

TRIBAL CODE

CHAPTER 23

RESERVATION WATER AND SHORELINE
PROTECTION AND ENHANCEMENT ORDINANCE

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Current Ordinance:

Resolution No. 567(99), Revised by replacing Chapter 23 in its entirety, effective October 25, 1999.

TRIBAL CODE

CHAPTER 23

RESERVATION WATER AND SHORELINE
PROTECTION AND ENHANCEMENT ORDINANCE

CHAPTER I: GENERAL PROVISIONS

23.101 Purpose.

The purpose of this ordinance is to provide for the protection, enhancement, and management of the Lac du Flambeau Reservation's lakes, streams, and ponds and their shorelines in order to assure present and future use and enjoyment of these resources by tribal members and such others as the Tribe shall permit. This ordinance is further intended to minimize the adverse effects of excessive or inappropriate construction of berthing and other recreational structures in the Tribe's waterways and to reduce the conflict between adjacent or nearby riparian owners by separating their respective uses of the water.

23.102 Authority.

This ordinance is enacted pursuant to Article VI, Section 1(a), (I), and (n) of the Tribe's Constitution.

23.103 Effective Date.

This ordinance shall take effect on the day following adoption by the Lac du Flambeau Tribal Council.

23.104 Abrogation and Greater Restrictions.

Where this ordinance imposes greater restrictions than those contained in other tribal ordinances, codes, or resolutions, the provisions of this ordinance shall govern.

23.105 Interpretation.

In the interpretation and application of the provisions of this ordinance, said provisions shall be held to be minimum requirements, and shall be liberally construed in favor of the Tribe and shall not be deemed a limitation on or a repeal of any other tribal power or authority.

23.106 Severability and Non-Liability.

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. The Tribe declares there is no liability on the part of the Tribe, its agencies, or employees, for damages that may occur as a result of reliance upon or conformance with this ordinance. The Tribe, by adoption of this ordinance, does not waive sovereign immunity in any respect.

23.107 Applicability.

This ordinance shall apply to activities undertaken upon the Tribe's reservation. It shall only apply to members unless a provision expressly provides to the contrary; provided, that the penalty provisions contained in Chapter IV shall apply to all persons who violate this ordinance.

23.108 Definitions.

(1) "Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(2) "Tribal Court" means the Lac du Flambeau Tribal Court.

(3) "Member" means a person enrolled in the Tribe.

(4) "Reservation" means the geographical area within the external boundaries of the Lac du Flambeau Reservation, as surveyed and provided pursuant to Article 1, Clause 3d of the Treaty of September 30, 1854, 10 Stat. 1109.

(5) "Reservation waters" means all lakes, streams, sloughs, bayous, and marsh outlets which are navigable in fact and which are located within the reservation; lakes which are partly within this reservation are included to the extent of the shoreline within the reservation.

(6) "Indian land" means all land which is held in trust by the United States for the benefit of the Tribe or of a member of the Tribe, and all land owned in fee by the Tribe or a member of the Tribe, such land being within the reservation boundaries defined in subsection (4) above.

(7) "Pier" means any structure extending channelward from the shore with water on both sides, built or maintained for the purpose of providing a berthing or mooring place for watercraft or for loading or unloading cargo or passengers onto or

from watercraft. Such a structure may include a boat shelter that is removed seasonally.

(8) "Wharf" means any structure extending along the shore and generally connected with the uplands throughout its length, built or maintained for the purpose of providing a berthing or mooring place for watercraft or for loading or unloading cargo or passengers onto or from watercraft.

(9) "Breakwall" means any structure extending along the shore built or maintained for the purpose of preventing shoreline erosion through water or wave action.

(10) "Bank" means the land surface abutting the bed of any navigable water body which, either prior to any project or alteration of land contours or as a result of the proposed project or alteration, slopes or drains without complete interruption into the water body.

(11) "Grade or otherwise remove" means the physical disturbance of the bank by the addition, removal or redistribution of topsoil.

(12) "Topsoil" means the uppermost surface layer of the ground before or after grading or otherwise removing.

(13) "Reclamation" means the rehabilitation of the project site including, but not limited to, establishment of adequate vegetative cover, stabilization of soil conditions, prevention of environmental pollution and where practicable, restoration of fish, plant and wildlife habitat.

(14) "Project site" means the surface area disturbed by a project operation, including the surface area from which materials have been or will be removed, the surface area covered by or to be covered by project refuse and land disturbed or to be disturbed by construction or improvement of haulage ways.

(15) "Boathouse" means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of structural parts. The term does not include shore stations which are removed from a waterway on an annual basis.

(16) "Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character

that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

(17) "Shorelands" means the lands within the following distances from the ordinary high-water mark of navigable waters:

(a) One thousand (1,000) feet from a lake, pond or flowage;

(b) Three hundred (300) feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

(18) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions as well as having hydric soils present. Wetlands generally include, but are not limited to swamps, marshes, and bogs.

(19) "Floodplain" means the land which has been or may be covered by flood water during the regional flood, and includes the floodway and floodfringe.

(20) "Regional flood" means a flood determined to be representative of large floods known to have occurred in Wisconsin or which may be expected to occur on a particular lake, river, or stream once in every one hundred (100) years.

(21) "Floodway" means the channel of a river or stream, and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

(22) "Floodfringe" means that portion of the floodplain outside of the floodway, which is covered by water during the regional flood. The term is generally associated with standing, rather than flowing, water.

(23) "Riprap" is a shoreline stabilization method which is used where it is necessary to armor the bank against high energy waves or current. Generally riprap requires regrading the bank and placing specific gradations of rock along the shore.

(24) "Fish Hatchery" means any building used for the purpose of aquaculture, owned and operated by the Lac du Flambeau Tribal Government.

(25) "Berth Structure" means any boathouse, boat shelter, boat hoist, boat lift, boat dolly and track or similar system, pier, dock, mooring or mooring buoy on a navigable body of water or within the water line setback area from a navigable body

of water or within the water line setback area from a navigable body of water where a boat is kept, secured or lies at anchor in aid of navigation.

(26) “Riparian Shoreline Frontage” is determined in order that each property owner have his due proportion of the line bounding navigability and a course of access to it from the shore exclusive of every other owner, and that all rules for apportionment or division are subject to such modification as may be necessary to accomplish substantially this result.

(27) “Berth” is a single space at a Berth Structure where a boat is kept, secured, or lies at anchor in aid of navigation.

CHAPTER II: ESTABLISHMENT OF ORDINARY HIGH WATER MARK

23.201 Authority to Establish.

The Lac du Flambeau Tribal Council shall have the authority to establish the ordinary high water mark for all reservation waters.

23.202 Standards for Establishing.

The establishment of an ordinary high water mark by the Lac du Flambeau Tribal Council shall remain consistent with the definition of ordinary high water mark found in this code.

CHAPTER III: PERMITS FOR STRUCTURES AND DEPOSITS IN RESERVATION WATERS

23.301 Permit Required for Certain Activities.

No tribal member or lessee shall conduct, nor shall any tribal member or lessee permit, employ, contract or authorize any person to conduct, any of the following activities without a permit therefor from the Tribe:

(1) Deposit any material or place any structure upon the bed of any reservation water without obtaining appropriate Tribal and/or Federal Permits.

23.302 Activities Presumed to be Non-Detrimental to Tribe’s Interests.

The Tribe, upon application and investigation, may grant to a tribal member or lessee a permit to conduct any of the following activities, which are presumed not to be detrimental to the Tribe’s interest:

(1) Place a fish crib or similar device on the bed of a lake for the purpose of improving fish habitat.

(2) Place a riprap or similar material on the bank of navigable reservation waters adjacent to the member or lessee's property for the purpose of protecting the bank and adjacent land from erosion.

23.303 Contents of Permit Application.

Any person wishing to undertake any activity subject to the restrictions of Section 23.301 shall first make application for a permit from the Tribe, which shall contain the following information in writing:

(1) Name of the applicant;

(2) Specific details on the type of activity to be undertaken;

(3) Location of the activity;

(4) Length of time within which the activity is expected to occur;

(5) Identity of any person who will conduct the activity under the supervision, direction, control, contract or employment of an applicant; and

(6) A map indicating the location of the proposed activity.

23.304 Site Inspection.

Prior to the issuance of any permit for which application is made under Section 23.304, the Land Use Officer shall undertake a site inspection and shall consult with the Tribal Natural Department.

23.305 Permit Fee.

The Conservation Code Committee shall issue a permit for activities subject to Section 23.301, upon determination in writing that such activity meets the requirements of this Chapter and upon receipt from the applicant of a fee in the amount of \$25.

CHAPTER IV: REGULATION OF STRUCTURES ON OR ADJACENT TO RESERVATION WATERS

23.401 Boathouses.

After the effective date of this ordinance, no permit may be issued for the construction or placement of a boathouse beyond the ordinary high-water mark of any reservation body of water. A permit may be issued for the construction of a dry boathouse or any of the following activities relating to boathouse maintenance for such structures which are in existence and in place on the effective date of this ordinance:

(1) Repair and maintenance of a boathouse extending beyond the ordinary high-water mark if the cost of the repair or maintenance does not exceed fifty percent (50%) of the current fair market value as certified by a competent appraiser using standard real estate appraisal techniques.

(2) Construction, repair or maintenance of a single-story boathouse if:

(a) The boathouse does not extend beyond the ordinary high-water mark;

(b) The boathouse must be constructed at a minimum setback of five (5) feet from the ordinary high mark and must not exceed three-hundred (300) square feet in area and must not exceed thirteen (13) feet in height; and covers the entire enlargement; and

(c) No living quarters or plumbing fixtures are constructed in the boathouse.

(d) Only one (1) boathouse is allowed per two-hundred (200) feet of shoreline.

(3) Any application requesting a permit under this section shall include a statement of all needed repair and maintenance items which are contemplated, together with a statement as to the existing, if any, condition of the foundation, structural framework, siding, roofing, and living quarters.

23.402 Fishing Rafts.

No permit may be issued for the construction or placement of a fishing raft upon any reservation body of water. Such a structure is defined as any raft, float or structure, including a structure located or extending below or beyond the ordinary high-water mark of a body of water, which is designed to be used or is normally used for fishing, which is not normally used as a means of transportation of water and which is normally retained in place by means of a permanent or semi-permanent attachment to the shore or bed of the water body.

23.403 Wharves and Piers.

No permit need be obtained for the construction of a wharf or pier on a reservation water if all the conditions below are met:

(1) The wharf or pier does not interfere with the public rights in navigable waters;

(2) The wharf or pier does not interfere with the rights of other riparian proprietors. For purposes of this Ordinance, riparian shoreline frontage shall be determined pursuant to the provisions of Section 23.403(6) herein.

(3) The wharf or pier does not extend beyond the bulkhead line which is established under Section 23.201; and

(4) The wharf or pier:

(a) Allow the free movement of water underneath;

(b) not to cause the formation of land by deposition of littoral drift sediment upon the bed of water; and

(c) not be constructed or maintained with a screen or in any other manner which would trap or accumulate aquatic plants.

(5) The use of the property must remain in conformity with the permissible uses enumerated within the zoning district.

(6) To provide each property owner with sufficient room to place a pier and moor boat along the common line between adjacent properties, the following method shall be used:

(a) each owner shall back his or her respective pier away from the common line or point of intersection of that line with the line of navigation in proportion to his or her share of the two adjacent shoreline lengths until sufficient room is provided to moor each property owner's boat at his or her respective pier and to provide safe maneuvering room for each boat to approach or leave the respective pier.

(b) If a property owner cannot move sufficiently from one side without violating the rule on the other side, then that owner shall position the pier in that location that best satisfies the rule on both sides and each owner

shall then move far enough to the side regardless of shoreline proportions to afford the necessary clearance.

(7) Apportionment of the line of navigation. The general procedure for apportionment of the line of navigation is to measure the whole shoreline of the cove or bay and the line of navigation in front of the shoreline and to apportion the line of navigation among the owners in proportion to the length of their respective holdings on the shoreline. The area of water within which each owner may place a pier to reach the line of navigation is determined by drawing straight lines between the corresponding points of division on the shoreline and the line of navigation.

(8) Extended Lot Lines. Under the extended lot line method, the area of water within which each owner may place a pier to reach the line of navigation is determined by extending the lot lines along the same alignment from the upland to the line of navigation.

23.404 Permits for Wharves and Piers.

No wharf or pier shall be constructed or maintained unless it is in compliance with Section 23.403 or a permit shall be issued under Section 23.301(1). In no event shall a permit be issued authorizing any of the following:

(1) Construction of a solid pier, which is defined as a structure not allowing for the free flow of water beneath.

(2) Construction of a pier which extends into the water from the shoreline beyond the point at which a three-foot depth contour is reached, or beyond the length of the boat using the pier.

23.405 Berth Structures.

Berthing structures constructed or replaced after the effective date of this Ordinance that do not meet the requirements in this subsection are prohibited.

(1) Permits. Berth structures, except boathouses and boat shelters, may be placed by a riparian property owner without a Tribal permit provided:

(a) the structure remain in conformity with the permissible uses enumerated within the zoning district;

(b) the structure is essential for the berthing of boats;

(c) the total number of berthing structures not exceed two for the first full 50 feet of shoreline and one berth for each additional full 50 feet;

(d) for purposes of a marina, the maximum number of berthing structures shall not exceed two times the number of berths that would otherwise be permitted under subsection (c) herein.

(2) Location of Berth Structures.

(a) Berth structures and moored boats must be confined to the owner's riparian zone. Berth structures must be set back a minimum of 10 feet from side lot lines extended waterward and any additional distance required to confine approach and docking of the boat to the owner's riparian zone.

(b) A berth structure may not unreasonably obstruct navigation or otherwise interfere with public rights in navigable waters.

(c) Berth structures and their use may not damage public interest in waterways, including but not limited to, ecologically significant areas, i.e. spawning areas, important vegetation, loon or other waterfowl nesting areas, natural shoreline beauty.

(d) Berth structures shall be consolidated as close together as practicable at a single location for each lot.

(e) Berth structures, where practicable, shall be located immediately waterward from the shoreline where any boathouse or boat shelter is located.

(3) Regulation of Lighting.

(a) Flashing and rotating lights are prohibited.

(b) Lighting inside a boathouse and intended to illuminate its interior is permitted.

(c) Lighting on exteriors of berthing structures shall be fitted with opaque shades or shields to prevent direct visibility of the lamp to persons on public waters or adjacent lands more than 50 feet beyond the berthing structure.

(d) Lighting not mounted on a berthing structure but designed to illuminate a berthing structure or its immediate vicinity shall comply with subparagraph (c) above.

(e) Lighting installed on, or intended to illuminate, seasonally-used berthing structures shall be turned off when not required for safety or security.

(f) Public marinas may install illuminated signs with opaque shaded or shielded lighting that provide information pertaining to applicable tribal, federal, or state rules and regulations related to electrical, fueling, waste, and sewage disposal or other safety and environmental matters. Such sign illumination shall not be visible from off the berth structure.

(g) The right to place berths, berth structures or on-site storage facilities for boats accrues in proportion to the amount of shoreline owned as described in Section 23.404(2). Any such berth or storage facility in excess of the number permitted pursuant to said section shall be authorized only for the purpose of serving the public's interests and rights in the navigable waterways of this Tribe. Such berths or on-site storage facilities must be available to members of the public on a first come-first serve basis. Rentals or leases for the exclusive use of any such berths shall not be permitted for periods in excess of one year.

23.406 Bridges In or Over Reservation Waters.

Any bridge which is constructed so as to cross a navigable body of reservation water must be authorized by a permit issued under Section 23.301. No bridge shall be constructed which:

(1) Does not maintain a clearance of at least five (5) feet between the bottom of the lowest portion of the bridge span and the elevation of the ordinary high-water mark of the body or water.

(2) Does not conform to the flood flow requirements, if any, of this ordinance.

(3) Does not span the stream from bank to bank.

(4) Does not have at least one end of the structure which is firmly anchored in such a manner that the bridge will not be transported downstream during flood conditions.

(5) Has approaches which increase the elevation above existing natural ground elevation or has approach ramps exceeding one foot in elevation to meet the bridge deck or are more than fifteen (15) feet in length.

23.407 Abandoned Structures.

Any structure extending from the shoreline of a reservation body of water which is abandoned may be removed by the Tribe pursuant to the provisions of Section 23.1008 of this ordinance. For purposes of this section, "abandoned" means the relinquishment of possession by the owner with indications of intent to terminate ownership, which may be evidenced by several factors, including the failure to act to maintain or repair the structure for a period longer than one (1) year.

23.408 Obstructions to Navigation.

Any structure which is constructed or utilized without the requisite permit under Section 23.301 or which is the subject of a complaint to the Tribe that it unduly interferes with the rights of others to utilize reservation waters may be removed by the Tribe pursuant to the provisions of Section 23.1008 of this ordinance.

23.409 Marina Facilities.

(1) Permits. Any pier, boat shelter or mooring placement which exceeds the requirements of 23.404(2) is deemed a marina facility for the purposes of meeting the requirements of this section and shall require a conditional use permit which may only be issued after a duly noticed public hearing has been held. Such permits may only be approved for lots which are located in zoning districts which allow marinas, or if the facility is owned by the Tribe or federal government.

(2) Criteria. In making a determination of whether a site is appropriate for a marina, the following issues must be addressed:

(a) Existing land and water uses within 1/2 mile of the marina, including all current business uses of the property.

(b) Current zoning district designation within 1/2 mile of the marina.

(c) Proximity of the marina to existing public boat landings, public swimming beaches and marinas.

(d) Buffer areas between the marina and adjacent properties.

(e) Location of ecologically significant areas with ½ mile of the proposed site.

(f) Noise control measures.

(g) A detailed sketch showing location and size of existing and proposed buildings, wells, septic systems, piers, individual slips, mooring buoys, water depth for berths and berth structures, boat launching facilities, beaches, fuel tanks and dispenser, parking lot(s), traffic circulation for both vehicles and boats.

(h) A statement from the applicant indicating the number of berths proposed to be sold, rented, or leased and the method of conveyances (e.g. fee simple, lease).

(i) Methods of waste collection and disposal. Identify precautions to stop improper disposal.

(j) Visual markers and/or signage of reasonable dimensions necessary to identify and/or locate the project.

(k) Exterior lighting of the marina facility.

(l) Sewage system capacity and compliance.

(m) Motor vehicle and trailer parking facilities.

(n) Hours of operation.

(o) Anticipated future changes or additional phases of the project.

(p) Methods for safely dispensing fuel.

(q) Location of any existing or proposed no-wake buoys.

(r) Erosion control measures.

(s) Stormwater runoff controls.

(t) Fire protection measures.

(u) A statement from the applicant identifying all permits applied for or obtained by the applicant or his/her predecessor at the site, or obtained

by the applicant or his/her operator at any other commercial site within the preceding ten (10) years and the extent of compliance with such permits.

(3) Marina Facility Requirements.

Marina facilities shall comply with the following requirements:

(a) After the effective date of this section, marina facilities may not be permitted on waters formally designated by tribe as an outstanding tribal resource water.

(b) The applicant is required to secure authorization required by floodplain, shoreland, wetland and general zoning ordinances and applicable statutes and administrative rules, including but not limited to regulations relating to electrical, fueling, waste and sewage disposal and other safety and environmental regulations.

(c) The applicant must demonstrate that on-land boat storage or trailer launch facilities are not a feasible alternative to any proposed pier, boat shelter or mooring construction.

(d) The applicant shall employ erosion control measures to prevent erosion, siltation, sedimentation and washing and blowing of dirt and debris from excavation, grading, open cuts, side slopes and related activities of the applicant or the contractors. Such measure shall include, but not be limited to, seeding, sodding, mulching, watering, ponding and the construction of berms.

(e) The applicant shall determine stormwater runoff or flow as a result of this development. The applicant shall provide stormwater management facilities either in the form of an infiltration structure or a detention basin which will retain on-site the first inch of stormwater from all impervious surfaces from this development.

(f) Berthing privileges available to members of the public shall be rented or leased only on a first come-first serve basis for terms no longer than one (1) year.

(g) Any change or proposed change involving the facts relating to criteria identified in Section 23.409(2) and (3) or as a condition of approval for which a conditional use permit was issued must be submitted to and approved by the Tribe prior to implementation of such change.

(h) Reasonable public access to the facility and handicapped parking in compliance with federal regulations for the disabled must be provided.

(i) Permits issued under this section are subject to further restrictions, conditions, modifications or revocation if the Tribe determines the facility has become detrimental to the public interest.

(j) Boats berthed at a marina facility shall not be used for overnight lodging.

(4) Off Street Parking and Loan Space.

(a) Off Street Parking. Off-street parking requirements must include minimum space required for each use of the property as identified below. The cumulative parking space requirements must be satisfied. If boat launching facilities are available to the public, parking spaces for towing vehicles and trailers shall be provided at the rate of 15 parking spaces per launching lane at a boat ramp. Each parking space shall be at least 10 feet wide by 40 feet long. Such parking shall be in addition to other required parking. Off street parking to meet all minimum setbacks required elsewhere in this ordinance.

(b) A marina requires 180 sq. ft. of parking space per boat berth.

CHAPTER V: REMOVAL OF MATERIAL FROM RESERVATION WATERS

23.501 Cutting of Aquatic Vegetation.

No person shall cut aquatic vegetation growing or found in any reservation body of water without first consulting with the Tribal Natural Resource Department as to the identity of the vegetation said person proposes to cut. In the event that the Tribal Natural Resource Department determines that the vegetation is in fact wild rice or advantageous to wildlife or fish habitat, it shall issue a written notice to said person not to cut. Any person who cuts aquatic vegetation after receipt of such written notice shall be subject to the penalty provisions of Chapter X.

23.502 Aquatic Vegetation Removal Without Consultation.

Any person who cuts down aquatic vegetation without consultation with the Tribal Natural Resource Department prior to such action shall be subject to the penalty provisions of Chapter X.

23.503 Removal of Aquatic Vegetation-if allowed.

Cutting aquatic vegetation in any reservation body of water requires the person or persons involved to remove cut vegetation from the water and to dispose of them in conformance with this ordinance and all other applicable law. Failure to do so shall subject a violator to the penalty provisions of Chapter X.

23.504 Removal of Material from Bed of Reservation Water.

No person shall remove any material from the bed of any reservation body of water without first obtaining a permit for such activity from the Tribe.

23.505 Purpose for Removal of Material From Bed.

No person shall be granted a permit to remove any material from the bed of any reservation body of water for the purpose of sale of any such material. A permit may be issued for any of the following purposes:

(1) To construct, dredge or do any work in connection with any artificial waterway, canal, channel, ditch, lagoon, pond, lake or similar waterway for the purpose of ultimate connection with an existing navigable stream;

(2) To construct, dredge, commence or do any work in connection with any artificial waterway which is located within five hundred (500) feet of the ordinary high-water mark of an existing navigable stream, lake or other body of navigable water.

(3) To remove material from a lake bed which, through siltation or because of lowered water level, has been determined by the Tribe to be unfit for recreational use in order to restore the area to recreational use.

23.506 Contents of Permit Application.

Any person seeking to remove material from the bed of a reservation body of water for any of the purposes authorized in Section 23.505 shall apply therefore on a form provided by the Conservation Code Committee, and shall include in addition the following:

(1) The location, extent, depth, and manner of project operations anticipated; proposed means of loading and transporting of material; and estimated volume and quality of material to be extracted, accompanied by an adequate documentation of the basis for such estimates;

(2) A legal description of all land within the project site which applicant owns, leases or has an option to purchase or lease;

(3) A timetable of the commencement, duration and cessation of project operations. The timetable shall reflect that the project site shall remain open for the minimum necessary period of time;

(4) A project and reclamation plan in accordance with the following section;

(5) Satisfactory evidence that the applicant has applied for or obtained all necessary Tribal and/or Federal permits and licenses for the project operations;

(6) Satisfactory evidence that the applicant or proposed operator is technically and financially qualified to conduct and complete project operations and progressive and final reclamation plans; and

(7) Estimated cost of progressive and final reclamation of the project site.

23.507 Contents of Project and Reclamation Plan.

Each permit application shall include a project and reclamation plan, which shall describe:

(1) The nature, extent and final configuration of the project site including nature, depth, location and extent of stockpiled materials, and disposal of waste or overburden.

(2) The progressive and final reclamation plans detailing the manner, time and location of:

(a) The removal, stockpiling, and protection of all materials in conformance with this ordinance.

(b) Adequate measures to screen the project from view from the waterway;

(c) Grading and stabilization of the project site;

(d) Adequate diversion and drainage of ground and surface water from the project site with no resultant pollution of ground or surface water; or in the event that fish entrapment is likely to occur, impoundment of water of sufficient permanency, size, and quality to benefit public use, with stable slopes and banks and adequate public access; and

(e) Erosion and drainage control, and re-vegetation utilizing soil conservation service critical area planting guidelines for the slope and soil type or the Wisconsin Department of Transportation minimum seeding requirements for disturbed earth, with diverse, self-regenerative species utilized where consistent with final reclamation.

(3) An acknowledgment of continuing responsibility for restoration and re-vegetation of the project site until stabilization has been determined adequate by the Tribal Land Management Department.

(4) A description of the existing natural and physical conditions of the project site, including necessary maps and cross sections acceptable to the department concerning:

(a) Soil and geologic composition of the project area;

(b) Location and dimensions of surface waters;

(c) Location of ground water;

(d) Hydraulic cross sections of the floodplains of any streams;

(e) Location of man-made features in the project site;

(f) Detailed map and description of the nature and extent of existing excavations, stockpiled materials, topsoil and refuse in the project site;

(g) Historical and archeological features, if known; and

(i) Existing drainage patterns.

23.508 Standards for Permit Issuance.

The Tribe may grant to any tribal member or lessee, and to any person acting under such person's direction, control, supervision or employment a permit to conduct an activity subject to the provisions of Section 23.505 upon assurance satisfactory to the Tribe that such activity is not detrimental to the Tribe's interest, and will be conducted in such manner as not to result in degradation of water quality, erosion of the affected shoreline, or destruction of wildlife or aquatic habitat.

23.509 Bond Requirements.

In addition to the information which must be submitted to the Tribe under Sections 23.506 and 23.507, the Tribe may require as a condition of permit issuance that the applicant submit a bond in an amount equal to the cost of the proposed reclamation of the activity site. The Tribe may accept a bond issued by a surety company licensed to do business in the State of Wisconsin, a performance bond issued by said company, or a cash bond. The bond shall provide that if issued by a surety, it may not be canceled at the surety's option, without a minimum advance notice to the Tribe of sixty (60) days. The bond shall be payable to the Lac du Flambeau Band of Lake Superior Chippewa Indians.

23.510 Contents of Permit.

A permit issued by the Tribe under this Chapter shall be granted for a specified period of time, and shall include the following conditions:

- (1) Projects shall be limited to the dimensions and depth approved by the Tribe;
- (2) Any waterway created by such project shall be a tribal waterway;
- (3) There will be no stockpiling or storage of materials subject to regulation under Chapter III or VII of this ordinance;
- (4) Progressive and final reclamation of the site is accomplished;
- (5) If determined necessary by the Tribe, banks and drainages to navigable waterways shall be stabilized prior to and during project operations, and drainages shall be filtered where necessary to prevent siltation and water turbidity;
- (6) Such other requirements as are necessary to ensure project operation and reclamation is conducted in conformance with the purposes of this ordinance.

23.511 Permit Extensions.

A permit extension may be granted by the Tribe if a request for such an extension is made in writing prior to the expiration date of the existing permit, subject to the following requirements:

- (1) No extension may be granted for an activity or project which is not in compliance with the terms of the existing permit.
- (2) No extension may be granted for a period more than one-half the duration of the original permit.

(3) No extension may be granted if the applicant cannot demonstrate a reasonable progression of excavation has been followed at the project site.

(4) An extension may be conditioned upon correction of any unanticipated environmental damage occurring during the original permit.

23.512 Site Inspection.

Prior to the issuance of any permit for which application is made under Section 23.506 and at any time during the term of the permit, the Tribe may undertake a site inspection.

23.513 Permit Fee.

The Tribe, through the Conservation Code Committee, shall collect from the applicant a fee for said permit and/or permit extension in an amount of \$25 per permitted activity or \$25 per variance request.

CHAPTER VI: DIVERSION OF WATER FROM RESERVATION LAKES AND STREAMS

23.601 Authorized Diversion of Water.

(1) A tribal member or lessee, or person acting under such person's employment, contract or authorization, may temporarily divert the surplus water of any stream for the purpose of bringing back or maintaining the normal flow of water in any navigable stream of the reservation.

(2) A tribal member or lessee, or person acting under such person's employment, contract or authorization, may divert water for the purposes of agriculture, aquaculture or fire control, provided that such diversion does not violate any provision of the Lac du Flambeau Water Quality Standards Code.

23.602 Unauthorized Diversion of Water.

No other diversion of water from a lake or stream of the Lac du Flambeau Reservation may be conducted.

CHAPTER VII: WETLAND PROTECTION

23.701 Establishment of Wetland Areas.

The Tribe, through its Natural Resource Department, shall designate all lands within the boundaries of the Lac du Flambeau Reservation which are wetlands. In so doing, the Tribe shall make reference to the wetland inventory maps, prepared by the Tribal Natural Resources Department in 1996 or later, whichever maps are most current.

23.702 Authorized Uses in Wetland Areas.

No tribal member or lessee, or person acting under such person's employment, contract, or authorization, shall engage in any activity on tribally-designated wetland other than the following:

(1) Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating.

(2) Harvesting of wild crops, including marsh hay, ferns, moss, wild rice, berries, tree fruits and seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tilling, or excavating.

(3) Practice of silviculture, including planting, thinning, and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tilling or excavating is done except as necessary for:

(a) Temporary water level stabilization measures to alleviate abnormally wet or dry conditions which have an adverse impact on the conduct of silvicultural activities if not corrected, or

(b) Construction and maintenance of roads necessary to conduct silvicultural activities, as permitted under Section 23.702(11).

(4) Construction and maintenance of duck blinds, provided that no filling, flooding, draining, dredging, ditching, tilling, or excavating is done.

(5) Construction and maintenance of non-residential buildings, subject to the following conditions:

(a) Building is used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation;

(b) The building cannot as a practical matter be located outside the wetland;

(c) The building does not exceed five hundred (500) square feet in size; and

(d) No filling, flooding, draining, dredging, ditching, tilling, or excavating is done, except limited filling and excavating necessary to provide structural support for the building.

(6) Construction and maintenance of piers, docks, walkways, observation decks and trail bridges, provided that no filling, flooding, dredging, ditching, tilling or excavating is done, except limited filling and excavating necessary for the installation of pilings.

(7) Establishment and development of public and private parks and recreation areas, outdoor education areas, historic and/or culturally significant, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game farms and wildlife preserves, and public boat launching ramps, provided that any filling, or excavating is necessary to accomplish one of the above purposes.

(8) Construction and maintenance of electric and telephone transmission lines and water, gas, and sewer distribution lines and related facilities, provided that the following conditions are met:

(a) Such lines cannot as a practical matter be located outside the wetland, and

(b) Any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize the adverse impact on the natural functions of the wetland.

(9) Construction and maintenance of roads necessary to provide access to uses permitted under this section, provided that the road cannot, as a practical matter, be located outside the wetland, and that the road construction and maintenance activities are carried out in the immediate vicinity of the road bed only and in a manner which minimizes the adverse impact on the natural functions of the wetland. Such an activity must also obtain any other required Federal and/or Tribal Permits.

(10) Maintenance, repair, replacement, and reconstruction of existing tribal, town, and county highways and bridges.

23.703 Prohibited Uses in Wetland Areas.

Any use not permitted in Section 23.702 is prohibited in any reservation wetland area unless a conditional use permit is granted by the Tribe.

23.704 Requirements of Conditional Use Permit.

The Tribe, through its Conservation Code Committee, may issue a conditional use permit to a tribal member or lessee for a wetland use not enumerated in Section 23.702 if, and only if, the proposed activity may not result or cause a significant adverse impact on any of the following:

- (1) Storm and flood water storage capacity;
- (2) Maintenance of dry stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, of the flow of groundwater through a wetland;
- (3) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- (4) Shoreline protection against soil erosion;
- (5) Fish spawning, breeding, nursery or feeding grounds; or
- (6) Wildlife habitat.
- (7) Lac du Flambeau Water Quality Standards Code compliance.

23.705 Contents of Conditional Use Permit Application.

Any person who desires to utilize any reservation wetland area for a purpose other than that designated in Section 23.702 shall first make application for a conditional use permit, which shall contain the following in writing:

- (1) Name of applicant;
- (2) Specific details on the type of activity to be undertaken;
- (3) Location of the activity;
- (4) Length of time within which the activity is expected to occur, including construction timetable, if applicable;

(5) Identity of any person who will conduct the activity under the supervision, direction, control, contract or employment of the applicant; and

(6) A map indicating the location of the proposed activity.

23.706 Site Inspection.

Prior to the issuance of any conditional use permit, the Land Use Officer shall undertake a site inspection, and shall consult with the Tribal Natural Resource Department in such inspection.

23.707 Conditional Use Permit Fee.

The Tribe shall issue a conditional use permit for activities subject to Section 23.703 upon determination that such activity meets the requirements of Section 23.704, and upon receipt from the applicant of a fee in the amount of \$25.

CHAPTER VIII: WATER QUALITY PROTECTION

23.801 Minimum Lot Size.

In order to afford protection against pollution of the adjacent body of water and protection against danger to health, safety, and welfare of tribal members and licensees, the following minimum lot sizes are established in shoreline areas:

(1) Lots served by tribal sanitary sewer shall have a minimum average width of one-hundred (100) feet and a minimum area of ten thousand (10,000) square feet.

(2) Lots not served by tribal sanitary sewer shall have a minimum average width of two-hundred (200) feet and a minimum area of twenty thousand (20,000) square feet.

(3) All newly established Lakefront Lots must have a minimum lake frontage of two-hundred (200) feet.

23.802 Building Setback Requirements.

The following setback requirements are established in order to protect the health, safety, and welfare of tribal members and licenses and to reduce flood hazards and prevent water pollution:

(1) A setback of seventy-five (75) feet from the ordinary high-water mark of an adjacent body of water to the nearest part of a building or structure shall be required, excepting piers, boat hoists, fish hatcheries and boathouses.

(2) No boathouse shall be used for human habitation nor constructed beyond the ordinary high-water mark of any reservation body of water. All new boathouses must be constructed at a minimum setback of five (5) feet from the ordinary high water mark and must not exceed three-hundred (300) square feet in area and must not exceed thirteen (13) feet in height.

23.803 Cutting of Trees and Shrubbery Restrictions.

The following restrictions are placed upon the cutting of trees and shrubbery in order to control erosion and reduce the flow of effluents, sediments and nutrients from the shoreland area:

(1) In the strip of land thirty-five (35) feet wide inland from the ordinary high-water mark, no more than thirty (30) feet in any two-hundred (200) feet shall be clear cut.

(2) In shoreland areas more than thirty-five (35) feet inland, tree and shrub cutting shall not be conducted in any area with an incline toward shore of more than forty-five (45) degrees or greater.

(3) This section shall not apply to removal of dead, diseased or dying trees or shrubbery.

23.804 Restrictions Upon Filling, Grading, Lagooning, Dredging, Ditching and Excavating.

Filling, grading, lagooning, dredging, ditching and excavating may only be conducted in accordance with the provisions of Chapters III, IV, V, VI and VII of this ordinance, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.

CHAPTER IX: NONCONFORMING USES AND STRUCTURES

23.901 Definition.

A nonconforming use and nonconforming structure is one which does not comply with the requirements of this ordinance, but was, prior to the enactment of this ordinance, lawful.

23.902 Prohibited Nonconforming Uses.

No activity or use which is prohibited or regulated by this ordinance shall be lawful upon the effective date of this ordinance.

23.903 Nonconforming Structures.

No addition or modification to any nonconforming structure shall be made, unless done in compliance with this section. For the purposes of this section, modification and addition shall include, but not be limited to, any alteration, addition, modification, rebuilding or replacement of any such existing building, accessory building or accessory use. Ordinary maintenance repairs may be undertaken upon a nonconforming structure, which include internal and external painting; decorating; paneling; replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage systems, water supply systems or connections to public utilities.

23.904 Discontinuance of Use of Nonconforming Structure.

If use of a nonconforming structure is discontinued for twelve (12) consecutive months, it is no longer permitted, and any future use of the building may be made only in compliance with the provisions of this ordinance.

23.905 Destruction or Damage to Nonconforming Structure.

If any nonconforming structure is destroyed or is so badly damaged that it cannot be practically restored, it may not be replaced, reconstructed or rebuilt unless the provisions of this ordinance are followed. For the purpose of this section, restoration is deemed impracticable where the total cost of such restoration would exceed fifty percent (50%) of the value of the structure.

23.906 Conditional Use Permits.

Conditional uses are permitted only upon the issuance of a Conditional Use Permit by the Tribe and shall be required for any future modifications of any structures under this section that is defined as a Nonconforming Use. Conditional Use Permits shall be consistent with the spirit of this Ordinance and local land use plans and controls.

CHAPTER X: ENFORCEMENT AND PENALTIES

23.1001 Enforcement by Tribal Law Enforcement Personnel.

Any provision of this ordinance may be enforced by tribal law enforcement personnel or by conservation wardens of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby deputized by the Tribe as tribal law enforcement personnel for the purposes of enforcing this ordinance.

23.1002 Authority of Law Enforcement Personnel.

(1) Any person authorized to enforce this ordinance may execute and serve warrants and other process issued by the Tribal Court in the same manner as any law enforcement officer of the State of Wisconsin may serve and execute such state warrants and other process under state law.

(2) Any person authorized to enforce this ordinance may, with or without warrant, enter and inspect activities on Indian land, where the person has probable cause to believe that a provision of this ordinance has been violated.

(3) Any person authorized to enforce this ordinance may issue a citation to a person upon reasonable belief that such person may have violated a provision of this ordinance, and may seize and hold any property needed as evidence or any property authorized to be seized pursuant to the civil remedial forfeiture provisions of this ordinance.

23.1003 Civil Remedial Forfeiture of Property.

Any person who, for himself, or herself, or by his/her agent, servant or employee or who as agent, servant or employee of another, violates this ordinance, shall be liable for a civil remedial forfeiture of any property, including construction tools, used in the commission of the violation of this ordinance.

23.1004 Civil Remedial Money Penalties.

Any person who, for himself, or herself, or by his/her agent, servant or employee, or who as agent, servant or employee of another, violates this ordinance, shall be liable as follows:

(1) Engaging in activity for which a permit is required without such permit shall result in a money penalty in an amount not to exceed Five Hundred Dollars (\$500.00) for each day during which such activity occurs.

(2) Violation of a provision of a permit issued by the Tribe shall result in a money penalty in an amount not to exceed Two Hundred and Fifty Dollars (\$250.00) for each day during which the violation occurs.

23.1005 Parties to a Violation.

(1) Whoever is concerned in the commission of a violation of this ordinance is a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been found to have violated this ordinance.

(2) A person is concerned in the commission of the violation if the person:

(a) Directly commits the violation;

(b) Aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to violate it or advises, hires, or counsels, or otherwise procures another to commit it.

23.1006 Injunctive Relief.

The Tribe may, in addition to the penalties provided in Sections 23.1004 and 23.1005 of this ordinance, seek to obtain an injunction in any court or competent jurisdiction against any person subject to this ordinance who undertakes activities which have any of the following potential effects:

(1) Obstruct a stream;

(2) Impair water quality;

(3) Disturb or impair fish reproduction; or

(4) Create a hazard to public health.

23.1007 Condemnation of Property.

The Tribe may seek to remove any structure which is abandoned by its owner of record and which, through use or location is in violation of this ordinance, through institution of a complaint for seizure pursuant to Chapter IV of the Tribal Court Code, Tribal Code, Ch. 80. The Tribe may also seek to remove any structure which is an obstruction to navigation through institution of such a complaint.

23.1008 Damages.

The Tribe reserves the right to seek money damages to its resources through any activity, whether authorized by this ordinance pursuant to permit or prohibited, in any court of competent jurisdiction.

23.1009 Jurisdiction.

The Tribal Court is hereby authorized and empowered to undertake jurisdiction of any proceeding instituted under this ordinance. Forfeiture proceedings shall be conducted pursuant to Chapter IV of the Tribal Court Code, Tribal Code Ch. 80.