

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA  
ORDINANCE #03/14**

**PRESERVATION OF CULTURAL RESOURCES**

**Adopted by Resolution #03/14 of the Fond du Lac Reservation  
Business Committee on May 6, 2014.**

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**FOND DU LAC ORDINANCE #03/14**

**PRESERVATION OF CULTURAL RESOURCES**

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**CHAPTER 1  
AUTHORITY; PURPOSE; SCOPE**

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**SECTION 101    AUTHORITY**

This Ordinance is enacted pursuant to the authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as such authority is granted by Article VI of the Revised Minnesota Chippewa Tribe Constitution, and as recognized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476.

**SECTION 102    FINDINGS**

The Fond du Lac Reservation Business Committee hereby finds and declares:

- a. The mission of the Fond du Lac Band includes the preservation of the Band's sovereignty, cultural identity, and heritage;
- b. The cultural heritage of the Fond du Lac Band should be maintained as a vital aspect of its community life and provide for development;
- c. Cultural sites and resources of the Fond du Lac Band are being lost or substantially altered, sometimes inadvertently, with increasing frequency;
- d. The preservation of this irreplaceable, invaluable cultural heritage is in the interest of the Fond du Lac Band and its people so that its legacy of cultural, educational, aesthetic, inspirational and economic benefits will be protected, maintained and enriched for future generations;
- e. Increased knowledge of cultural resources through the creation of better means to identify, inventory, assess and administer them will improve the planning of tribal, federal, state or other projects and enable expeditious project development with

adequate protection for and mitigation of harm to those resources; and

- f. The Fond du Lac Band's cultural resource preservation program is a necessary supplement to existing federal and state programs that provide preservation services on lands where the Band has an historical interest.

#### **SECTION 103      POLICY**

It is the policy of the Fond du Lac Band, in cooperation with the federal government, the State of Minnesota, other Indian tribes, private organizations and others to:

- a. Establish the means by which the cultural resources of the Band can be preserved;
- b. Administer cultural resources owned or controlled by the Band as a steward for present and future generations;
- c. Encourage governmental entities, organizations and individuals to identify, protect and preserve the Band's cultural resources wherever located;
- d. Identify, acquire, and preserve through public and private efforts, all cultural resources of the Band; and
- e. Administer this Ordinance in a manner which protects cultural resources even if the resources have no direct or determined connection with the Band.

#### **SECTION 104      SCOPE**

This Ordinance shall apply to any conduct by any person on lands which are owned in fee or trust by the Fond du Lac Band within the boundaries of the Fond du Lac Reservation.

#### **SECTION 105      RESERVATION OF RIGHTS**

The Reservation Business Committee reserves the right to amend or repeal all or any part of this Ordinance at any time and there shall be no vested rights of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the power of the Reservation Business Committee to amend or repeal this Ordinance or any part herein at any time. 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 forum not expressly authorized to exercise jurisdiction under this Ordinance. Any provision of this Ordinance

which is adjudicated to be inconsistent or incompatible with applicable federal law shall be invalid and unenforceable to the extent of such inconsistency or incompatibility, provided, however, that all remaining provisions shall be given full force and effect.

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**CHAPTER 2**  
**DEFINITIONS AND INTERPRETATION**

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**SECTION 201      DEFINITIONS**

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

- a.    **"ARPA"** means the Archaeological Resources Protection Act, Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. § § 470mm, as amended.
- b.    **"Band lands"** means, for the purposes of this Ordinance:
  - 1.    Any lands which are held in trust or other restricted status by the United States for the benefit of the Fond du Lac Band or its members;
  - 2.    Any lands which are held in trust or other restricted status by the United States for the benefit of the Minnesota Chippewa Tribe or its members which lie within the boundaries of the Fond du Lac Reservation; and
  - 3.    Any lands which are held in fee by the Fond du Lac Band or any political subdivision of the Band within the boundaries of the Fond du Lac Reservation.
- c.    **"Cultural Patrimony Objects"** means objects, artifacts or materials with ceremonial, cultural, historical, sacred, spiritual, or traditional value to the Fond du Lac Band whether or not associated with burials or remains.
- d.    **"Cultural property"** means any cultural resource determined to be significant enough to be included in the Fond du Lac Register.
- e.    **"Cultural remains"** means any remains with archaeological, cultural, historical, sacred, spiritual, or traditional value to the Fond du Lac Band, including, but not limited to Cultural Patrimony Objects and Funerary Objects.
- f.    **"Cultural resource"** means any product of human activity, or any object, place, site or structure given significance by human activity or belief. Cultural resources include traditional sites for harvesting wild rice, maple sugar, and medicinal plants.
- g.    **"Fond du Lac Band" or "Band"** means the Fond du Lac Band of Lake Superior Chippewa.

- h. **"Fond du Lac Register"** means the Fond du Lac Register of Cultural Properties.
- i. **"Fond du Lac Reservation"** means the historical land base of the Fond du Lac Band as set aside under Article 2 of the Treaty of LaPointe, 10 Stat. 1109, and any lands outside of those boundaries which were subsequently acquired in trust for the Band.
- j. **"Funerary Objects"** means any objects, artifacts or materials which are reasonably believed to have been placed with deceased individual in burial as part of tribal cultural ceremony or rite.
- k. **"Lands in which the Fond du Lac Band has an historical interest"** means all lands historically or traditionally used by the Fond du Lac Band, including the territories ceded to the United States by the treaties of 1837, 1842 and 1854.
- l. **"NAGPRA"** means the Native American Graves Protection and Repatriation Act, Pub. L. 101-106, 104 Stat. 3048, 25 U.S.C. § § 3001-3013, 18 U.S.C. § 1170, as amended.
- m. **"Remains"** means the physical remains, articulated or unarticulated bones and bone fragments, and the surrounding soil matrix at any stage of decomposition of any human.
- n. **"Reservation Business Committee" or "RBC"** means the governing body of the Fond du Lac Band of Lake Superior Chippewa.
- o. **"Sponsor"** means the governmental official or the official in a private entity who has decision-making authority over a particular undertaking.
- p. **"Tribal Preservation Officer" or "THPO"** means the Fond du Lac Tribal Historic Preservation Officer, who is the manager of the Fond du Lac Tribal Historic Preservation Office.
- q. **"Undertaking"** means any project, activity or program that can result in changes in the character or use of cultural properties.

## **SECTION 202     INTERPRETATION**

The provisions of this Ordinance shall be interpreted in a manner which gives plain effect to its terms and purposes, and to avoid unnecessary conflicts of law.

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**CHAPTER 3**  
**ADMINISTRATION**

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**SECTION 301      ESTABLISHMENT AND OPERATION OF THE FOND DU LAC**  
**TRIBAL HISTORIC PRESERVATION OFFICE**

- a. The Fond du Lac Tribal Historic Preservation Office is hereby established, and shall be the Fond du Lac tribal government entity responsible for the protection, preservation and management of the Band's cultural resources.
- b. The office shall be directed by the Fond du Lac Tribal Historic Preservation Officer (THPO). The THPO who shall advise the Reservation Business Committee and its various divisions, programs and enterprises, other tribal organizations and entities, individuals, the federal, state, and local governments and private organizations on matters pertaining to cultural resource preservation on Band lands and on lands in which the Fond du Lac Band has an historical interest.
- c. Unless otherwise provided by resolution of the Reservation Business Committee, determinations of the THPO on matters within its authority shall be given deference by other divisions, programs, or Band enterprises.
- d. The THPO shall be a technical advisor to any committee authorized by the RBC to adopt or recommend land use plans for Band lands.
- e. The THPO is authorized to enter upon all Band lands, including lands leased to others, for the purpose of performing duties under this Ordinance. Except in exigent circumstances in which there is a threat of imminent harm to cultural resources, the THPO will give reasonable notice of entry to the occupant or owner of the property.
- f. Archaeology. The THPO shall receive and review all applications for federal permits under ARPA and shall actively participate in federal permitting processes in order to ensure that applicants, permittees and federal agencies comply with ARPA tribal notice and consent requirements for activities affecting Fond du Lac cultural resources.
- g. The records and data collected, created, maintained, or possessed by the THPO shall be treated as confidential in accordance with the Fond du Lac Data Privacy and Records Management Policy.

**SECTION 302      THE FOND DU LAC CULTURAL CENTER AND MUSEUM**

The Fond du Lac Cultural Center and Museum shall be the repository for all cultural resources collected on Band lands and for cultural resources repatriated, donated, or otherwise in the possession of the Band. If necessary, the Cultural Center and Museum may have cultural resources stored in a climate-controlled facility, such as the Fond du Lac Resource Management and Tribal Court Building.

**SECTION 303      THE FOND DU LAC REGISTER OF CULTURAL PROPERTIES**

- a. The THPO shall create, maintain and administer a Fond du Lac Register of Cultural Properties comprising buildings, objects, places, sites and structures significant in the Band's history, archaeology and culture.
- b. Cultural properties on the Fond du Lac Reservation shall be included in the Register if, on the date this Ordinance is adopted, they are:
  - (1) Historic properties listed on the National Register of Historic Places on the Nation Register of Historic Landmarks;
  - (2) Natural areas designated as a National Historic Landmark; and
  - (3) Archaeological sites designated for protection under federal law.
- c. The THPO shall establish a program to locate, inventory and evaluate cultural resources on the Fond du Lac Reservation and to list all such resources as may be eligible on the Register.

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**CHAPTER 4**  
**PROHIBITED ACTIVITIES; PERMITS**

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**SECTION 401      PROHIBITED ACTIVITIES**

Unless specifically authorized by a valid permit:

- a. No person may alter, damage, excavate, collect, destroy or remove any cultural properties on Band lands.
- b. No person may sell, buy, exchange or transport cultural resources from Band lands.
- c. No person may engage in research that involves or impacts cultural resources on Band lands except as authorized by a permit issued by the THPO.
- d. No sponsor of any undertaking on Band lands may commence, or implement, the undertaking without a valid permit.

**SECTION 402      PERMITS**

- a. The THPO shall issue permits only on a case-by-case basis. The THPO may prescribe a form for applications for permits. Each permit shall contain:
  - (1) The nature of the permitted activity;
  - (2) The duration of the permit;
  - (3) A description of the reports the permittee is required to submit and the time for submission; and
  - (4) The requirements which the permittee must meet if the activity involves the alteration, collection, excavation, removal or disturbance of cultural resources.
- b. The prohibitions of Section 401 and the permit requirements of Section 402 shall not apply to:
  - (1) The Resource Management Division and its employees engaged in official business relating to cultural resources management activities consistent with this Ordinance or other duly enacted Band procedures and policies;

- (2) Fond du Lac Band members who are engaged in activities directly relating to the practice of traditional Ojibwe religion; or
- (3) Harvesting of wild rice, maple sugar, or medicinal plants in accordance with applicable law.

**SECTION 403      SUSPENSION OR REVOCATION OF PERMIT**

The THPO may suspend or revoke a permit:

- a. Without cause upon a written determination that continuation of activities is not in the best interests of the Band. Such suspension or revocation shall not bar the permittee from holding a modified permit or a new permit.
- b. With cause upon a written determination (i) that a permit term or condition has not been met by the permittee; (ii) that a permit term or condition has been knowingly or willfully violated; or (iii) that the permittee has engaged in activities outside the scope of the permit or otherwise prohibited by this Ordinance.

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**CHAPTER 5**  
**TREATMENT OF CULTURAL REMAINS**

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**SECTION 501**      **ROLE OF THE THPO IN THE ADMINISTRATION OF CULTURAL REMAINS**

The THPO shall:

- a. Advise the Reservation Business Committee and other relevant parties about the identification, preservation, protection and repatriation of cultural remains;
- b. Develop and recommend to the Reservation Business Committee any policies, procedures or other measures to identify, protect, preserve and repatriate cultural remains;
- c. Receive all notices to the Band of discovery of cultural remains under NAGPRA;
- d. Take emergency measures to protect cultural remains from disturbance or removal;
- e. Modify, suspend, or halt any undertakings that might adversely affect cultural remains on Band lands;
- f. Enter into cooperative agreements with other public and private entities or persons to facilitate reports of discovery of cultural remains and compliance with this Ordinance on land in which the Band has an historical interest; and
- g. Make reasonable and good faith efforts to determine whether discovered cultural remains are ancestors of the Band, and give such notices as may be reasonable to other governments, known living descendants or relatives, or Band members generally regarding discovered cultural remains.

**SECTION 502**      **DISCOVERY OF CULTURAL REMAINS**

- a. Reports. All persons and all Divisions, offices and entities including sponsors of undertakings within Band lands shall report promptly to the THPO the discovery of any cultural remains.
- b. Investigation. The THPO shall cause a prompt investigation of any report of discovery under this Ordinance, NAGPRA or ARPA and create a written record of the investigation.

- c. Remedy. The THPO shall take such action as is necessary to modify, suspend, or halt any activity that might adversely affect discovered cultural remains. Such action may be verbal, provided that it is reduced to writing not later than the next business day. Written directives to halt work on construction activities shall be served on the owner, the contractor, and the field supervisor or foreman responsible for the activity.

**SECTION 503      IDENTIFICATION OF CULTURAL REMAINS**

If discovered cultural remains are or appear to be ancestors of the Band, the THPO shall make reasonable and good faith efforts to identify any known living descendants or relatives of the discovered cultural remains and provide written notice to any known descendants or relatives.

- a. After receipt of notice under this Section, descendants, relatives, or Band members may make a written claim of ownership of the cultural remains to the Preservation Officer. The claim must be submitted to the THPO within thirty (30) days of the date of the notice.
- b. Within sixty (60) days of receipt of a claim of ownership, the THPO shall make a written determination of any claim of individual ownership. The THPO must find that the preponderance of evidence supports a claim to individual ownership. In the event of individual ownership, the remains shall be promptly turned over to the claimant.
- c. If no individual claim is found valid, the cultural remains shall be deemed the property of the Band for re-interment.

**SECTION 504      REPATRIATION**

The THPO shall:

- a. Be familiar with NAGPRA and support the administration and enforcement of NAGPRA;
- b. Develop and recommend to the Reservation Business Committee for approval tribal policies and procedures to implement NAGPRA, including but not limited to:
  - (1) Requests for inventories of cultural remains;
  - (2) Consultation with federal agencies, the governments of other tribes, and other appropriate entities regarding cultural remains;
  - (3) Establishing the affiliation of cultural remains; and

- (4) Establishing the right of possession of cultural remains.
- c. Receive all notices and inventories of cultural remains;
- d. Review and monitor all inventories of all cultural remains. In reviewing such inventories, the THPO may use tribal community, spiritual, or traditional leaders, provided that compensation paid for such services must be authorized in accordance with Fond du Lac Ordinance #07/95;
- e. Investigate the possibility of repatriation and cultural remains, and determine whether any cultural remains should be requested for return and shall request such return;
- f. Provide technical assistance to individual tribal members in their repatriation claims;
- g. Coordinate and supervise the return of all cultural remains;
- h. Determine, in accordance with the provisions of Section 503 of this Ordinance, whether any of the returned cultural remains are of valid individual ownership, and if so, return such cultural remains promptly to the claiming tribal members, descendants, or relatives; and
- i. Subject to the approval of the Reservation Business Committee, may recommend and seek the assistance of the Tribal Attorney to initiate administrative or legal action to enforce NAGPRA and provisions of this Ordinance.

**SECTION 505      DISPOSITION OF CULTURAL REMAINS**

Subject to the approval of the Reservation Business Committee, the THPO shall develop procedures for the proper disposition, placement, and curation of any unclaimed cultural remains, and may prepare an internal plan for the adequate custody, safekeeping, and maintenance by the Band of unclaimed cultural remains. In developing such procedures and plan, the THPO may use tribal community, spiritual, and traditional leaders.

**SECTION 506      RE-INTERMENT**

- a. If conditions favor preservation of unclaimed cultural remains in situ, the THPO shall coordinate re-interment in situ.
- b. If conditions do not favor preservation of unclaimed cultural remains in situ, then the THPO may coordinate the removal of the remains and their re-interment elsewhere.
- c. Tribal community, spiritual, and traditional leaders may assist any re-interment of unclaimed cultural remains.

- d. Re-interment of unclaimed cultural remains shall occur as soon as reasonably possible, but should proceed with such care and precautions as are necessary to avoid mistakes or misjudgment.
- e. Re-interment shall have as its goals both respectful treatment and keeping cultural remains together.

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**CHAPTER 6**  
**PENALTIES AND JUDICIAL REVIEW**

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**SECTION 601      CIVIL PENALTIES AND COSTS**

- a. Any person who violates the prohibitions in this Ordinance is subject to a civil penalty of up to \$5000.00 and an assessment of actual damages. The assessment of damages shall include, but is not limited to, consideration of:
- (1) Costs of restoration of the cultural resources;
  - (2) Reasonable enforcement and administrative costs, and costs of disposition of the cultural resources, including, if necessary, curation in perpetuity;
  - (3) Costs of testing and evaluation necessary to plan for restoration or curation; and
  - (4) Costs of mitigation measures which the THPO deems to be necessary and appropriate to protect the cultural resource from further harm.

**SECTION 602      SEIZURE**

The THPO is authorized to seize cultural resources taken or possessed in violation of this Ordinance. Fond du Lac Law Enforcement Officers and Conservation Officers are authorized to assist the THPO in seizing cultural resources.

**SECTION 603      NOTICE OF VIOLATION**

- a. Civil penalties, damages and forfeitures of seized cultural resources shall be proposed in notices and served on the person believed to be in violation in the same manner as a civil complaint under the Fond du Lac Civil Code.
- b. A person who receives a notice of violation, assessment or proposed forfeiture shall within twenty (20) days of service:
- (1) Pay the penalty or assessment; or relinquish the item(s) proposed for forfeiture; or
  - (2) File a petition for relief from the penalty, assessment of forfeiture with the THPO.
- c. If a timely petition for relief is filed, the THPO shall make a final written determination within thirty (30) days of

receipt of the petition. The final determination shall include the basis for the decision and the amount of the final penalty or damages, or both. The date the payment is due shall be prescribed, but shall not be more than thirty (30) days after said final decision.

**SECTION 604      JUDICIAL REVIEW OF CONTESTED VIOLATIONS, ASSESSMENTS  
AND FORFEITURES**

- a. A person who has received a final decision of the THPO may contest that decision by commencing a civil action in the Fond du Lac Tribal Court which shall have exclusive jurisdiction to review contested decisions of the THPO. The Tribal Court shall have authority to reverse or modify a THPO decision only upon a specific finding that the decision or a part thereof, was arbitrary, capricious, or otherwise not in accordance with this Ordinance.
- b. A complaint seeking judicial review of a THPO decision must be filed within thirty (30) days of the decision.

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**CHAPTER 7**  
**EFFECTIVE DATE; AMENDMENT**

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**SECTION 701     EFFECTIVE DATE**

The provisions of this Ordinance shall be effective on the date of adoption by the Reservation Business Committee.

**SECTION 702     AMENDMENT OR RESCISSION**

The provisions of this Ordinance may be amended or rescinded by Resolution of the Fond du Lac Reservation Business Committee.

**SECTION 703     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 #03/14 was duly presented and adopted by Resolution #1157/14 by a vote of 2 for, 0 against, 0 silent, with a quorum of 3 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on May 6, 2014, on the Fond du Lac Reservation.

  
\_\_\_\_\_  
Karen R. Diver,  
Chairwoman

  
\_\_\_\_\_  
Ferdinand Martineau, Jr.,  
Secretary/Treasurer

# Fond du Lac Band of Lake Superior Chippewa

1720 Big Lake Rd.  
Cloquet, MN 55720  
Phone (218) 879-4593  
Fax (218) 879-4146

## Reservation Business Committee

Resolution #1157/14



### ENACTING FOND DU LAC ORDINANCE #03/14, PRESERVATION OF CULTURAL RESOURCES

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

Chairwoman  
**Karen R. Diver**

Secretary/Treasurer  
**Ferdinand Martineau, Jr.**

Dist. I Representative  
**Wally Dupuis**

Dist. II Representative  
**David R. Tiessen, Jr.**

Dist. III Representative  
**Kevin R. Dupuis, Sr.**

Executive Director,  
Tribal Programs  
**Chuck Walt**

Executive Director,  
Enterprises  
**Michael Himango**

WHEREAS, the Fond du Lac Band of Lake Superior Chippewa are a sovereign people, who occupy the Fond du Lac Reservation and retain their aboriginal rights of self-government and self-determination pursuant to the Treaty of LaPointe of September 30, 1854, 10 Stat. 1109; the Indian Reorganization Act of 1934, 25 U.S.C. § 461 et seq.; the common law of the United States; and as recognized by the United Nations Declaration on the Rights of Indigenous Peoples of September 13, 2007; and

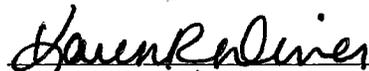
WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the duly-constituted governing body of the Fond du Lac Band, to exercise the responsibilities of self-government and management over the Band's affairs; and

WHEREAS, the Reservation Business Committee has determined that it is in the best interests of the Band to enact a Preservation of Cultural Resources ordinance to identify, preserve, and protect the Band's cultural resources;

NOW THEREFORE BE IT RESOLVED, that the Reservation Business Committee hereby enacts Fond du Lac Ordinance #03/14, entitled "Preservation of Cultural Resources", which shall be effective immediately.

#### CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 2 for, 0 against, 0 silent, with a quorum of 3 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on May 6, 2014, on the Fond du Lac Reservation.

  
\_\_\_\_\_  
Karen R. Diver  
Chairwoman

  
\_\_\_\_\_  
Ferdinand Martineau, Jr.  
Secretary/Treasurer