sublessee from terminating a lease without regard to any default if the terms of the lease so provide.
- (d) In addition to enforcement actions provided for in this Chapter, the BIA may, upon reasonable notice from the Band at the BIA's discretion, enforce the provisions of, or cancel a lease document.

### **Section 502 Jurisdiction of the Tribal Court**

The Fond du Lac Tribal Court shall have exclusive jurisdiction over enforcement actions brought under Section 503.

### **Section 503 Commencement of an Action**

If the Band believes a lessee to be in default, the Band may commence an enforcement action by filing a complaint under the Civil Code of the Fond du Lac Band of Lake Superior Chippewa, #04/92, as amended. The complaint shall state the facts forming the basis of the default, the relief sought, and shall include a description of the leased premises at issue. The Band may be represented by an attorney or an authorized Resource Management Employee.

### **Section 504 Notice of Hearing**

After a complaint is filed, the Tribal Court shall schedule a hearing and issue a notice of hearing to the Band and the lessee. The hearing shall be held within ten (10) days of the date the complaint is filed.

### **Section 505 Service of the Complaint and Notice of Hearing**

The Band shall serve the complaint and notice of hearing upon the lessee at least three (3) business days before the hearing date. Service shall be completed as follows:

- (a) By personal service of the complaint and notice of hearing on any lessee; or
- (b) By mailing the complaint and notice of hearing to the address identified by the lessee or lessees pursuant to Section 302(y).

The Band shall complete an affidavit of service and file the affidavit with the Tribal Court.

**Section 506 Answer by the Lessee**

The lessee shall be exempt from the requirement in the Civil Code to file an answer. Unless the lessee affirmatively admits an allegation, the lessee shall be presumed to have denied all allegations in the complaint. The hearing shall not be delayed in order to give the lessee time to file an answer.

**Section 507 Burden of Proof**

At the hearing, the Band shall have the burden of establishing by a preponderance of the evidence at least one of the grounds for a default listed in Section 508 of this Ordinance. The lessee shall have the right to present evidence and testimony to defend against the complaint.

**Section 508 Finding of Default**

The lessee is in default if:

- (a) the lessee has failed to make rent payments or other payments required by the lease, provided that the lessee has been given notice of the violation and has failed to make the required payments within 30 days' after receiving notice; or
- (b) the lessee is otherwise in breach of the terms of the lease or any other requirements of this Ordinance.

**Section 509 Remedies**

Upon a finding of default, the Tribal Court may upon the request of the Band:

- (a) cancel the lease;
- (b) assess any damages resulting from the default, including interest and late payment penalties;
- (c) grant other appropriate remedies, including execution on bonds, collection of insurance proceeds, or negotiated remedies; or
- (d) order any combination of the remedies listed in this Section 509.

**Section 510 Penalties**

Unless the lease provides otherwise, the interest charges and late payment penalties prescribed by the lease shall apply in the absence of any specific notice to the lessee from the Band, and the failure to pay such amount shall constitute a breach of the lease.

**Section 511 Order and Judgment**

Within three (3) business days after the hearing, the Tribal Court shall issue an order and judgment containing the following:

- (a) Findings of fact;
- (b) If lease cancellation was requested, an order granting the lease cancellation effective immediately or a statement that a ground for lease cancellation was not established;
- (c) If damages were requested, an order establishing the damages owed by the lessee or a statement that damages were not established; and
- (d) Any additional orders or conclusions with respect to the claims raised, remedies requested, defenses proffered, or any other subject matter relevant to ruling on the allegations in the complaint.

**Section 512 Motion for Reconsideration**

No later than ten (10) days after entry of the order and judgment, an aggrieved party may move the Tribal Court to amend the findings of fact or conclusions, make additional findings of fact or conclusions, and amend the judgment accordingly. The movant shall provide support for the request. If the Court denies the motion, the order and judgment shall be final. If the Court grants the motion, the amended order and judgment shall be final.

**Section 513 Repossession of Property**

Immediately upon cancellation of a lease by Court order and judgment, the Band may take possession of the leased premises, unless otherwise provided for by the order and judgment. Personal property shall be disposed of in accordance with the lease and applicable policies.

**Section 514 Lease Trespass**

A lease trespass occurs when:

- (a) an individual or entity takes possession of, or uses, Tribal trust land without a lease and a lease is required under this Ordinance; or

- (b) a lessee remains in possession of Tribal trust land after the expiration, termination, or cancellation of a lease.

**Section 515 Trespass Enforcement Actions**

In the event of a lease trespass under Section 514 of this Ordinance, the Band may:

- (a) bring an action in Tribal Court to recover possession and/or damages, including through an eviction action, and may pursue any additional remedies available under Band law (except as otherwise prohibited by federal law);
- (b) contact the BIA office with jurisdiction over the Tribal trust lands and request that the office take enforcement action on behalf of the Band; or
- (c) pursue any other available remedies.

**Section 516 Recording of Lease Cancellations and Terminations**

- (a) All lease cancellations or terminations must be recorded in the Band's land recording system, which is maintained by the Band's Resource Management Division;
- (b) All lease cancellations or terminations must be provided to the Bureau of Indian Affairs for recording.

---

**CHAPTER 6**  
**EFFECTIVE DATE; AMENDMENTS; SEVERABILITY**

---

**Section 601**    **Effective Date**

The provisions of this Ordinance shall become effective immediately upon adoption by the Reservation Business Committee and upon approval of this Ordinance by the Secretary of the Interior.

**Section 602**    **Amendment or Rescission**

The Reservation Business Committee may amend this Ordinance as it deems necessary to protect the public health, safety and welfare of the Fond du Lac Reservation. The provisions of this Ordinance may be amended by resolution of the Reservation Business Committee.

An amendment to this Ordinance through resolution of the Reservation Business Committee is effective only if (1) the amendment is approved by the Secretary of the Interior or (2) the amendment is a minor technical amendment.

**Section 603**    **Severability**

If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance will not be affected thereby.

**CERTIFICATION**

We do hereby certify that the foregoing Ordinance #02/15 was duly presented and adopted by Resolution #1166/15 by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on June 3, 2015, on the Fond du Lac Reservation, and subsequently amended by Resolution #1212/15 on July 8, 2015, Resolution #1170/17 on May 10, 2017, Resolution #1009/18 on January 2, 2018; Resolution #1211/18 on July 31, 2018; and #1229/18 on August 14, 2018.



Kevin R. Dupuis, Sr.  
Chairman



Ferdinand Martineau, Jr.  
Secretary/Treasurer