

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA**

**ORDINANCE #05/10**

**TRIBAL ENVIRONMENTAL POLICY**

Adopted by Resolution #1343/10 of the Fond du Lac Reservation Business Committee on September 21, 2010.

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA**  
**TRIBAL ENVIRONMENTAL POLICY ORDINANCE (TEPO)**

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**CHAPTER 1**  
**AUTHORITY, PURPOSES AND SCOPE**

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**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 recognized and reserved under the Treaty of LaPointe, 10 Stat. 1109, and as exercised in accordance with Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and the common law of the United States of America.

**Section 102**            **Purposes.** The purposes of this Tribal Environmental Policy Ordinance are:

- a. To reflect the continuing commitment of the Fond du Lac Band to protect, preserve and enhance the human environment of the Band homeland in a manner which is consistent with, and reflective of, traditional Anishinaabe values as expressed in the Fond du Lac Integrated Resources Management Plan (IRMP); To provide a process for Band members to express their values and be heard in the planning process for major Band actions;
- b. To administer the standards set forth in this Ordinance in a uniform manner over all land within the Fond du Lac Reservation which is subject to the jurisdictional authority of the Fond du Lac Band;
- c. To require that an environmental compliance review be conducted in conformance with this Ordinance prior to implementation of all major Band actions; provide quality information to Band decision makers to help them fully recognize impacts to the Band homeland (human environment); and to help refine the alternatives before they become too set to take advantage of desirable refinements; and
- d. To minimize duplication with the federal National Environmental Policy Act (NEPA) process by providing for joint preparation of environmental documents to the greatest extent possible to concurrently comply with this Ordinance and NEPA. To further advance government-to-government consultation with federal agencies proposing major federal actions impacting the human environment within the boundaries of the Fond du Lac Reservation or on lands owned by the Fond du Lac Reservation government.

**Section 103**            **Fond du Lac Integrated Resources Management Plan (IRMP).**

This Ordinance springs from the vision of the Fond du Lac IRMP in these ways:

- a. The IRMP states that: "Due to significant program expansion with the (Resource Management) division and an increase in resource management responsibilities, an updated Integrated Resource Management Plan is essential for enhancing coordination, internal review, efficiency and cooperation between programs." This Ordinance establishes a policy and procedure that is an extension of the IRMP vision "...for enhancing coordination, internal review, efficiency and cooperation between programs." When

environmental review documents are prepared in compliance with this Ordinance, the assessment of significance of the effects of the proposed land use permits or other major Band actions need to be measured with standard practices of specific importance to the Fond du Lac Band. The criteria and standard practices that shall be used to measure significance of impacts are spelled out in the IRMP. For example Section 4 (c) of the IRMP addresses concerns, goals, objectives and opportunities regarding water and wetlands. The IRMP envisions capacity for water and wetlands including staff, recognition of treatment as a sovereign, certification by EPA regarding storm water enforcement and other established standard practices and procedures that shall be used in the conduct of environmental assessments in compliance with this Ordinance. Other sections of the IRMP establish the vision for the basis of standard practice for assessment of significance of impact of major Band actions on the other resources.

- b. The IRMP states that: "In developing the Integrated Resource Management Plan, consideration has been given to National Environmental Policy Act. This document (the Fond du Lac IRMP) will serve both as an Integrated Resource Management Plan and an Environmental Assessment for the Fond du Lac Reservation (authorized by Code of Federal Regulations 40 parts 1500.4 (o), 1500.5(l), and the Council on Environmental Quality Regulation Section 1506.4). However, specific projects or activities that are addressed within this document must follow National Environmental Policy Act compliance procedures and regulation whenever federal dollars are used. This document will make environmental and legal compliance at the tribal and federal level more expedient." This quote from the Fond du Lac IRMP acknowledges that specific projects and actions addressed in the IRMP will require environmental review procedures of the National Environmental Policy Act (NEPA). But NEPA is limited in scope to only major federal actions. It is possible that some of the actions called for in the Fond du Lac IRMP will not require major federal actions. As the capacity and sovereignty of the Fond du Lac Band continues to expand, many more of its actions will be major Band actions, without the need for major federal action. Thus, there has been a need for the Fond du Lac Band to establish internal review policies and procedures for those cases of sovereign major Fond du Lac Band actions without federal action. This Ordinance is intended to provide the policies and procedures to address that need.

**Section 104**                      Scope.

- a. The provisions of this Ordinance shall apply to all lands and activities within the exterior boundaries of the Fond du Lac Reservation, and/or on lands owned by the Fond du Lac Band outside the exterior boundaries of the Fond du Lac Reservation.
- b. It is not the intent of this Ordinance to repeal, amend or otherwise interfere with any existing easements, covenants or agreements, or with any administrative rule or permit previously or hereafter adopted or issued pursuant to law. Where the conditions imposed by any provision of this Ordinance are either more protective or less protective than comparable conditions imposed by any other applicable law, ordinance, statute, resolution or administrative rule, the conditions which are more protective or which impose higher standards or requirements shall prevail.

**Section 105**                      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 shall not be affected thereby.

**Section 106**

**Reservation of Rights.**

The Reservation Business Committee (RBC) 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 consent to jurisdiction by any forum not expressly authorized to exercise jurisdiction under this Ordinance. Any provision of this Ordinance which is 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.

**Section 107**

**Tribal Governments and NEPA.**

The Fond du Lac Band government has substantial authority, as other tribal governments inherently possess, through its retained tribal sovereignty, for additional environmental protection within the Fond du Lac Reservation. This tribal governmental authority is distinct from the responsibilities and authority of the federal agencies under NEPA and other federal environmental laws, and from the federal trust responsibility. Activities affecting the environment of the Fond du Lac Reservation often require the concurrent approval of both the Band and a federal agency(s), often the Bureau of Indian Affairs (BIA). Because of this dual tribal/federal authority, the Band's TEPO process shall be coordinated with federal decision-making when there is a concurrent federal action. Such coordination helps reduce paperwork and delay, integrates environmental considerations into the early stages of planning and increases the usefulness of the TEPO and NEPA procedures for Band and federal decision makers.

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**CHAPTER 2**

**DEFINITIONS AND INTERPRETATION**

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**Section 201**

**Definitions.**

The following terms shall have the meanings assigned to them for purposes of this ordinance:

- a. **Adoption:** The Band may adopt an existing Tribal Environmental Policy Ordinance (TEPO) or National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS) if the document is complete, adequately describes the proposal, and assesses significance of impacts. The Band does this by preparing a Finding of No Significant Impact (FONSI) for an EA or Record of Decision (ROD) for an EIS and it may be done cooperatively with a federal agency(s).
- b. **Anishanaabe:** The people of the Fond du Lac Band Of Lake Superior Chippewa.
- c. **Area of Potential Effect (APE):** The term "area of potential effect" is normally associated with determining effects to historic properties for compliance with Section 106 of the National Historic Preservation Act (NHPA). But it is also a useful concept for helping to determine environmental effects for this ordinance. While Section 103 of this ordinance indicates the scope of this ordinance applies to areas within the Fond du Lac Reservation, it is possible that a major federal action may have an APE that extends onto the Reservation.
- d. **Band:** The Fond du Lac Band of Lake Superior Chippewa, governed through the Fond du Lac Reservation Business Committee (RBC).

- e. Categorical exclusion (CATEX) means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in the TEPO process and for which, therefore, neither an EA nor EIS is required for compliance with TEPO. The Band may decide, in complying with this Ordinance, to prepare environmental assessments for reasons such as those stated in 40 CFR §1508.9 even though it is not required to do so. An exception checklist is included in Appendix A to help determine whether there are extraordinary circumstances in which a normally excluded action may have a significant environmental effect and for which an EA or EIS should be prepared to determine the significance of the impacts at question. Similarly, federal agencies can use a CATEX as a compliance document for compliance with their NEPA process.
- f. Concurrent federal action: The case when the Band proposal undergoing an environmental compliance review under this Ordinance has a simultaneous major federal action that triggers the need for compliance document(s) for both NEPA and this TEPO. To minimize duplication of effort for related major Band actions and concurrent federal action(s), the TEPO team should consider the potential for preparing a joint compliance document(s) with the federal agency(ies).
- g. Cooperating agency Is the Fond du Lac Band or any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to resources impacted by a proposal (or a reasonable alternative) for major federal action potentially significantly affecting the quality of the environment. This ordinance and NEPA authorize roles for cooperating agencies to be involved in the process. The duties and responsibilities of a given cooperating agency are explained in CEQ regulations 40 CFR 1501.6.
- h. Cultural assessment: An evaluation of the potential effects of a proposed action and its practical alternatives on the historic and cultural attributes of a particular geographical area. Actions proposed by the RBC or individual members that involve federal funding or other federal actions must comply with the regulations 36 CFR 800 for Section 106 of the National Historic Preservation Act to determine the level of impact of the proposed action on cultural resources either eligible for or listed on the National Register of Historic Properties.
- i. Cumulative impact Is the impact on the environment which results from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of whether the Band, agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.
- j. Effects Include:
  - 1. Direct effects, which are caused by the action and occur at the same time and place.
  - 2. Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

3. Cumulative effects, which result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of whether the Band, agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Effects and impacts as used in this Ordinance are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the Fond du Lac Band believes that the effect will be beneficial.

- k. Endangered Species Act of 1973 (ESA): 16 U.S.C.A. §§1531 to 1599 is a federal statute that aims to conserve the ecosystems upon which endangered and threatened species depend. Section 7 of the ESA requires federal agency decision makers to consider whether the effects of their actions are likely to jeopardize the continued existence of any listed threatened or endangered species or their critical habitat. The ESA is administered by the US Fish and Wildlife Service (FWS) and federal agencies consult with the FWS regarding potential impacts of alternatives and mitigation of those effects.
- l. Environment or Environmental Resources: Is the human environment, including: socio-economic conditions, air, water, living and other resources needed to support a healthy, sustainable quality of life in the tribal homeland of the Fond du Lac Band.
- m. Environmental Compliance Review: The review of a proposed action and practicable alternatives for compliance with applicable mandates for the protection of the environment and cultural resources, including concurrent preparation of a Categorical Exclusion (CATEX), Environmental Assessment (EA) or Environmental Impact Statement (EIS), whichever is appropriate for the level of significance of impacts of the alternatives.
- n. Environmental Assessment (EA): To increase the compatibility of the Fond du Lac Band's EA with the federal NEPA process, for purposes of this Ordinance, an EA is defined in the President's Council on Environmental Quality (CEQ) NEPA regulations 40 CFR 1508.9. Further, an EA is:
  1. A concise public document for which the Fond du Lac Band, federal agency or another is responsible to prepare individually or as a team. An EA:
    - a. Is to help determine that an environmental impact statement is not required because of a Finding of No Significant Impact (FONSI); or conversely that an environmental impact statement is needed because an effect(s) is determined in the EA to be significant. Chapter 7 of this Ordinance describes the process used to determine the significance of effects of the alternatives.
    - b. Is the Fond du Lac Band's or government agency's NEPA compliance document when no environmental impact statement is normally required and no categorical exclusion is possible. Section 801(b) of this ordinance lists the major band actions that normally require an EIS. Section 501 of this Ordinance explains how to determine whether or not a categorical exclusion is possible.
    - c. Has the same basic chapters and categories of contents as an environmental impact statement so the contents of the EA can be used in preparing the EIS. Normally one does not need to entirely complete an EA before beginning the EIS. It is more common

that an EA process is stopped and an EIS immediately begun when a significant impact is determined.

2. Shall include brief discussions of the purpose and need for the proposal; the alternatives as required by section 102(2)(E), including mitigation; assessment of the significance of effects of the proposed action and alternatives; and a listing of agencies and persons consulted.
- o. Environmental Assessment for the U.S. Department of Housing and Urban Development (HUD): When the proposal involves HUD funding or other major federal actions by HUD, the EA will be prepared using unique HUD regulations and procedures for preparing an environmental assessment found in 24 CFR Part 58 and described in HUD's *Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities*.
- p. Environmental document: The NEPA definition is adopted and includes the documents specified in 40 CFR §1508.9 (environmental assessment), 40 CFR §1508.11 (environmental impact statement), 40 CFR §1508.13 (finding of no significant impact), and 40 CFR §1508.22 (notice of intent).
- q. Environmental Effects: Effects of the proposal and practicable alternatives on the human environment, including socio-economic conditions, air, water, living and other resources needed to support a healthy, sustainable quality of life in the tribal homeland of the Fond du Lac Band.
- r. Environmental Impact Statement (EIS): A detailed, in-depth study of effects of a proposed action and its practical alternatives on the physical, biological, cultural and socio-economic attributes of a particular geographical area. An EIS also includes analysis of compliance with Band, federal and other jurisdictional requirements for the protection of environmental resources and historic properties. An EIS is done when required (See Section 7.1) or when significant impacts are predicted using the significance determination procedure in Chapter 6.
- s. Federal agency: Means all agencies of the Federal Government in the Executive Branch. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. For purposes of this Ordinance, the definition of the term federal agency also includes the Fond du Lac Band and units of general local government when they assume NEPA responsibilities of HUD under section 104(h) of the Housing and Community Development Act of 1974 (AKA HUD's Part 58 NEPA Regulations). Note that in cases of assumed HUD responsibilities, documents should explain the delegation of authority as explained in HUD's Part 58 NEPA Regulations.
- t. Finding of No Significant Impact (FONSI): Finding of No Significant Impact means a document by the Fond du Lac Band briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it.
- u. Fond du Lac Band of Lake Superior Chippewa: A federally recognized Indian tribe which retains the powers of self-government over the Fond du Lac Reservation in accordance with the laws of the United States.

- v. **Fond du Lac Reservation:** All lands set aside under treaty or statute as the lands of the Fond du Lac Band of Lake Superior Chippewa that lie within the exterior reservation boundary. See Section 101 of this Ordinance for the citations for treaties and statutes.
- w. **Foreseeable:** Is being able to dependably anticipate that actions or plans by the Fond du Lac Band or others exist because they are publicly documented in some manner. Foreseeable actions or plans should be considered in the TEPO process, such as for analyzing cumulative impacts. Such public documentation could include, but is not limited to, official correspondence or resolutions of the Fond du Lac Band or other government bodies, master plans, Fond du Lac Integrated Resource Management Plan, site development plans, detailed construction plans and specifications, transportation improvement plans, housing plans, land consolidation plans, land use maps, regulations or official meeting minutes. Without public documentation, the existence of actions and plans is speculative, rather than foreseeable.
- x. **Government-to-Government Consultation:** For the limited purposes of this Ordinance, it is defined as consultation between the Fond du Lac Band and the Federal Government with regard to impact of federal actions on the trust resources of the Fond du Lac Band. Such consultative impact analysis will be conducted as described in Executive Order 13175 *Consultation and Coordination With Indian Tribal Governments*, dated November 6, 2000, in conformance with this Ordinance, at a minimum. The Fond du Lac Band may seek further extent or additional methods of consultation, depending on the gravity of impacts and issues of a given major federal action.
- y. **Historic Properties:** Cultural resources that are either eligible for inclusion in the National Register of Historic Places or already listed on the National Register of Historic Places. See Section 106 of the National Historic Preservation Act for the compliance requirements for federal agencies regarding historic properties.
- z. **Housing and Urban Development (HUD):** An agency of the Federal Government that specializes in helping tribal and local housing authorities to develop public housing and related community services infrastructure. Congress has authorized NEPA regulations that are unique to HUD (24 CFR Part 58) and thus HUD is generally not able to adopt NEPA documents from other federal agencies for compliance on cooperative housing development projects. However, some other agencies may be able to adopt NEPA documents completed under HUD Part 58 regulations. Further, HUD Part 58 NEPA documents satisfy the environmental compliance review requirements of this ordinance.
- aa. **Human environment:** Shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. See the definition of "effects". This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment. For TEPO purposes, the human environment more specifically includes all socio-economic, natural and physical environmental resources needed to support a healthy, sustainable quality of life in the tribal homeland as determined by the Band.
- bb. **Integrated Resource Management Plan (IRMP):** Means the Fond du Lac Bands' Integrated Resource Management Plan. The Fond du Lac Band's IRMP may be revised or updated periodically. This definition means the most current IRMP that is approved by the Fond du Lac Band.

- cc. Jurisdiction by law: Means Band or agency authority to approve, veto, or finance all or part of a proposal.
- dd. Lead agency: Means the Fond du Lac Band for the scope and content of the compliance documents for the TEPO process. For the NEPA process, "lead agency" means the federal agency or agencies responsible for the scope and content and preparing or having taken primary responsibility for preparing the NEPA compliance documents. The duties and responsibilities of the lead agency are explained in CEQ regulations 40 CFR § 1501.5.
- ee. Major Federal Action: Major federal actions include actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (40 CFR § 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the federal Administrative Procedure Act or other applicable federal law as agency action. (Note that major federal actions may be concurrent with a related major Band action or an action similar or linked in scope by another governmental entity with a proposal that affects the Fond du Lac Band.)
1. Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (40 CFR § 1506.8; 40 CFR § 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.
  2. Federal actions tend to fall within one of the following categories:
    - a. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.
    - b. Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.
    - c. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
    - d. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.
- ff. Major Band Action: Similar in nature to a major federal action, but a major Band action includes actions with effects that may be major and which are potentially subject to control and responsibility of the Fond du Lac Band of Lake Superior Chippewa. Note that major Band actions may be concurrent with a related major federal action or an action similar in scope by another governmental entity with a proposal that affects the Fond du Lac Band.

- gg. Mitigation: Includes:
1. Avoiding the impact altogether by not taking a certain action or parts of an action.
  2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
  3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
  4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
  5. Compensating for the impact by replacing or providing substitute resources or environments.
- hh. National Environmental Policy Act of 1969 (NEPA): As amended (42 U.S.C. 4321, et seq.) is the basic national charter for protection of the human environment. It established policy that federal decision makers must consider public input and quality environmental information before making decisions to implement major federal actions, such as funding, approving permits or otherwise making decisions at the core of proposed major federal actions. This Ordinance is modeled after some of the key aspects of NEPA.
- ii. NEPA process: Means all measures necessary for compliance with the requirements of Section 2 and Title I of the National Environmental Policy Act of 1969 (NEPA): as amended (42 U.S.C. 4321, et seq.)
- jj. NEPA's Forty Most Asked Questions: This is a publication prepared by the President's Council on Environmental Quality (CEQ) that answers forty frequently asked questions regarding the NEPA process and the environmental compliance review process set out in this ordinance. This document is incorporated into this ordinance by reference. Where it refers to NEPA, that is also to be taken as applicable to environmental reviews conducted in compliance with this ordinance. The document can be found at <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm> and other federal agency websites.
- kk. Notice of Intent (NOI): Means a public notice that an environmental impact statement will be prepared and considered. The notice shall briefly:
1. Describe the proposed action and possible alternatives.
  2. Describe the proposed scoping process including whether, when, and where any scoping meeting will be held.
  3. State the name and address of a person within the Fond du Lac Band or federal agency who can answer questions about the proposed action and the environmental impact statement.
- ll. Other Laws: Ordinances, resolutions and the Integrated Resource Management Plan of the Fond du Lac Band of Lake Superior Chippewa and laws or requirements of federal agencies, Congress or the President imposed for the protection of the environment. Other laws also include case law of the Fond du Lac Tribal, Federal and Supreme Courts applicable to the Band and the Fond du Lac Reservation.
- mm. Proposal: Exists at that stage in the development of an action when the Band is subject to TEPO or a federal agency is subject to TEPO and NEPA, has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of a TEPO and/or NEPA compliance document on a proposal should be timed so that the final document may be completed in time for the document to be included in any application, recommendation or other information on the proposal can be adequately considered prior to implementation of a major Band action, potentially with a concurrent major federal action. A proposal may exist in fact, as well as by Band or federal agency written declaration that one exists.

nn. Public: Any federal, state or local government agency, individual, firm, association, organization, partnership, trust, company or corporation, family, individual household or U.S. citizen other than the RBC and the Band government employees. While the Band is one level of government that represents individual tribal members as U.S. citizens, Band members, when acting as individual U.S. citizens, are members of the public for the purposes of the TEPO public involvement process.

oo. Record of Decision (ROD): Is used in cases when major Band actions result in preparation of an environmental impact statement in order to comply with this Ordinance. At the time of its decision, the Fond du Lac Band shall prepare a concise written public record of decision. The record, which may be integrated into any other record prepared by the Fond du Lac Band shall, at a minimum:

1. State what the Fond du Lac Band's decision was.
2. Identify all alternatives considered by the Fond du Lac Band in reaching its decision. The ROD may summarize preferences among alternatives based on relevant factors including economic and technical considerations and Fond du Lac Band goals, objectives and opportunities, such as those expressed in the Fond du Lac Integrated Resource Management Plan. The ROD shall identify and discuss all such factors including any essential considerations of Band policy which were balanced by the Band in making its decision and state how those considerations entered into its decision. The balancing of Band policy generally relates to the trade-off(s) of natural resources that tend to come with community development actions. Where the selected alternative is anticipated to have significant impacts, the ROD shall refer back to specific sections of the IRMP where a particular goal, objective or opportunity is described. For example, the decision to proceed with a specific housing subdivision might interfere with an opportunity for some increment of transition to pre-European settlement vegetation on a given parcel. If that is found to be a significant impact of the housing project, the ROD shall spell out the significant impact and trade-off of an opportunity described in IRMP Chapter 4. Natural Resources - Section F3 Forestry.
3. State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Note that a Record of Decision (ROD) is the document that spells out the actual decision by the Fond du Lac Band as to which alternative has been selected for implementation. A ROD is different from a Finding of No Significant Impact (FONSI) that may follow completion of an environmental assessment. A FONSI is a determination that no EIS is need, but a FONSI is not the actual document of a Fond du Lac Band decision to proceed with one of the alternatives.

pp. Reservation Business Committee (RBC): The Fond du Lac Reservation Business Committee, which is the duly elected governing body of the Fond du Lac Band.

qq. Scope: The scope of a TEPO compliance document consists of the range of actions, alternatives, and impacts to be considered in an EA or EIS. The scope of an individual document may depend on its relationships to other statements, such as tiering of documents from broader planning purposes to specific proposals. To determine the scope of EAs and EISs, the Band shall consider three types of actions, three types of alternatives, and three types of impacts. They include:

1. Actions (other than unconnected single actions) which may be:
    - a. Connected actions, which means that they are closely related and therefore should be discussed in the same EAs or EISs. Actions are connected if they:
      1. Automatically trigger other actions which may require EAs or EISs.
      2. Cannot or will not proceed unless other actions are taken previously or simultaneously.
      3. Are interdependent parts of a larger action and depend on the larger action for their justification.
    - b. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
    - c. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single EA or EIS.
  2. Alternatives, which include:
    - a. No action alternative.
    - b. Other reasonable courses of actions.
    - c. Mitigation measures (not in the proposed action).
  3. Impacts or effects, which may be direct, indirect or cumulative.
- rr. Section 106 of the National Historic Preservation Act: Says: "The head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking in any state and the head of any federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking." 16 U.S.C. 470(f), Advisory Council on Historic Preservation, comment on federal undertakings.
- ss. Significantly: Has a specific meaning in NEPA and this ordinance. It is strongly recommended that the terms significant or significantly not be used in environmental compliance documents to describe effects of alternatives except when used as defined here and further explained in Chapter 6 of this ordinance. The level of significance of effects of the proposal and alternatives is what determines what kind of environmental document must be prepared for compliance with this ordinance. A categorical exclusion is used for proposals that normally do not cause significant impacts. An environmental impact statement is used when significant impacts are anticipated in order to study the impacts and to determine mitigation. An environmental assessment is used to help predict whether significant impacts exist or when significant impacts can be mitigated as a normal course of action with the proposal. For example, to construct on-site waste water disposal facilities simultaneously with construction of a

cluster of homes because the community waste water system is already projected to soon be at capacity and there are no other foreseeable alternatives to provide waste water disposal.

- tt. Special expertise: Means statutory responsibility, agency mission, or related program experience. When the Band entities or a federal agency has special expertise for specific resources, they should be invited to participate on the team or cooperate in preparing environmental compliance documents. Also see cooperating agency.
- uu. TEPO process: Means all measures necessary for compliance with the requirements of this Ordinance.
- vv. Tiering: Refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower EISs or EAs, or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:
  - a. From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.
  - b. From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.
- ww. Tribal Environmental Policy Ordinance (TEPO): The name of this Fond du Lac Band Ordinance that requires an environmental compliance review of proposals and applications for Band land use permits and other major Band actions prior to their formal approval by Band officials.
- xx. Wetland: Those areas that are comprised of hydric soils and are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of hydrophytic vegetation. Wetlands include but are not limited to shallow and deep marshes, wet meadows, swamps, bogs, and forested wetlands.

## **Section 202**                      **Interpretation**

The provisions of this Ordinance and all laws and regulations adopted hereunder shall be interpreted and administered in a manner which secures and maintains to the greatest degree permissible under law the independent right of self-government of the Fond du Lac Band over activities on the Fond du Lac Reservation.

- a. The singular number includes the plural and the plural the singular.
- b. The word "shall" is mandatory and the word "may" is permissive.
- c. Whenever a word or term defined appears in the text of this Ordinance, its meaning shall be construed as set forth in the definition given.
- d. All measured distances expressed in feet shall be rounded to the nearest foot.

- e. All measured distances, unless otherwise specified, shall be measured horizontally.
- f. The phrase "used for" shall include the phrases "arranged for", "designed for", "intended for", "maintained for", and "occupied for".

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**CHAPTER 3**

**ESTABLISHMENT OF THE FOND DU LAC ENVIRONMENTAL REVIEW COMMITTEE;  
DISTRIBUTION AND EXERCISE OF ENVIRONMENTAL REVIEW AUTHORITY**

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**Section 301                      Establishment of the Fond du Lac Environmental Review Committee**

- a. The Fond du Lac Reservation Business Committee hereby establishes the Fond du Lac Reservation Environmental Review Committee as a subcommittee of the Land Use Committee. The Environmental Review Committee shall be comprised of the following members:
  - 1. Four (4) employees of the Fond du Lac Band, regardless of their membership status with the Band, who shall serve as part of their employment position with the Band: (1) Tribal Historic Preservation Officer; (2) the Water Regulatory Specialist; (3) the Environmental Specialist; and (4) the Fond du Lac Reservation Forester

If any of these positions are vacant, then a person(s) is designated by the Land Use Committee Chair to fill the vacant position(s) on the Environmental Review Committee.
- b. The Environmental Review Committee shall hereby be established as a subcommittee of the Land Use Committee, subject to the by-laws of the Land Use Committee.

**Section 302                      Distribution of Environmental Review Authority**

The environmental review authority of the Fond du Lac Band shall be exercised as follows:

- a. The Fond du Lac Reservation Business Committee may on its own, or on the request of the Environmental Review Committee, Land Use Committee or petition or appeal of the affected property owners, lease holders, land assignees or applicants:
  - 1. Change any of the regulations of this Ordinance as to the list of Band actions that can normally be categorically excluded; or the list of major Band actions that normally require an environmental impact statement, by amendment of this Ordinance;
  - 2. Change the Band's determination of significance of specific effects of a given proposed major Band action and/or major federal action:
    - a. From significant to not significant, thereby possibly changing the kind of compliance document needed or whether mitigation needs to be enforceable for compliance with this Ordinance.

- b. From not significant to significant, thereby possibly changing the kind of compliance document needed to an environmental impact statement or requiring mitigation to be enforceable in an environmental assessment for compliance with this Ordinance.
  3. May hold public scoping or comment meetings for specific TEPO compliance documents for proposed major Band actions.
- b. The Fond du Lac Reservation Business Committee hereby designates the following powers and duties to the Fond du Lac Reservation Environmental Review Committee:
  1. Together with the Director of the Resource Management Division and such persons as may be deemed appropriate by the Reservation Business Committee, to monitor natural resource goals, objectives and opportunities expressed by the Band in its Integrated Resource Management Plan (IRMP), and as such make recommendations and keep the RBC informed on environmental compliance review and natural resource issues;
  2. To maintain custody of the Official Fond du Lac IRMP;
  3. To review environmental compliance documents for major Band actions and/or major federal actions; and to make sure the RBC, Land Use Administrator and other decision making entities of the Band have quality information on environmental effects prior to approving land use permits or other major Band actions in accordance with the provisions of this Ordinance;
  4. To make recommendations to the RBC on environmental and natural resource factors regarding appeals from permit decisions made by the Land Use and Zoning Administrator, other major Band actions and/or major federal actions that affect the interest of the Band;
  5. To adopt by a majority vote such rules and regulations governing the conduct of hearings before the Environmental Review Committee as it deems necessary, with the approval of the RBC and subject to all applicable requirements of due process, **provided** that all meetings and votes of the Environmental Review Committee and all hearings it conducts shall be open to the public (with the exception of Executive Sessions), and **further provided** that written minutes of all such meetings and hearings shall be prepared and shall be available to the public; and
  6. To review decisions and actions of the Director of the Resource Management Division; and teams assembled by the RMD Director to prepare environmental review documents in compliance with this Ordinance, in such manner and at such time as the Committee may determine.
  7. To make recommendations to the Land Use Committee and the RBC on the effect of a proposed Conditional Use, Special Use, Shoreland or Variance upon the human environment and the Band's natural resource goals, objectives and opportunities documented in the Fond du Lac IRMP;
  8. To conduct inspections of mitigation and other protective measures specified in environmental review documents in accordance with this Ordinance, at project impact locations to help ensure the protection of the human environment and the Band's natural resources as stipulated in a FONSI or ROD; and to report to the entity with jurisdiction by law for each identified violation any problems with improper or ineffective implementation of enforceable or other mitigation;
- c. The Fond du Lac Reservation Business Committee does hereby delegate the following powers and duties to the Director of the Resource Management Division:
  1. To consult and cooperate with the Environmental Review Committee during its assessment of the significance of effects of proposed land use permits and other major Band actions and/or

- major federal actions; and in conducting those assessments of effects, the consideration of the natural resource goals, objectives and opportunities documented in the Fond du Lac IRMP;
2. To provide a report listing all environmental reviews underway and the status of each to the RBC and the Land Use Committee upon request;
  3. To approve Categorical Exclusions (CATEX) and Finding of No Significant Impact (FONSI) for each environmental assessment following the procedures of this Ordinance. To be clear, the approval of the RBC Chair is required for RODs resulting from EISs.
  4. To make recommendations to the Land Use Committee and the RBC concerning any matter under appeal;
  5. To investigate cases where major Band actions and/or major federal actions have been partially or entirely implemented prior to completion of the environmental review in compliance with this Ordinance; and to make recommendations to the RBC regarding potential consequences and alternate responses to such non-compliance.
  6. To provide such administrative, technical and professional assistance as may be required by the Environmental Review and Land Use Committees in the exercise of their duties;
  7. To provide the necessary assistance to ensure that the project applicant complies with all applicable environmental review requirements of this Ordinance;
- d. The Fond du Lac Reservation Business Committee does hereby delegate the following powers and duties to the Tribal Environmental Policy Ordinance (TEPO) Coordinator:
1. To maintain permanent and current administrative records pertaining to this Ordinance, including, but not limited to, all Environmental Review Committee meeting minutes and other Committee documents such as monthly status reports, categorical exclusions, environmental assessments, FONSI, environmental impact statements, RODs; government-to-government consultation on environmental review matters, together with correspondence and documentation of coordination on environmental review matters with applicants, the public, cooperating agencies, lead agencies, and Band comments on the environmental compliance documents published by others for public comment;
  2. To receive, file and forward all applications for appeals received on EIS Records of Decision regarding variances, conditional uses, special uses, shoreland uses, subdivisions, or other environmental review matters pertaining to the Environmental Review and Land Use Committees;
  3. To request that the project applicant furnish additional information as may be necessary to properly perform all environmental review duties in compliance with this Ordinance;
  4. To facilitate communication with county, state, federal and other entities as appropriate for compliance with this Ordinance.

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**CHAPTER 4**  
**TEPO & NEPA PROCEDURES PRIOR TO**  
**MAJOR BAND ACTIONS**

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**Section 401**                      **Summary of TEPO Process Before Major Band Action.**

- a.        The first step in the TEPO process for major Band actions is to verify that someone proposing an action needs to comply with this Ordinance at all. The need to comply with this Tribal Environmental Policy Ordinance (TEPO) is triggered by a major Band action, as defined in this Ordinance. If the Band intends to hire an employee or buy office supplies, that is not a major Band action and thus no TEPO process is triggered. But approving a land use permit for new housing or economic development probably meets the definition of major Band action and such major Band actions shall not be implemented until this Tribal Environmental Policy Ordinance (TEPO) process is complete. So, in order to keep development proposals on time, early application of the TEPO process is important. The TEPO process may also help refine the proposal to better satisfy the purpose and need for the project while better protecting the human environment.
- b.        One key purpose of this Ordinance is to require the Band to conduct the TEPO process before implementation of every major Band action. This includes major Band actions that have an area of potential effect (APE) within Reservation boundaries, or impacts that extend onto the Reservation.
- c.        Another key purpose of this Ordinance is to minimize the amount and duplication of compliance paperwork. This includes preparing compliance documents with other entities, such as federal agencies, who may have a concurrent major federal action that triggers the Agency(s) need for compliance with NEPA for a proposal that must also comply with this TEPO. The following sections summarize what happens when there is, and when there is not a concurrent major federal action. There is also a special case when the federal agency with the concurrent major federal action is HUD, which has unique NEPA regulations from all other federal agencies. HUD indicates that it can't accept NEPA documents from other federal agencies, but other federal agencies may be able to accept HUD documents, if the HUD document spells out the actions of the other federal agency and the significance determination of the resulting effects on the environment.

**Section 402**                      **Summary of TEPO Process Before Major Federal Actions.**

- a.        A federal agency(s) with a major federal action that impacts the Fond du Lac Reservation needs to consider when this Ordinance applies to that agency(s). Major federal actions that potentially affect the Fond du Lac Reservation trigger the need for that federal agency(s) to: (1) comply with NEPA; (2) consider inviting the Band to be a cooperating agency in the NEPA process (40 CFR § 1508.5); and (3) to consult government-to-government with the Fond du Lac tribal government (Executive Order 13175 and Executive Memorandum dated November 2000 on *Government to Government Relations with Native American Tribal Governments*) prior to completing the NEPA process and prior to implementing the proposed major federal action (40 CFR § 1505).
- b.        In this Ordinance, the Band establishes that the minimum government-to-government consultation process for federal agencies to consult the Band shall be for federal agencies to comply with this

Ordinance. Depending on the specific details of resource impacts, further government-to-government consultation may also be necessary.

- c. Note that the significance criteria for the NEPA process found at 40 CFR § 1508.27(b)(10) say that the following should be considered by the federal agency(s) regarding the intensity of impacts: Whether the proposed action threatens violation of federal, state, or local law or requirements imposed for the protection of the environment. Section 102(a) of this Ordinance indicates that one of the purposes of this Ordinance is "To reflect the continuing commitment of the Fond du Lac Band to protect, preserve and enhance the human environment of the Band homeland..." Thus, the federal agency(s) determining the significance of effects to the Fond du Lac Reservation is to consider whether the proposed federal action threatens violation of this Ordinance.
- d. With the potential for significant impacts in the NEPA process because of lack of compliance with this TEPO, the federal agency(s) may find themselves unable to use a categorical exclusion or to make a Finding of No Significant Impact (FONSI) based on an environmental assessment (EA).

**Section 403**

**Environmental Compliance Review Process When Major Federal Action, or Concurrent Federal Action is Foreseeable.**

- a. When the concurrent federal action is by a non-HUD agency, then the Fond du Lac Resource Management Division Director shall assign an employee of the Resource Management Division to be the lead coordinator with the federal agency proposing the concurrent federal action. The Resource Management Division lead coordinator will attempt to coordinate with the federal NEPA team leader to help ensure that the federal agency fully complies with this Tribal Environmental Policy Ordinance to: (1) complete the appropriate compliance document (CATEX, EA or EIS) in a team setting with the federal agency and Fond du Lac Resource Management Division staff in the federal NEPA process using 40 CFR Parts 1500-1508 and (2) in the process the federal decision maker conducts appropriate government-to-government consultation with the government of the Fond du Lac Band. If the Resource Management Division Director and staff concur with the federal NEPA process, they may recommend adoption of the resulting federal NEPA document (CATEX, EA or EIS) by the Band. If the Resource Management Division Director and staff find the federal NEPA process and document to be inadequate, they may recommend to the RBC that the Band conduct its own analysis and independent document, if necessary, to ensure quality analysis. The major federal action should not be permitted by the Band until the Band is satisfied with the quality of the environmental consultation review, whether conducted principally by the federal agency, by the Band or together as a team.
- b. When the major federal action is by HUD, then the appropriate divisions or entities of the Fond du Lac Band should work together to prepare the proper NEPA compliance document (CATEX, EA or EIS) using HUD's NEPA regulations at 24 CFR § 58. Part 58 regulations require that the Fond du Lac Band assumes HUD's responsibility for NEPA compliance and only one NEPA document is prepared for use by HUD to comply with NEPA and the Band in compliance with this Ordinance. Note that not all of HUD's programs require the Fond du Lac Band to assume HUD's responsibility for NEPA compliance. For example, HUD's Rural Housing & Economic Housing (RHED) Programs require HUD to prepare the NEPA compliance documents based on information provided by the funding recipient.

**Section 404**      **Environmental Compliance Process When Major Federal Action is NOT Foreseeable**

When major federal action(s) is not foreseeable, then the Band completes the TEPO process prior to implementing every major Band action, such as issuance of a Fond du Lac land use permit, funding approval or other Band decision required to implement the proposed action.

**Section 405**      **Responsibility for TEPO Compliance Matters.**

When the Band is an applicant for federal action and/or is affected by a proposed federal action or concurrent federal action, then the federal agency(s) shall invite the Band for government-to-government consultation during the preparation of NEPA environmental documents. The Band shall also be invited by the federal agency(s) as a cooperating agency, at the Band's option, in the review or preparation of federal NEPA environmental documents. The Band may invite a federal agency(s) to participate as cooperating agency in the TEPO process based on federal special expertise or jurisdiction by law. Any requests by other tribes to participate as a cooperating agency(s) with respect to the TEPO process may also be considered by the Band and either accepted or denied. Notwithstanding the above, the Band shall retain sole responsibility and discretion in all TEPO compliance matters.

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**CHAPTER 5**  
**INITIATING THE TEPO PROCESS**

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These sections describe the process to determine what kind of TEPO compliance document needs to be prepared. The presence of significant impacts, including those identified while complying with other environmental mandates, can affect the Band's determination as to what kind of TEPO compliance document needs to be prepared.

**Section 501**      **Actions Not Requiring an EA or EIS :**

- a.      **Categorical Exclusion Adequate:** If a categorical exclusion can be prepared for the proposal using the process in Chapter 6 of this TEPO, then it is not necessary to prepare an EA or EIS.
- b.      **Actions Analyzed in Existing Environmental Documents:** If the environmental impacts of a proposed action are sufficiently covered in an existing compliance document for this TEPO, federal NEPA or other EA or EIS, it may not be necessary to prepare new TEPO documents. The use of such earlier documents is referred to as adoption. In order to adopt an existing environmental document prepared previously, the Band shall prepare its own, or cooperatively prepare and sign a Finding of No Significant Impact (FONSI) for an adopted EA or Record of Decision (ROD) for an adopted EIS.
- c.      **Emergencies:** In an emergency, short-term or immediate response actions with significant environmental impacts may be taken without observing the provisions of the TEPO, if the action is necessary to control the immediate impacts of the emergency, particularly to protect human health and safety. Such actions, however, must be documented. In an emergency situation, contact the Fond du Lac Resource Management Division as soon as possible. The Resource Management Division will consult and coordinate with the RBC and the Legal Affairs Office on alternative compliance actions. All other emergency actions remain subject to the TEPO process. TEPO compliance documents are required for longer-term recovery, planning and mitigation implementation phases of an emergency. Note that many recovery activities for emergencies can be categorically excluded using category A. Operation,

Maintenance, and Replacement of Existing Facilities, or category L (5) Emergency transportation repairs under 23 U.S.C. 125.

**Section 502            Determination of Whether to Prepare an EA or EIS.**

If none of the situations described in Section 501 apply, then an EA or EIS is required. This section provides guidance for determining whether to prepare an EA or EIS.

- a. EIS Required. The primary requirement of TEPO is that an EIS be prepared for every major Band action that would or may significantly affect the quality of the human environment. There are three ways to determine if an EIS is required.
  1. List of actions in Section 901 (b) of this Ordinance that normally require an EIS.
  2. An EA finding that the proposed action would significantly affect the quality of the human environment and the significant impact(s) cannot be mitigated to below significant levels. This case is when a FONSI is not appropriate for an EA, but rather that an EIS needs to be done.
  3. Using the significance criteria and process in Chapter 8 of this TEPO, available information indicates that the proposed action would significantly affect the quality of the human environment and cannot be mitigated to below significant levels. Under these circumstances, there is no need to first complete an EA.
- b. EA Required. An EA must be prepared for all major Band actions, except those covered under Section 501 and Section 502 A. Also, if an EIS has been initiated and it becomes apparent that the action will not have significant impacts, the document may be released as an EA in support of a FONSI. The notice of cancellation for the EIS shall explain the reasons for not completing the document as an EIS and include a statement that the EA and FONSI will be made available for public review.

**Section 503            Initiate Compliance With Other Laws Early in TEPO Process.**

- a. Significance Determination Considers Compliance with Other Laws: Note that the criteria to determine significance in Section 803(10), includes consideration of "Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment." If the action has significant effects because it threatens violation of other ordinances or mandates, then an EIS may need to be prepared for detailed study of the impacts and compliance with other laws. Copies of compliance documents or correspondence regarding compliance with other laws need to be attached to the TEPO documents including a CATEX, EA or EIS.
- b. Major Band Action with No Foreseeable Concurrent Major Federal Action: Other Band ordinances or federal statutes that protect environmental and cultural resources may also need to be considered when completing the TEPO CATEX or environmental documents. It is best to initiate consultation on these compliances early in the TEPO process. For example, the major Band action may also trigger the need for compliance with the Clean Water Act Section 404 wetland fill permit or construction storm water permit if the disturbance area is one acre or more.
- b. Concurrent Major Federal Action is Foreseeable: Note that compliance documents for Section 106 and the Endangered Species Act (ESA) should always be attached to the NEPA document for federal

compliance with NEPA. Consultation under Section 106 of National Historic Preservation Act (Section 106) and Section 7 of the Endangered Species Act (ESA) consultation should be started at the beginning of the TEPO/NEPA process. The consultation for these two specific statutes is the responsibility of the federal agencies, but the Fond du Lac Historic Preservation Office and RBC will be contacted by the agency(s) for compliance with Section 106. The Band may enter an agreement with the U.S Fish and Wildlife Service regarding compliance with the ESA on the Fond du Lac Reservation.

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## CHAPTER 6

### CATEGORICAL EXCLUSIONS (CATEX) FOR COMPLIANCE WITH TEPO

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#### **Section 601**                      Summary of CATEX Process.

Categorical Exclusion is one of the compliance documents in the Band's TEPO process. In order to help eliminate duplicative compliance documents for concurrent federal actions, the Band established this TEPO process to be patterned after the BIA NEPA CATEX process. This should also help minimize duplication of the CATEX process with BIA, which often has concurrent or connected proposed actions with the Band.

In order for the Band to use a categorical exclusion for TEPO compliance for a specific proposed action, one must be able to (1) pick a specific category from the list in Section 603 that precisely matches the proposed action, AND (2) be able to say "No" to all 12 questions on the Exception Checklist for Categorical Exclusions, contained in Appendix A, regarding the proposed action. The Exception Checklist may not be used on its own to determine that a proposed action is a categorical exclusion. An answer of no to all of the circumstances listed on the checklist does not create a categorical exclusion. The proposed action must also be listed in Section 603.

The list in Section 603 contains cases of proposed actions that are anticipated to normally not have significant impacts. However, even actions that are normally categorically excluded can have significant impacts if the Band action at hand is proposed for a sensitive location, such as the site of an important cultural resource or within critical habitat for a threatened or endangered species. That is why each proposed CATEX must be reviewed for significance prior to use of a particular CATEX category. The Exception Checklist for BIA Categorical Exclusions uses 12 questions to review the NEPA significance criteria. The way to think about the logical process for the Exception Checklist for CATEXs follows: One can find a categorical exclusion type in Section 603 that fits a specific proposed action, except that the answer is "Yes" to question 2 on the checklist about wetlands. So the proposal may potentially have significant wetland impacts. If the question of significance of wetland impacts cannot be answered by briefly consulting an agency with jurisdiction by law or special expertise, then one should consider whether an EA or EIS should be prepared to help make a more detailed determination of the significance of predicted wetland impacts.

#### **Section 602**                      Process for the TEPO CATEX Exception Checklist.

- a. On the *Exception Checklist for Fond du Lac Categorical Exclusions* in Appendix A, the preparer fills in the blanks for the project name, date and concise description of the proposed action.
- b. The preparer inspects the list of possible categorical exclusions in Section 603 to find one that fits the case exactly for the proposed action. Is the proposed action specifically listed?

1. If yes, the preparer inserts the letter and name of the category on the EXCEPTION CHECKLIST following the text: "Exclusion Category and number:" Example: A. Operation, Maintenance, and Replacement of Existing Facilities
  2. If no, use Section 502 to determine whether to prepare an EA or an EIS.
- c. When an earlier TEPO or NEPA analysis is a provision of the exclusion (such as stated in categorical exclusion number F[1]), then write in the title and date of the earlier TEPO or NEPA document(s) . Note that earlier NEPA documents likely need to be adopted by the Band with a Band approved FONSI for an earlier EA or ROD for an EIS.
  - d. Determine (yes or no) if any of the 12 circumstances listed on the *Exception Checklist for Fond du Lac Band Categorical Exclusions* exist in the case of the proposed action. If the answer is yes for any of the 12 listed circumstances, then the categorical exclusion cannot be used. Determine whether to prepare an EA or an EIS using Section 502.
  - e. If the answer is no for all listed circumstances, check the "CE" blank on the back of the Exception Checklist. Obtain all signatures indicated on the Exception Checklist. Retain the signed checklist, and any other associated documentation (e.g. Section 106, Section 7 consultation documents) for the record. For compliance with this TEPO, copies of the Band 's approved CATEX go to the applicant and the Fond du Lac Resource Management Division (RMD) and department(s) of the Band with the authority to approve or fund the major Band action, such as approval of a land use permit by the Fond du Lac Land Use Committee. If a federal agency(s) has a concurrent major federal action(s), then a copy of the Band approved CATEX may need to go to that federal agency(s) for their use in complying with NEPA. This completes the TEPO requirement for the proposed action.
  - f. For compliance with TEPO, the Exception Checklist for Categorical Exclusions shall be signed and approved by (1) Fond du Lac Tribal Historic Preservation Officer (THPO), and then (2) Director, Fond du Lac Resource Management Division (RMD). For compliance with NEPA for a concurrent federal action, the checklist form approved for TEPO would be submitted to the applicable federal agency who would then sign the remaining signature blocks, at the discretion of the agency officials. Note, the Band preparer should retain copies of the TEPO CATEX and request signed copies of the NEPA approved CATEX. Also note that the exception checklist in Appendix A of this Ordinance is a revised version of BIA's checklist. It has been revised to provide signature blocks for Band officials to use in compliance with the TEPO process.

### **Section 603                      Categorical Exclusion List.**

For compliance with TEPO, the following Band actions are hereby designated as categorical exclusions unless the action qualifies as an exception using the categorical exclusion exception checklist in Appendix A. These actions are anticipated to normally not have significant impacts. These activities are single, independent actions not associated with a larger, existing or proposed complex or facility. If cases occur that involve cumulative significance, then a TEPO EA or EIS should be accomplished following the process in Section 502.

Caution: The list of categorical exclusions contained in Section 603 of this Ordinance has been revised somewhat from the BIA's list of categorical exclusions. Note that categorical exclusion m(3) in the following list permits the Band to use a federal categorical exclusion for concurrent major Band and federal actions.

- a. Operation, Maintenance, and Replacement of Existing Facilities. Examples are normal renovation of existing buildings, road maintenance and limited rehabilitation of irrigation structures.
- b. Transfer of Existing Federal Facilities to Other Entities. Transfer of existing operation and maintenance activities of federal facilities to the Band when no change in operations or maintenance is anticipated.
- c. Human Resources Programs. Examples are social services, education services, employment assistance, tribal operations, law enforcement and credit and financing activities not related to development.
- d. Administrative Actions and Other Activities Relating to Trust Resources. Examples are: management of trust funds (collection and distribution), budget, finance, estate planning, wills and appraisals.
- e. Self-Determination and Self-Governance. Self-Determination Act contracts and grants or Self-Governance Compacts for federal programs listed as categorical exclusions, or for programs in which environmental impacts are adequately addressed in earlier TEPO or NEPA analysis.
- f. Rights-of-Way.
  - 1. Rights-of-Way inside another right-of-way, or amendments to rights-of-way where no deviations from or additions to the original right-of-way are involved and where there is an existing TEPO or NEPA analysis covering the same or similar impacts in the right-of-way area.
  - 2. Service line agreements to an individual residence, building or well from an existing facility where installation will involve no clearance of vegetation from the right-of-way other than for placement of poles, signs (including highway signs), or buried power/cable lines.
  - 3. Renewals, assignments and conversions of existing rights-of-way where there would be essentially no change in use and continuation would not lead to environmental degradation.
- g. Minerals.
  - 1. Approval of permits for geologic mapping, inventory, reconnaissance and surface sample collecting for sand and gravel borrow pits.
  - 2. Approval of unitization agreements, pooling or communitization agreements.
  - 3. Approval of mineral lease adjustments and transfers, including assignments and subleases.
  - 4. Approval of royalty determinations such as royalty rate adjustments of an existing lease or contract agreement.
- h. Forestry.
  - 1. Approval of free-use cutting, without permit, to Indian owners for on-Reservation personal use of forest products, not to exceed 2,500 feet board measure when cutting will not adversely affect associated resources such as riparian zones, areas of special significance, etc.
  - 2. Approval and issuance of cutting permits for forest products not to exceed \$5,000 in value.
  - 3. Approval and issuance of paid timber cutting permits or contracts for products valued at less than \$25,000 when in compliance with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
  - 4. Approval of annual logging plans when in compliance with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
  - 5. Approval of Fire Management Planning Analysis detailing emergency fire suppression activities.
  - 6. Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres and not including approval of salvage sales of damaged timber.

7. Approval of forest stand improvement projects of less than 2,000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
  8. Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
  9. Approval of prescribed burning plans of less than 2,000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
  10. Approval of forestation projects with native species and associated protection and site preparation activities on less than 2,000 acres when consistent with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
- i. Land Conveyance and Other Transfers. Approvals or grants of conveyances and other transfers of interests in land where no change in land use is planned.
  - j. Reservation Proclamations. Lands established as or added to a reservation pursuant to 25 U.S.C. 467, where no change in land use is planned.
  - k. Waste Management.
    1. Closure operations for solid waste facilities when done in compliance with other federal laws and regulations and where cover material is taken from locations which have been approved for use by earlier TEPO or NEPA analysis.
    2. Activities involving remediation of hazardous waste sites if done in compliance with applicable Band ordinance or federal laws such as the Resource Conservation and Recovery Act (P.L. 94-580), Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-516), Toxic Substances Control Act (P.L. 94-469) or similar.
  - l. Roads and Transportation.
    1. Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.
    2. Construction of bicycle and pedestrian lanes and paths adjacent to existing highways and within the existing rights-of-way.
    3. Activities included in a "highway safety plan" under 23 CFR 402.
    4. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
    5. Emergency repairs under 23 U.S.C. 125.
    6. Acquisition of scenic easements.
    7. Alterations to facilities to make them accessible for the elderly or handicapped.
    8. Resurfacing a roadway without adding to the existing width.
    9. Rehabilitation, reconstruction or replacement of an existing bridge structure on essentially the same alignment or location (e.g., widening, adding shoulders or safety lanes, walkways, bikeways or guardrails).
    10. Approvals for changes in access control within existing right-of-ways.
    11. Road construction within an existing right-of-way which has already been acquired for a HUD housing project and for which earlier TEPO or NEPA analysis has already been prepared.

m. Other.

1. Data gathering activities such as inventories, soil and range surveys, wetland delineation, timber cruising, geological, geophysical, archeological, paleontological and cadastral surveys.
2. Establishment of non-disturbance (less than significant effect) environmental quality monitoring programs, shallow monitoring wells and field monitoring stations including testing services.
3. Band actions where there is a concurrent federal action and the action is categorically excluded for that federal agency.

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**CHAPTER 7**  
**ENVIRONMENTAL ASSESSMENT**

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**Section 701**                    **Introduction.**

For compliance with this Ordinance, an environmental assessment (EA) is a concise public document, for which the Band is responsible, that provides sufficient analysis for determining whether a proposed action may or will have a significant impact on the quality of the human environment. The EA should be completed early in the Band's decision making process so that if it becomes apparent that the proposed action may or will have significant impacts, an EIS can be prepared. If the EA does not reveal any significant impacts, a FONSI is prepared. For the case of a major federal action or concurrent federal action, a federal agency(s) is responsible for preparing an EA in compliance with NEPA. The Band is hereby authorized to work with the federal agency(s) and others to prepare an EA that complies with both the TEPO process and NEPA process.

**Section 702**                    **Initiating an EA.** There are two ways that an EA may be initiated:

- a. **Internally Initiated Proposals.** Internally initiated proposals are actions that the Band itself takes, such as the construction of housing or economic development. An EA is normally prepared by the Resource Management Division program staff in conjunction with the department within the Band which has identified the need for the proposed action and which has lead responsibility for implementing the action. Depending upon the complexity of the proposed action, the responsibility for preparation of, or oversight of a contract for the preparation of the EA may be assigned to either an individual or an interdisciplinary team.
- b. **Externally Initiated Proposals.** Externally initiated proposals trigger Band review in compliance with the TEPO process. The Band may also have a concurrent or linked major Band action, such as approval of a Fond du Lac land use permit. The applicant (Band and/or federal agency) normally prepares the EA. For the case when the applicant is a Band member without the resources to prepare the EA, then the Band will consider whether the Resource Management Division has the resources to prepare the EA on behalf of the Band member. The EA should be submitted with the application for Band land use permit, or as soon thereafter as possible. Even if the EA was primarily drafted by a federal agency applicant, the Band shall make its own evaluation of the environmental issues and take responsibility for the scope, content and adequacy of the EA for the purposes of supporting the Band's decision regarding the proposed action.