

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #04/12

AGRICULTURAL AND FOREST LAND TRESPASS ORDINANCE

Adopted by Resolution # 1297/12 of the Fond du Lac Reservation
Business Committee on September 25, 2012.

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FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #04/12

AGRICULTURAL AND FOREST LAND TRESPASS ORDINANCE

CHAPTER 1
AUTHORITY, FINDINGS AND PURPOSES

Section 101 Authority

This Ordinance is enacted by the Fond du Lac Reservation Business Committee pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa, as reserved under the Treaty of LaPointe, 10 Stat. 1109, and as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; under Article VI of the Revised Constitution of the Minnesota Chippewa Tribe; and under the common law of the United States; and pursuant to the federal authority delegated by 25 U.S.C. §§ 3106, 3713 and 25 C.F.R. §§ 163.29, 166.802.

Section 102 Findings and Purposes

The Fond du Lac Reservation Business Committee finds that an Agricultural and Forest Land Trespass Ordinance is necessary to protect Band resources and to prevent the unauthorized use of land. The purposes of this Ordinance are accordingly:

- (1) To maximize the Band's sovereign authority over the Reservation;
- (2) To promote the efficient and productive use of Reservation lands, as authorized by law;
- (3) To prevent and deter trespass to agricultural and forest land;
- (4) To protect the Band's agricultural and forest resources; and
- (5) To provide appropriate compensation for the owners of land that has been misused.

Section 103 Reservation of Rights

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

CHAPTER 2
DEFINITIONS AND GENERAL PROVISIONS

Section 201 Definitions

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

- (6) **"Alloted land"** means land or interests in lands the title to which is held, for any individual Indian, in trust by the United States or is subject to restriction against alienation imposed by the United States.
- (7) **"Agricultural land"** means (1) trust or allotted land located on the Reservation, including farmland and rangeland, excluding forest land, used for production of agricultural product, and (2) trust or allotted land occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.
- (8) **"Agricultural product"** means:
 - (a) Crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;
 - (b) Domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animals specifically raised and used for food or fiber as a beast of burden;
 - (c) Forage, hay, fodder, food grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and
 - (d) Other marketable or traditionally used materials authorized for removal from agricultural lands.
- (9) **"Authorized Band official"** means Conservation Officers or other individuals designated by the Reservation Business Committee to enforce this Ordinance.
- (10) **"Band"** means the Fond du Lac Band of Lake Superior Chippewa.
- (11) **"Forest land"** means trust or allotted land on the Reservation, including commercial, non-commercial, productive, and non-

productive timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed of other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification has been taken.

- (12) **"Forest product"** means marketable products extracted from forest land, such as: timber; timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles, and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, roots, acorns, syrup, wild rice, mushrooms, and herbs; other marketable material; and gravel which is extracted from, and utilized on, forest land.
- (13) **"Reservation"** means the Fond du Lac Indian Reservation.
- (14) **"Reservation Business Committee"** means the duly elected governing body of the Band.
- (15) **"Secretary of the Interior"** means the United States Secretary of the Interior.
- (16) **"Stumpage value"** means the value of a forest product prior to extraction from forest land.
- (17) **"Trespass"** means any unauthorized occupancy of, use of, or action on land. Trespass includes the removal of forest products from, or damaging forest products on, forest land, except where authorized by law and applicable federal or tribal regulations. Trespass can also include any damage to forest resources on forest land resulting from activities under contracts or permits or from fire.
- (18) **"Tribal Court"** means the Fond du Lac Band of Lake Superior Chippewa Tribal Court.
- (19) **"Trust land"** means land held in trust by the United States government for the benefit of an Indian tribe or its members.

CHAPTER 3
AGRICULTURAL LAND TRESPASS

Section 301 Jurisdiction in Agricultural Land Trespass Cases

The Tribal Court shall have jurisdiction over civil actions brought by the Band or the United States for trespass to agricultural land. This jurisdiction is based on the Band's inherent authority and on power delegated by 25 U.S.C. § 3713 and 25 C.F.R. § 166.802.

Section 302 Trespass to Agricultural Land Prohibited

Trespass to agricultural land is prohibited. Trespassers shall be subject to a civil action brought by the Band or the United States and shall be liable for civil penalties and damages as described in this Chapter.

Section 303 Notice of Trespass

(a) **Issuing a Notice of Trespass.** Trespassers are notified of a trespass determination as follows:

(1) If authorized Band officials or federal officials have reason to believe that a trespass on agricultural land has occurred, the officials shall, within five business days, provide written notice to the alleged trespasser, the possessor of trespass property, any known lien holder, and beneficial Indian landowner, as appropriate. The written notice will include the following:

- (A) The basis for the trespass determination;
- (B) A legal description of where the trespass occurred;
- (C) A verification of ownership of unauthorized property (e.g., brands in the state brand book for cases of livestock trespass, if applicable);
- (D) Corrective actions that must be taken;
- (E) Time frames for taking the corrective actions;
- (F) Potential consequences and penalties for failure to take corrective action; and
- (G) A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by us.

- (2) If authorized Band officials or federal officials determine that the alleged trespasser or possessor of trespass property is unknown or refuses delivery of the written notice, a public trespass notice shall be posted at the Band community building, posted at the U.S. Post Office, and published in the local newspaper nearest to the agricultural land where the trespass is occurring.
 - (3) Trespass notices under this section are not subject to appeal.
- (b) **Response to Trespass Notices.** An individual who receives a trespass notice must, within the time frame specified in the notice:
- (1) Comply with the ordered corrective actions; or
 - (2) Contact the issuing official(s) in writing to explain why the trespass notice is in error. If the issuing officials determined that the trespass notice was issued in error, the notice will be withdrawn.
- (c) **Expiration of Trespass Notice.** A written trespass notice will remain in effect for the same conduct identified in that written notice for a period of one year from the date of receipt of the written notice by the trespasser.
- (d) **Failure to Comply.** If a trespasser fails to take corrective action specified by us, authorized Band officials or federal officials may take one or more of the following actions, as appropriate:
- (1) Seize, impound, sell, or dispose of unauthorized livestock or other property involved in the trespass. The authorized Band officials or federal officials may keep such seized property for use as evidence.
 - (2) Assess penalties, damages, and costs, under Section 305.

Section 304 Unauthorized Livestock

- (a) **Impoundment.** Authorized Band officials or federal officials shall impound unauthorized livestock or other property on agricultural land under the following conditions:
- (1) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.
 - (2) When the known owner or the owner's representative of the unauthorized livestock or other property refuses to

accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

- (3) Any time after five days of providing notice of impoundment if you failed to correct the trespass.

(b) **Notice of Intent to Impound.**

- (1) If the trespass is not corrected in the time specified in the initial trespass notice, authorized Band officials or federal officials shall send written notice of intent to impound unauthorized livestock or other property to the unauthorized livestock or property owner or representative, and any known lien holder of the unauthorized livestock or other property.

- (2) If authorized Band officials or federal officials determine that the owner of the unauthorized livestock or other property or the owner's representative is unknown or refuses delivery of the written notice, public notice of the intent to impound will be posted at the Band community building, posted at the U.S. Post Office, and published in the local newspaper nearest to the agricultural land where the trespass is occurring.

- (3) After notice has been given as described above, authorized Band officials or federal officials may impound unauthorized livestock or other property without any further notice.

(c) **Notice of Sale.** Following the impoundment of unauthorized livestock or other property, authorized Band officials or federal officials shall provide notice that the impounded property will be sold as follows:

- (1) Authorized Band officials or federal officials shall provide written notice of the sale to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed prior to the sale.

- (2) Authorized Band officials or federal officials shall provide public notice of sale of impounded property that will be posted at the Band community building, posted at the U.S. Post Office, and published in the local newspaper nearest to the agricultural land where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must

be at least five days after the publication and posting of notice.

- (d) **Redemption.** The owner may redeem impounded livestock or other property by submitting proof of ownership and paying all penalties, damages, and costs under Section 305 and completing all corrective actions identified under Section 303.
- (e) **Sale.** The sale of impounded livestock or other property shall be conducted as follows:
 - (1) Unless the owner or known lien holder of the impounded livestock or other property redeems the property prior to the time set by the sale, by submitting proof of ownership and settling all obligations under Sections 303 and 305, the property will be sold by public sale to the highest bidder.
 - (2) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the owner, condemned and destroyed, or otherwise disposed of.
 - (3) Authorized Band officials or federal officials shall give the purchaser a bill of sale or other written receipt evidencing the sale.

Section 305 Penalties for Trespass to Agricultural Land

Trespassers on agricultural land must pay the following penalties and costs:

- (a) Collection of the value of the products illegally used or removed plus a penalty of double their values;
- (b) Costs associated with any damage to agricultural land and/or property;
- (c) The costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;
- (d) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under Section 304; and
- (e) All other penalties authorized by law.

The value of forage and crops consumed or destroyed shall be determined based upon the average rate received per month for

comparable property or grazing privileges, or the estimated commercial value or replacement costs of such products or property.

The value of the products or property illegally used or removed shall be based upon a valuation of similar products or property.

The damages to agricultural land shall be determined by considering the costs of rehabilitation and revegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

Costs of enforcement may include detection and all actions taken through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

Section 306 Treatment of Proceeds

- (a) Any money recovered under this Chapter shall be treated as proceeds from the sale of agricultural property from the agricultural land upon which the trespass occurred.
- (b) Proceeds recovered under this Chapter may be distributed to:
 - (1) Repair damages of the agricultural land and property;
 - (2) Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit; and
 - (3) Reimburse for costs associated with the enforcement of this subpart.
- (c) If any money is left over after the distribution of the proceeds described in paragraph (b) of this Section, the money shall be returned to the trespasser or, where the owner of the impounded property cannot be identified within 180 days, the net proceeds of the sale shall be deposited in the accounts of the landowners where the trespass occurred.

Section 307 Referral for Civil Prosecution

If a trespasser does not pay assessed penalties, damages, and costs, the case shall be referred for civil prosecution.

Section 308 Coordination of Civil Prosecution

The Band and the Secretary of the Interior shall be jointly responsible to coordinate civil prosecution of trespass actions involving agricultural land. The Band may request that the

Secretary of the Interior defer prosecution of an agricultural trespass to the Band. Where said deferral is not requested, the federal officials responsible for initiating and prosecuting such cases may file and prosecute the action in the Tribal Court.

CHAPTER 4
FOREST LAND TRESPASS

Section 401 Jurisdiction in Forest Land Trespass Cases

The Tribal Court shall have jurisdiction over civil actions brought by the Band or the United States for trespass to forest land. This jurisdiction is based on the Band's inherent authority and on power delegated by 25 U.S.C. § 3106 and 25 C.F.R. § 163.29.

Section 402 Trespass to Forest Land Prohibited

Trespass to forest land is prohibited. Trespassers shall be subject to a civil action brought by the Band or the United States and shall be liable for civil penalties and damages as described in this Chapter.

Section 403 Penalties for Trespass to Forest Land

Civil penalties for trespass to forest land include, but are not limited to:

- (a) Treble damages, whenever any person, without lawful authority injures, severs, or carries off any forest product. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness of intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass to forest land.
- (b) Payment of costs associated with damage to Indian forest land includes, but is not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.
- (c) Payment of all reasonable costs associated with the enforcement of these trespass regulations beginning with detection and including all processes through the prosecution and collection of damages, including but not limited to field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.
- (d) Interest calculated at an annual interest rate of four percent. Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass to forest land, and calculated from the date of the trespass until payment is rendered.

Section 404 Collection and Civil Forfeiture

Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties identified under Section 403. After disposition of real and personal property to pay civil penalties and damages resulting from trespass to forest land, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

- (a) Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the trespass lands; or
- (b) Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency, and the cost to restore the trespass land. Forest management deductions shall not be withheld where less than the highest stumpage value of the unprocessed forest products taken in trespass has been recovered.

Section 405 Trespass by Beneficial Owners

Indian beneficial owners who trespass, or who are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive their beneficial share of any civil penalties and damages collected in consequence of the trespass to forest land. Any civil penalties and damages defaulted in consequence of this provision instead shall be distributed first toward restoration of the land subject to the trespass and second toward costs of the enforcement in consequence of the trespass, with any remainder to the forest management deduction account of the Band.

Section 406 Treatment of Proceeds

Civil penalties and other damages collected under this Chapter, except for penalties and damages provided for in Section 403(b) and Section 403(c), shall be treated as proceeds from the sale of forest products from the forest land upon which the trespass occurred.

Section 407 Enforcement Procedure

- (a) **Seizure of Forest Products.** When an authorized Band representative or federal official has reason to believe

forest products are involved in trespass to forest land, such individual may seize and take possession of the forest products involved in the trespass if the products are located on Reservation.

- (b) **Seizure of Equipment.** When an authorized Band representative has reason to believe that trespass activity has occurred, the authorized Band representative may seize and take possession of the equipment involved in the trespass activity. All equipment seized shall be kept in the custody of the Band's Conservation Department for use as evidence unless otherwise ordered by the Tribal Court.
- (c) **Notice of Seizure.** When forest products or equipment are seized, the person seizing the products must at the time of the seizure issue a Notice of Seizure to the possessor or claimant of the forest products. The Notice of Seizure shall indicate the date of the seizure, a description of the forest products seized, the estimated value of the forest products seized, an indication of whether the forest products are perishable, and the name and authority of the person seizing the forest products. A copy of a Notice of Seizure shall be given to the possessor or claimant at the time of the seizure. If the claimant or possessor is unknown or unavailable, Notice of Seizure shall be posted on the trespass property, and a copy of the Notice shall be kept with any incident report generated by the official seizing the forest products.
- (d) **Sale of Perishable Forest Products.** If the property seized is perishable and will lose substantial value if not sold or otherwise disposed of, the authorized Band representative or federal official may cause the forest products to be sold. Such sale action shall not be stayed by a filing of an administrative appeal nor by a challenge of the seizure action through the Tribal Court. All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.
- (e) **Off-Reservation Products.** When there is reason to believe that forest products are involved in trespass to forest land and that such products have been removed to land not under federal or Band supervision, the authorized Band representative or federal official shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

- (1) That such products could be Indian trust property involved in a trespass; and
 - (2) That removal or disposition of the forest products may result in criminal and/or civil action by the United States or the Band.
- (f) **Notice of Trespass.** An authorized Band representative or federal official shall promptly determine if a trespass to forest land has occurred. The appropriate representative shall issue an official Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The Notice is intended to inform the trespasser, buyer, or the processor:
- (1) That a determination has been made that a trespass has occurred;
 - (2) The basis for the determination;
 - (3) An assessment of the damages, penalties and costs;
 - (4) Of the seizure of forest products, if applicable;
 - (5) Of the seizure of equipment, if applicable; and
 - (6) That disposition or removal of Indian forest products taken in the trespass may result in criminal and/or civil action by the United States or the Band.

Section 408 Referral for Civil Prosecution

If a trespasser does not pay assessed penalties, damages, and costs, the case shall be referred for civil prosecution.

Section 409 Coordination of Civil Prosecution

The Band and the Secretary of the Interior shall be jointly responsible to coordinate civil prosecution of trespass actions involving forest land. The Band may request that the Secretary of the Interior defer prosecution of a forest trespass to the Band. Where said deferral is not requested, the federal officials responsible for initiating and prosecuting such cases may file and prosecute the action in Tribal Court.

CHAPTER 5
EFFECTIVE DATE, AMENDMENTS, SEVERABILITY

Section 501 Effective Date

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

Section 502 Amendment or Rescission


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

Section 503 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 #04/12 was duly presented and adopted by Resolution #1297/12 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 September 25, 2012, on the Fond du Lac Reservation.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer

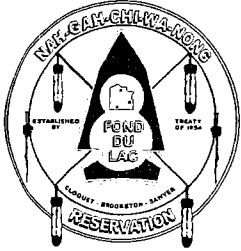
Fond du Lac Band of Lake Superior Chippewa

Reservation Business Committee

1720 Big Lake Rd.
Cloquet, MN 55720
Phone (218) 879-4593
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Resolution #1297/12

ENACTING FOND DU LAC ORDINANCE #04/12, AGRICULTURAL AND FOREST LAND TRESPASS ORDINANCE



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
Sandra M. Shabiash

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

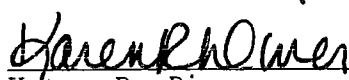
WHEREAS, the Reservation Business Committee has the power to regulate trespass to agricultural and forest land held in trust on Fond du Lac Reservation, pursuant to the Band's inherent authority and the federal authority delegated by 25 U.S.C. §§ 3106, 3713 and 25 C.F.R. §§ 163.29, 166.802; and

WHEREAS, the Reservation Business Committee deems it appropriate and in the best interests of the Band to exercise this authority by enacting an ordinance authorizing civil trespass actions in the Fond du Lac Tribal Court;


NOW THEREFORE BE IT RESOLVED, that the Reservation Business Committee hereby enacts Fond du Lac Ordinance #04/12, entitled "Agricultural and Forest Land Trespass Ordinance", which shall become effective thirty (30) days from adoption.

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 September 25, 2012, on the Fond du Lac Reservation.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer