

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
ORDINANCE #02/11, AMENDED
LAND ASSIGNMENT AND LAND LEASE ORDINANCE

Adopted by Resolution #1286/11 of the Fond du Lac Reservation
Business Committee on August 30, 2011.
Amended by Resolution #1328/11 of the Fond du Lac Reservation
Business Committee on September 27, 2011.

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CHAPTER 1
AUTHORITY, FINDINGS AND PURPOSES

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 Lake Superior Chippewa, 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; Article VI of the Revised Constitution of the Minnesota Chippewa Tribe; and under the common law of the United States.

Section 102 Findings and Purposes

The Fond du Lac Reservation Business Committee finds that a Land Assignment and Land Lease Ordinance is necessary to maximize the Band's control over Band lands and to promote the efficient and fair allocation of land use opportunities for Band members. The purposes of this Ordinance are accordingly:

- (a) To establish uniform policies and procedures for the use, assignment, and lease of Band lands;
- (b) To promote the efficient use of Band lands and land-based resources;
- (c) To minimize interference by the Bureau of Indian Affairs with the Band's use of its own resources;
- (d) To promote home ownership and access to credit for Band members;
- (e) To ensure that interests in Band lands can be easily identified; and
- (f) To protect the Band's long-term interests in its lands.

Section 103 Reservation of Rights

The Reservation Business Committee reserves the right to amend or repeal all or any part of this Ordinance at any time. There shall be no vested private right of any kind created by this Ordinance. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the powers of the Fond du Lac Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

CHAPTER 2
DEFINITIONS AND GENERAL PROVISIONS

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) **"Allotted land"** means land or interests in lands the title to which is held, for any individual Indian, in trust by the United States or is subject to restriction against alienation imposed by the United States.
- (c) **"Allottee"** means any individual Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to restriction against alienation imposed by the United States.
- (d) **"Assigned land"** means the land that a land assignment gives the assignee the right to use.
- (e) **"Assignee"** means the holder of a land assignment.
- (f) **"Band"** means the Fond du Lac Band of Lake Superior Chippewa.
- (g) **"Band lands"** means, for the purposes of this Ordinance:
 - (8) Any trust land held for the benefit of the Band or its members;
 - (9) Any trust land held for the benefit of the Minnesota Chippewa Tribe or its members which lies within the boundaries of the Fond du Lac Reservation;
 - (10) Any allotted lands in which the Band has an interest; and
 - (11) Any lands which are held in fee by the Fond du Lac Band or any political subdivision of the Band.
- (l) **"Band member"** means an enrolled member of the Fond du Lac Band of Lake Superior Chippewa.
- (m) **"BIA"** means the Bureau of Indian Affairs within the United States Department of the Interior.

- (n) **"Commercial purposes"** means the purposes of business, for-profit organizations, or nonprofit organizations.
- (o) **"Fee land"** means lands held by the owner in fee simple and not in trust.
- (p) **"Governmental purposes"** means the purposes of delivering government services by the Band or conducting Band governmental functions.
- (q) **"Land assignment"** means a formal right to use Band lands subject to the conditions set forth in this Ordinance.
- (r) **"Lease"** means a written contract, other than a land assignment, between landowners and a lessee, whereby the lessee is granted a right to possession of land, for a specified purpose and duration.
- (s) **"Leased land"** means the land that a lease gives the lessee the right to use.
- (t) **"Lessee"** means the holder of a land lease.
- (u) **"Livestock"** means those animals commonly associated with a farm or performing work in an agricultural setting. Such animals include members of the equestrian family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including farm pigs and Vietnamese pot-bellied pigs), goats, and other animals typically associated with a farm, ranch, or stable.
- (v) **"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. If land contains a year-round dwelling, the land cannot be designated for recreational purposes. If land is designated for recreational purposes, a year-round dwelling cannot be built on the land and any existing seasonal dwelling cannot be converted into a year-round dwelling.
- (w) **"Reservation"** means the Fond du Lac Indian Reservation.
- (x) **"Reservation Business Committee"** means the duly elected governing body of the Band.
- (y) **"Residential purposes"** means the purposes of constructing or maintaining a residential house which the assignee or lessee will use as his or her primary residence.

(z) "Trust land" means land held in trust by the United States government for the benefit of an Indian tribe or its members.

Section 202 Prior Leases and Assignments

This Ordinance shall apply to leases and land assignments made on or after the effective date of this Ordinance. Leases and land assignments made prior to the effective date shall remain valid and need not be modified.

Section 203 Permits

This Ordinance shall not apply to land use permits. Nothing in this Ordinance shall be construed as limiting the Band's ability to grant permission for the short-term use of Band lands provided that such permission is revocable at will by the Reservation Business Committee.

Section 204 Other Land Ordinances

This Ordinance shall complement and shall be construed to be consistent with the Band's other land ordinances, including the Land Use Ordinance, FDL Ordinance #02/07.

Section 205 Livestock Prohibitions

The provisions of every land assignment and lease shall state whether livestock may be kept on the land. No livestock may be kept on land assigned or leased for residential or recreational purposes.

Section 206 Timber Cutting Permits

The provisions of every land assignment and lease shall state that a timber cutting permit is required before timber may be cut on the assigned land or leased land. Cutting timber without a permit shall be grounds for termination of the land assignment or lease.

Section 207 Encroachment onto Neighboring Property

The provisions of every land assignment and lease shall state that encroachment onto neighboring property or ongoing trespass onto neighboring property shall be grounds for termination of the land assignment or lease.

Section 208 Allocation of Future Land Assignments and Leases for Residential Purposes

If an individual has an existing land assignment or lease for housing or residential purposes, that person shall be ineligible

for another land assignment or lease for housing or residential purposes.

This Section shall not be construed as limiting the ability of an individual to obtain a new land assignment or lease after a previous land assignment or lease is terminated. The requirements of this Section shall be satisfied if the grant of the new land assignment or lease is made conditional on the current land assignment or lease being terminated within 90 days, if no construction is required for the intended use, or within 1 year, if construction is required.

CHAPTER 3
LAND ASSIGNMENTS

Section 301 Eligibility for Land Assignments

Eligibility for land assignments is limited to:

- (a) Band members over the age of 18;
- (b) organizations and business entities wholly owned by the Band;
and
- (c) the Band itself.

Each individual Band member applying for a land assignment shall be subject to a criminal history investigation as required under FDL Ordinance #02/09.

Section 302 Land Available for Land Assignments

Land assignments may only be made if (a) the land assignment involves Band lands, (b) the land is not subject to an existing land assignment or lease, and (c) the use of the land is consistent with the policies and ordinances of the Reservation Business Committee.

Section 303 Housing Division Assignments

A rental or home ownership agreement entered into between a Band member and the Fond du Lac Housing Division shall serve, as a matter of law, as a land assignment. Land assignments made through the Housing Division shall be made in accordance with all policies, procedures, rules, and ordinances applicable to rental and home ownership agreements. The land assignment shall remain in place or be terminated according to the provisions of the rental or home ownership agreement. In the event that a Band member pays for the a Housing Division home ownership house in full and becomes a home owner pursuant to the provisions of the home ownership agreement, the Band member shall be given a separate residential assignment pursuant to Section 305.

Section 304 Fond du Lac Development House Assignments

A rental or home ownership agreement between a Fond du Lac Band member and Fond du Lac Development for a Fond du Lac Development house shall serve, as a matter of law, as a land assignment. Land assignments involving Fond du Lac Development houses shall be made by the Reservation Business Committee. The land assignment shall

remain in place or be terminated according to the provisions of the rental or home ownership agreement. In the event that a Band member pays for a Fond du Lac Development home ownership house in full and becomes a home owner pursuant to the provisions of the home ownership agreement, the Band member shall be given a separate land assignment for residential purposes pursuant to Section 305.

Section 305 Land Assignments for Residential Purposes

A land assignment may be made to an eligible Band member for residential purposes. The length, continuation, or renewal of a land assignment for residential purposes may be conditioned on the construction, maintenance, or use by the assignee of a residential house on the assigned land.

Section 306 Agricultural, Commercial, Governmental, and Recreational Assignments

A land assignment may be made for agricultural, commercial, governmental, or recreational purposes. The length, continuation, or renewal of a land assignment for agricultural, commercial, governmental, or recreational purposes may be conditioned on the construction or maintenance of a building on the assigned land or the use or type of use of the assigned land.

Section 307 Land Assignment Procedures

To obtain a land assignment for residential, agricultural, commercial, or recreational purposes, an eligible applicant must apply to the Resource Management Division, follow all applicable procedures, and pay all applicable fees. After the application is processed, the application shall be reviewed by the Fond du Lac Land Use Committee and shall be approved or denied by the Reservation Business Committee. If the application is approved, a written land assignment agreement shall be signed by the assignee and the Chair and Secretary/Treasurer of the Band.

Section 308 Assignments of Allotted Lands

A land assignment may be made involving allotted land only if the Band or the Minnesota Chippewa Tribe has an interest in the allotted land. The allottees shall be entitled to notice of the assignment and just compensation for the use of the assigned land.

Section 309 Duration of Assignments

Land assignments for residential, agricultural, commercial, and recreational purposes may be made for terms not to exceed 25 years but may include provisions authorizing a renewal or extension for

one additional term not to exceed 25 years. Land assignments for governmental purposes may be made for an indefinite term.

Section 310 Inheritance of Assignments

A land assignment may be inherited only if the provisions of the land assignment permit it to be inherited.

Section 311 Transfer of Assignments

A land assignment may be transferred to an eligible Band member only if the provisions of the land assignment permit it to be transferred. A land assignment cannot be transferred to a non-Band member.

Section 312 Termination of Assignments

A land assignment shall be terminated according to its provisions. Notwithstanding the provisions of the land assignment, a land assignment may be terminated by the Band if the assignee is paid just compensation.

CHAPTER 4
LAND LEASES

Section 401 **Required Leases**

A written lease is required in the following situations:

- (a) Non-Band Members. A lease is required to give a non-Band member any formal right to use Band lands. A lease is not required, however, when the non-Band member is a co-occupant of land that is assigned or leased to a Band member.

- (b) Security Interests. A lease is required when Band lands will be used as part of a security interest for a home under Section 184 of the Native American Housing Assistance Act of 1996, the Department of Veteran's Affairs Direct Home Loans for Native American Veterans Living on Trust Lands program, or a similar program.

If the required lease involves trust or allotted land, the lease shall require approval by the BIA.

Section 402 **Leases of Allotted Lands**

It is the Band's policy to avoid leases of allotted lands and to eliminate fractionation by purchasing allotment interests. In order to promote this policy, all proposed leases of allotted lands must be reviewed and approved by the Fond du Lac Legal Affairs Office. A lease may be approved if the lease is necessary to protect the rights of the assignee and the allottees. The lease shall be in writing and shall require approval by the BIA. This lease shall be in addition to any land assignment required under Section 308.

Section 403 **Lease Procedures**

To obtain a lease, a person shall apply to the Resource Management Division, follow all applicable procedures, and pay all applicable fees. After the application is processed, the application shall be reviewed by the Land Use Committee and shall be approved or denied by the Reservation Business Committee.

Section 404 **Duration of Leases**

If a lease requires approval by the BIA, then the maximum term of the lease shall be governed by federal law. Leases not requiring BIA approval may be made for terms not to exceed 25 years but may include provisions authorizing a renewal or extension for one additional term not to exceed 25 years.

Section 405 Inheritance of a Lease Interest

A lease may be inherited only if the provisions of the lease permit it to be inherited.

Section 406 Transfer of a Lease Interest

An interest in a lease may be transferred to a third party only if the provisions of lease permit it to be transferred.

Section 407 Lease Termination

A lease shall be terminated according to its provisions. Notwithstanding the provisions of the lease, a lease may be terminated by the Band if the lessee is paid just compensation, unless termination is prohibited by federal law.

CHAPTER 5
RECORDING OF ASSIGNMENTS AND LEASES

Section 501 Creation and Maintenance of a Land Recording System

The Resource Management Division shall create and maintain a land recording system, which shall be separate from any land recording system maintained by the BIA. The land recording system shall record all interests in Band lands which pre-exist or are granted pursuant to this Ordinance.

Section 502 Recording of Assignments

The Resource Management Division shall record all assignments of Band lands in the land recording system. In order to facilitate the recording of assignments, the Director of the Housing Division shall forward information about changes in rental or home ownership agreements to the Resource Management Division at least once per month. Assignments shall be recorded when received by the Resource Management Division.

Section 503 Recording of Leases

The Resource Management Division shall record all leases in the land recording system. If a lease requires approval by the BIA under Section 401 or Section 402, then the lease shall also be recorded with the BIA.

CHAPTER 6
EFFECTIVE DATE, AMENDMENTS, SEVERABILITY

Section 601 **Effective Date**

The provisions of this Ordinance shall become effective thirty (30) days from adoption by the Reservation Business Committee.

Section 602 **Amendment or Rescission**


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

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 #02/11 was duly presented and adopted by Resolution #1286/11 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 August 30, 2011 on the Fond du Lac Reservation; and subsequently amended by Resolution #1328/11 on September 27, 2011.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer