

TRIBAL CODE
CHAPTER 62
LAND USE ORDINANCE

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History Note:

Adopted March 27, 1967 as the Zoning Ordinance, Resolution No. 24(67).

This chapter was entirely rewritten and adopted August 14, 2006 as the Land Use Ordinance, Resolution 190(06).

Current Ordinance:

Resolution No. 70(07), March 26, 2007, amends 62.301(2), and 62.301(6), renumbering (6) to(7) and adding subsection 62.301(8).

Resolution No. 71(07), March 26, 2007, adopts and approves the Land Use Board Committee By-Laws.

Other Land Use Actions

Adoption of Vilas County forestry zones, August 21, 1978, Resolution No. 168(78).

Land Division Moratorium Ordinance adopted October 13, 1980, Resolution No. 288(80), subject to Secretarial approval. Ordinance was rejected by Interior Field Solicitor and was rescinded January 12, 1981, Resolution No. 6(81).

Attorney General Opinion

Op. Atty. Gen. October 19, 1982. Lac du Flambeau has exclusive zoning authority over Indian Land on the reservation and concurrent authority over private land on the reservation.

TRIBAL CODE
CHAPTER 62
LAND USE ORDINANCE

CHAPTER I: GENERAL PROVISIONS

62.101 Title.

Lac du Flambeau Tribal Land Use Ordinance.

62.105 Purpose and Policy.

(1) The purpose of this ordinance is to promote the health, safety and general welfare of the Lac du Flambeau Community while recognizing the Anishinaabe obligation to honor and protect the natural and cultural resources of the Lac du Flambeau Reservation.

(2) This ordinance shall be implemented in order to achieve purposes which shall include, but need not be limited to, effectuating the most appropriate use of land, preserving natural and cultural areas, and protecting economic and social stability through:

- (a) Separating conflicting land uses.
- (b) Prohibiting certain uses detrimental to the forestry and shore land areas.
- (c) Controlling building sites, placement of structures and land use.
- (d) Providing for the orderly development of Reservation land.

62.110 Authority.

This comprehensive revision to the Lac du Flambeau Tribal Land Use Code is adopted pursuant to the authorization contained in Article VI., Section 1(a) and Section 1(n) of the Tribe's Constitution.

62.115 Effective Date.

This ordinance shall take effect upon adoption by the Lac du Flambeau Tribal Council.

62.120 Abrogation and Greater Restrictions.

If a tribal ordinance exists relating to the subject matter contained in this ordinance or any amendments to it, the tribal ordinance continues in all respects to the extent of greater restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. It is not intended by this ordinance to repeal, abrogate or impair any existing deed restrictions or other ordinances, except where specifically so stated.

62.125 Interpretation.

In the interpretation and application of the provisions of this code, 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 or repeal of any other Tribal power, authority or immunity.

62.130 A Severability and Non-Liability.

If any section, clause, 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. The Tribe declares there is no liability of the part of the Tribe, its agencies, or employees, for damages that may occur as a result of reliance on or conformance with this ordinance.

62.135 Sovereign Immunity.

This ordinance shall not be construed as a waiver, limited or otherwise, of the Tribe's sovereign immunity.

62.140 Jurisdiction.

The land use provisions of this ordinance shall apply in all territory within the Lac du Flambeau Band of Lake Superior Chippewa Indian Reservation under the jurisdiction of the Tribe's governing body. Specifically, this ordinance shall apply to all trust and allotted lands, as well as fee land owned by the Tribe and individual tribal members. The Lac du Flambeau Tribal Court shall have exclusive jurisdiction over the enforcement of this ordinance.

62.145 Compliance.

No land or premises shall be used, no building or structure shall be erected, altered, moved, occupied, or used, and no activities shall be undertaken, except in conformity with the requirements of this ordinance. Where a violation is occurring or has occurred, the property owner, as well as any contractor who did work in violation of this ordinance, may be subjected to prosecution under this ordinance.

62.150 Repeal of Previous Zoning Provisions.

This ordinance shall replace in its entity the previous ordinance known as the “Zoning Ordinance.”

62.155 Building Under Construction.

Nothing contained in this ordinance shall require any change in the plans, construction, size or designated use of any structure or part thereof for which a location and occupancy permit or land use permit under existing or previous requirements has been validly issued, provided the permitted construction is actually under way at the time this ordinance becomes effective.

62.160 Unsafe Structures.

The Land Management Officer may, when the safety and welfare of the public requires immediate action, upon reasonable notification, enter the premises, with assistance from Tribal protective services personnel, as may be necessary, and cause such structure to be made safe or removed. The expense of such work shall be recovered by the Tribe against the owner or occupant thereof.

62.165 Structures on Islands Prohibited.

The Tribe does not have the facilities to provide adequate ambulance, fire, or other emergency services to residences or other structures on islands in the lakes and waterways. Therefore, the Tribe prohibits the construction of residences or other structures on any islands within the Reservation.

62.170 Types of Uses.

Two types of principal uses are allowed in each zoning district: (1) permitted uses and (2) conditional uses.

(1) PERMITTED USES. Only the permitted use specified for a land use district, services essential to the permitted use and its accessory uses shall be permitted in that district as a matter of right. A Land Use Permit must be issued by the Land Management Officer before a permitted use may occur.

(2) CONDITIONAL USES. Conditional uses and their accessory uses are those uses which, because of their unique characteristics, cannot properly be allowed without additional consideration of the impact of those uses. Such uses may be allowed subject to the specific limitation, review and approval provisions for conditional uses provided in this ordinance.

CHAPTER II: LAND USE DISTRICT REGULATIONS

62.201 Land Use Districts.

- (1) DISTRICTS CREATED. The following land use districts are created:
 - (a) Special Purpose (SP).
 - (b) Forestry (F).
 - (c) Single Family Residential (SF).
 - (d) Multiple Family Residential (MF).
 - (e) Recreational (REC).
 - (f) Business (B).
 - (g) Mixed Use (MX).
 - (h) Community Based Facilities (CBF).
 - (I) Agricultural (AG).
 - (j) Industrial (I).

62.205 Official Tribal Land Use Map.

A map of land use designations entitled “Official Tribal Land Use Map” is incorporated into this ordinance by reference and hereby declared to be part and parcel to this ordinance.

62.210 Special Purpose District (SP).

(1) PURPOSE. The purpose of the Special Purpose District is to impose a strict prohibition on any development, mining, and agriculture in order to preserve areas which may contain wildlife, natural preserves, medicinal plants or other cultural gathering activity areas, designated ceremonial areas, designated water protection areas, or cultural/historic resources.

- (2) PERMITTED USES.
 - (a) Cultural and ceremonial activities.
 - (b) Educational activities.
 - (c) Fish, forest and wildlife management uses, with initial ground

disturbing activities subject to the Green Sheet review process.

(d) Recreational activities such as hiking, biking, canoeing, etc.

(e) Other uses customarily associated with such principal uses.

(3) All other uses are strictly prohibited.

62.215 Forestry District (F).

(1) PURPOSE. The purpose of the Forestry District is to protect the integrity of the Tribe's forested lands by preserving such land in a relatively natural state. Forest, wildlife and water are the primary resources to be developed in Forest Districts.

(2) PERMITTED USES.

(a) Camping trailers, mobile campers, or houseboats intended for temporary parking which shall not exceed 30 days.

(b) Cultural and ceremonial activities.

(c) Fish and wildlife management.

(d) Forest management.

(e) Hobby farms.

(f) Portable sawmills and debarking operations.

(g) Recreational activities such as hiking, biking and canoeing.

(i) Seasonal cottages, cabins and hunting shelters.

(j) Single family dwellings.

(k) Utility facilities.

(3) CONDITIONAL USES.

(a) Campgrounds.

(b) Golf courses.

(c) Marinas and bait shops.

- (d) Parks and playgrounds.
- (e) Permanent sawmills and debarking operations.
- (f) Recreational camps.
- (g) Structures used in communications.

62.220 Single Family Residential District (SF).

(1) PURPOSE. The purpose of the Single Family Residential District is to provide an area for residential use and for certain private and public facilities and services that are compatible with neighborhood surroundings.

(2) PERMITTED USES.

(a) Single family dwellings, including long-term, single-family rental and lease arrangements requiring a thirty (30) consecutive day minimum length of stay.

- (b) Community gardens.
- (c) Cultural and ceremonial activities.
- (d) Fish and wildlife management.
- (e) Gardens and greenhouses for home use.
- (f) Home occupations as defined in Chapter IV of this ordinance.
- (g) Manufactured and modular housing, subject to the requirements of paragraph (4).
- (h) Parks and playgrounds.

(I) Community and other living arrangements that are properly licensed or permitted by the appropriate agency and/or program and have the living capacity for eight or fewer persons.

(j) Utility facilities.

(3) CONDITIONAL USES.

- (a) Bed and breakfast establishments with four or fewer guest rooms.
- (b) Burial grounds and cemeteries.

(c) Churches, schools, libraries, community buildings and museums.

(d) Community or living arrangements that are properly licensed by the appropriate agency and have the capacity for 9 or more residents.

(e) Duplexes, townhouses, apartments and other multiple family dwelling units.

(f) Mobile homes, subject to the requirements of paragraph (4).

(4) **ADDITIONAL REQUIREMENTS.** All mobile, manufactured and modular homes must be in compliance with the Tribe's building code.

62.225 Multiple Family Residential District (MF).

(1) **PURPOSE.** The purpose of the Multiple Family Residential District is to provide residents of the Lac du Flambeau Reservation with a variety of housing options in areas with compatible land uses.

(2) **PERMITTED USES.**

(a) All the permitted uses of Single Family Residential District.

(b) Community and other living arrangements that are properly licensed or permitted by the appropriate agency and/or program that have the capacity for nine or more persons.

(c) Duplexes, townhouses, apartments, and other multi-family dwellings.

(d) Mobile homes, subject to the requirements of section 62.220(4).

(3) **CONDITIONAL USES.**

(a) Bed and breakfast establishments.

(b) Burial grounds and cemeteries.

(c) Churches, schools, libraries, community buildings and museums.

(d) Health care facilities.

(e) Mobile homes parks, subject to future regulations.

(f) Sales and service operations conducted exclusively for the

convenience of the residents of a multi-family dwelling.

62.230 Recreational (REC).

(1) PURPOSE. The purpose of the Recreational District is to provide an area for the orderly and attractive grouping of recreational oriented service establishments as well as encouraging the maintenance and enjoyment of the Tribes natural resources.

(2) PERMITTED USES.

- (a) Bait shops.
- (b) Campgrounds.
- (c) Cultural and ceremonial activities.
- (d) Fish and wildlife management.
- (e) Gardens and greenhouses..
- (f) Recreational activities such as hiking, biking and canoeing.
- (g) Recreational camps.
- (h) Riding stables.
- (I) Parks and playgrounds.
- (j) Utility facilities.

(3) CONDITIONAL USES.

- (a) Bed and breakfast establishments.
- (b) Burial grounds and cemeteries.
- (c) Community buildings.
- (d) Eating and drinking establishments.
- (e) Gift and specialty shops customary in a recreation district.
- (f) Golf courses.

- (g) Gun clubs and shooting ranges.
- (h) Hobby farms.
- (l) Home occupations.
- (j) Hotels, motels, resorts.
- (k) Manufactured, modular and mobile housing, subject to the provisions of section 62.220(4).
- (l) Marinas.
- (m) Multiple family dwellings.
- (n) Service and repair of recreational vehicles.
- (o) Single family dwellings.

62.235 Business District (B).

(1) PURPOSE. The purpose of the Business District is to provide an area for general retail and commercial business use.

(2) PERMITTED USES.

- (a) Auto, RV and snowmobiles sales, service and repair except body shops.
- (b) Banks, credit unions and financial institutions.
- (c) Cultural and ceremonial activities.
- (d) Eating and drinking establishments.
- (e) Health care facilities.
- (f) Hotels, motels and resorts.
- (g) Indoor recreational establishments.
- (h) Marinas.
- (i) Mini storage buildings.

- (j) Professional offices.
 - (k) Residential dwelling units on second stories.
 - (l) Retail and commercial sales and services.
 - (m) Utility facilities.
- (3) CONDITIONAL USES.
- (a) Agri-business (forest crop includes logging).
 - (b) Airports and landing strips.
 - (c) Any permitted use in the Business District which is located on property adjacent to or across the street from Single Family Residential District.
 - (d) Body shops.
 - (e) Campgrounds.
 - (f) Golf courses.
 - (g) Outdoor amusement facilities.
 - (h) Recreational camps.
 - (i) Residential uses.
 - (j) Structures used in communications.
 - (k) Warehousing and wholesaling.

62.240 Mixed Use District (MX).

(1) PURPOSE. The purpose of the Mixed Use District is to allow complimentary land uses such as housing, retail, offices, commercial services, and recreational, cultural and ceremonial uses to create economic and social vitality, while making efficient use of existing infrastructure and services.

- (2) PERMITTED USES.
- (a) All the permitted uses of the Single Family Residential District.
 - (b) Auto service stations.

- (c) Banks, credit unions and financial institutions.
 - (d) Bed and breakfast establishments.
 - (e) Churches, schools, libraries, community buildings and museums.
 - (f) Dwelling units attached to commercial uses (including dwelling units on second stories).
 - (g) Eating and drinking establishments.
 - (h) Fish and wildlife management.
 - (I) Health care facilities.
 - (j) Hotels, motels and resorts.
 - (k) Indoor recreation facilities.
 - (l) Professional offices.
 - (m) Retail sales and service.
 - (n) Utility facilities.
- (3) **CONDITIONAL USES.**
- (a) Burial grounds and cemeteries.
 - (b) Marinas.
 - (c) Mobile homes, subject to the provisions of section 62.220(4).
 - (d) Multiple family dwellings.
 - (e) Warehousing and wholesaling.

62.245 Community Based Facilities District (CBF).

(1) **PURPOSE.** The purpose of the Community Based Facility is to preserve areas for governmental services which serve the general community as a whole.

(2) **PERMITTED USES.** Those uses which shall be determined necessary by the Lac du Flambeau Tribal Council.

(3) **ADDITIONAL REQUIREMENTS.** Building height limits, minimum lot area, minimum lot width, minimum setback from roads, side lot setbacks, and rear lot setbacks shall be determined by the Lac du Flambeau Tribal Council on a case-by-case as necessary to serve the general welfare of the Lac du Flambeau Community.

62.250 Agricultural District (AG).

(1) **PURPOSE.** The purpose of the Agricultural District is to preserve land and water resources for food and fiber production, and preserve productive farms by preventing land use conflicts between incompatible uses. The Agricultural District is intended to apply to lands in productive farm operations including lands historically exhibiting good crop yields or capable of such yields; lands suitable for specialty crops such as cranberry production, sod farms, Christmas trees and other types of food and fiber products. Wood lots and forested land which are part of a commercial farm operation may be included in the Agricultural District.

(2) **PERMITTED USES.**

- (a) Agricultural, animal husbandry and forestry uses.
- (b) Fish and wildlife management.
- (c) Hobby Farms.
- (d) Roadside stands selling products produced on the farm.
- (e) Structures and improvements consistent with and contributing to agricultural use.
- (f) Utility facilities.

(3) **CONDITIONAL USES.**

- (a) Bed and breakfast establishments..
- (b) Single family residential uses.
- (c) Structures used in communications.
- (d) Warehousing.

62.255 Industrial District (I).

(1) **PURPOSE.** The purpose of the Industrial District is to provide areas for

industrial and commercial activities that, on the basis of their physical and operational characteristics, would achieve desirable economic benefits for the community while at the same time not producing unreasonably detrimental to the surrounding area such as noise, dirt, smoke, odor, traffic, physical appearance or other similar factors.

(2) PERMITTED USES.

(a) Any existing trade or industry.

(b) Any permitted use of the Forestry District except temporary seasonal use cabins or cottages, year round dwellings and related dwellings, which are not permitted.

(c) Heavy equipment storage yards.

(d) Utility facilities.

(3) CONDITIONAL USES.

(a) Any new trade or industry use not located adjacent to a residential district.

(b) Cold storage warehouses.

(c) Expansion to any existing trade or industry to the extent lawfully existing and operating in the Industrial District on the effective date of this ordinance, provided it is not located on property adjacent to a residential district.

(d) Non-metallic mineral extraction.

(e) Solid waste disposal sites and facilities, (See Tribal Code Chapter 24: Solid Waste Management Code for additional restrictions).

(f) Structures for communication.

(4) ADDITIONAL PROVISIONS FOR NON-METALLIC MINERAL EXTRACTION.

(a) The Land Use Board shall determine whether the present and future needs of the Tribe shall be adequately served by the proposed facility, and if the Tribe as a whole shall benefit rather than be harmed or injured by the proposed use of land.

(b) The application for the conditional use permit necessary to conduct a non-metallic mineral extraction operation shall include a written description of

the proposed operation including a time schedule of development, termination, and reclamation, a site plan showing the proposed and existing roads and drives and the sources, quantity and disposition of water to be used, if any, and a topographic reclamation plan.

(c) Excavation below the grade of an abutting public street or highway shall be set back from the street or highway a distance at least equal to the distance that is required for buildings or structure.

(d) Topsoil from the area of operation shall be saved and stored on site for reclamation of the area.

(e) Reclamation of the area operations is required as follows:

1. Final slopes shall not be graded more than 3:1, or in a safe angle of repose in a quarry operation;

2. Excavations made to a water producing depth shall be not less than 3 feet measured from the low water mark;

3. The area shall be covered with topsoil and seeded to prevent erosions.

4. The area shall be cleared of all debris and left in a workmanlike condition subject to the approval of the Tribe;

5. Any other requirements that the Natural Resources Department deems appropriate.

(f) The outer boundaries of all non-metallic mineral extraction sites shall include a fifty (50) foot buffer zone consisting of a landscaped greenbelt of coniferous trees. Where mature existing vegetation presently screening the site exists, the non-coniferous species do not need to be removed, but any new planting shall be coniferous species.

(g) Portable cement batch or mixing plants, or portable hot mix blacktop plants used in connection with a highway improvement or construction project requires a Conditional Use Permit. Material produced by such a plant shall be used only for the designated project, and sale or use of material at any other location will require a separate Conditional Use Permit.

62.260 Minimum Lot Area and Dimensional Standards for Land Use Districts.

Note: Other tribal laws may impose additional restrictions, including, but not limited to, Tribal Code Chapter 28: Lac du Flambeau Water Quality Standards Code and

Wellhead Protection Ordinance and Tribal Code Chapter 23: Reservation Water and Shoreline Protection and Enhancement Ordinance.

(1) BUILDING HEIGHT LIMIT.

- (a) Principal buildings may not exceed 35 feet.
- (b) Accessory buildings may not exceed 15 feet.
- (c) Private garages may not exceed 25 feet.
- (d) Within Agricultural Districts farm buildings related to the production of agricultural products may not exceed 60 feet.

(2) BUILDING SETBACK REQUIREMENTS.

(a) The minimum setback from the edge of the road or highway right-of-way shall be forty (40) feet in all Districts except in Community Based Facilities Districts.

(b) The minimum setback from the ordinary high water mark of an adjacent body of water to the nearest part of a building or structure shall be 75 feet except for piers, boat hoists, fish hatcheries and boathouses.

(c) The minimum setback on waters designated as Outstanding Tribal Resource Waters pursuant to Tribal Code Chapter 28: Lac du Flambeau Water Quality Standards Code and Wellhead Protection Ordinance is 200 feet from the ordinary high water mark.

(3) The following requirements apply to Forestry Districts and Agricultural Districts.

(a) MINIMUM LOT AREA.

- 1. A lot shall have a minimum area of 5 acres.

(b) MINIMUM LOT WIDTH.

- 1. A lot shall have a minimum width of 300 feet.

(c) SIDE YARD SETBACK REQUIREMENTS.

- 1. Principal buildings: 15 feet.
- 2. Accessory buildings: 5 feet.

(d) REAR YARD SETBACK REQUIREMENTS.

1. Principal buildings: 40 feet.
2. Accessory buildings: 5 feet.

(4) The following requirements apply to Single Family, Multiple Family, Mixed Use, Recreational, Business and Industrial Districts:

(a) MINIMUM LOT AREA.

1. Sewered back lots: 10,000 square feet.
2. Sewered shore land lots: 30, 000 square feet.
3. Unsewered back lots: 22,500 square feet.
4. Unsewered shore lands lots: 30, 000 square feet.

(b) MINIMUM LOT WIDTH.

1. Sewered back lots: 100 feet.
2. Sewered shore land lots: 100 feet. A minimum 200 foot width must exist at the lakefront.
3. Unsewered back lots: 150 feet.
4. Unsewered shore land lots: 200 feet. A minimum 200 feet width must exist at the lakefront.

(c) SIDE YARD SETBACK REQUIREMENTS.

1. Principal buildings: 10 feet.
2. Accessory buildings: 5 feet.

(d) REAR YARD SETBACK REQUIREMENTS.

1. Principal buildings: 25 feet.
2. Accessory buildings: 5 feet.

(5) Cluster Development: The following provisions apply to areas that are developed as planned communities for housing.

(a) A development plan shall be drafted by the Council's designee and approved by the Tribal Council for number of sites and size of sites.

(b) A "footprint" designating the position of each dwelling shall be pre-determined in the development plan, utilizing above density requirements to the extent practical.

(c) There shall be a designated park area for each cluster development that has at least ten (10) housing sites.

(d) The plan shall include road patterns and standards for their development.

(e) The plan shall include other infrastructure such as wastewater treatment, water accessibility and electricity.

CHAPTER III: SPECIFIC USE REQUIREMENTS

62.301 Signs.

(1) To place any sign on or off premises requires a Land Use Permit.

(2) Approved signs must be in those areas designated for such use by the Lac du Flambeau Land Use Board.

(3) Fees for signs shall be determined by the Land Use Board.

(4) One sign may be placed on premises. The sign must be a minimum of five (5) feet from the road right-of-way and side lot line or as required by Tribal, State, Federal or County regulations.

(5) Two signs may be placed along approaching highways. These signs must meet all Tribal, State, and local highway regulations and setbacks.

(6) EXCEPTIONS TO THE ORDINANCE:

(a) A single sign identifying the owners name may be located on the owner's property.

(b) Fire numbers using a format described by the Tribal Council.

(c) Temporary signs advertising the sale of real estate or personal property.

(d) Temporary election signs which shall not be placed more than

thirty (30) days before the primary election and shall be removed no more than five (5) days following the general election.

(e) Temporary construction signs, to be removed at the close of the contract.

(f) Temporary signs for nonprofit agencies/organizations for projects/events, not to exceed 30 days in length, or length determined by the Lac du Flambeau Land Use Board.

(7) All signs, sign faces and supports shall be maintained in a good state of appearance and repair, as determined by the Land Management Officer.

(8) All tribal members, non-members, tribal and non-tribal departments, agencies and non-profit groups are required to comply with the sign requirements.

CHAPTER IV: ADMINISTRATION AND ENFORCEMENT

62.401 Land Use Permits.

(1) ACTIVITIES NOT REQUIRING PERMITS.

(a) With the exception of section 62.401(2), any land use permitted outright in any designation may be conducted without a land use permit, provided it is conducted in accordance with this ordinance and other tribal laws.

(b) A Land Use Permit is not required for structures not intended for permanent human habitation, provided such structures meet the dimensional and setback requirements of this ordinance and other tribal laws, and are less than one thousand (1,000) cubic ft. in size.

(c) A land Use Permit shall not be required for the construction of public utility lines or structures, however other permits, and/or regulations may be applicable.

(2) ACTIVITIES REQUIRING PERMITS.

(a) Any person shall apply for and receive the appropriate Land Use Permit before:

1. A structure intended for permanent human habitation is built, erected, placed, enlarged, or moved.

2. A permanent structure is altered so as to change its use or increase the square footage of its floor area or vertical surface area.

3. The use of a structure or property is changed.

(b) A contractor must have verification that the necessary permit has been properly obtained before commencing any project.

(3) APPLICATION FOR LAND USE PERMITS. The application for a land use permit must contain the following information:

(a) Name and address of the owner of the property.

(b) Legal description of the parcel.

(c) Size and location of the building to be erected or moved onto the property.

(d) Proposed use of the building or premises.

(e) Type of construction.

(f) Drawing of the premises showing:

1. The dimensions of the lot.

2. The dimensions of the proposed building.

3. The distance in feet from the abutting street or highway.

4. The distance in feet from the side and rear lot line.

5. The size and location of any existing building.

6. The application shall be signed by the owner, however, if a prospective owner desires a prior finding on a proposed construction or use before consummation of the purchase, such a person may apply for a permit.

7. Such other information as deemed necessary by the Land Management Officer.

(h) The appropriate fee as set by the Land Use Board.

(i) Incomplete applications will not be considered until all required information has been furnished to the Land management Officer

(4) ISSUANCE OF LAND USE PERMITS. The Land Management Officer shall issue a Land Use Permit for the proposed activity if, upon reviewing the application

and accompanying information, makes a determination that the planned construction or alteration is permitted in the Land Use District in which it will be situated and is in compliance with all other provisions of this ordinance. If proposed activity is not permitted within the Land Use District or the proposed activity is not in compliance with the provisions of this ordinance the Land Management Officer shall deny the application.

(a) Notice of permit approval shall be posted in a conspicuous place on the premises during the construction and no construction shall begin until the notice has been posted. For purposes of this ordinance, start of construction shall be when any earth disturbing activity takes place that will lead to the installation of footings, piers, posts, pilings or foundations.

(b) Earth disturbing activity for purposes of soil evaluation testing shall not be considered the start of construction.

(5) APPEAL FROM ACTION OF LAND MANAGEMENT OFFICER. An applicant may appeal a denial of permit by the Land Management Officer to the Land Use Board. The request must be made in writing within fourteen (14) days of the permit denial, specifying the grounds of the appeal, and be accompanied by the appropriate fee as set by the Land Use Board.

62.405 Conditional Use Permits.

(1) GENERAL PROVISIONS. A Conditional Use Permit may be issued by the Land Use Board only for conditional uses listed under each specific land use district upon review the Conditional Use Permit applications.

(2) APPLICATION FOR CONDITIONAL USE PERMIT. An application for a Conditional Use Permit shall be filed by a property owner or owner's agent with the Land Management Officer on a form prescribed by the Land Management Officer, together with a fee set by the Land Use Board. The application shall be accompanied by such other plans and other information as may be prescribed by the land management Officer or Land Use Board.

(3) HEARING. The Land Use Board shall set a time for a public hearing on each application for a Conditional Use Permit and shall give notice thereof ten (10) days before the hearing. Notice shall be displayed in a minimum of three (3) public areas within the Lac du Flambeau Reservation for a minimum of ten (10) prior to the public hearing.

(4) ISSUANCE OF CONDITIONAL USE PERMIT. Following the hearing, the Land Use Board shall make its decision to approve, approve with conditions, or deny the Conditional Use Permit. No Conditional Use Permit maybe approved or conditionally approved unless the Land Use Board finds that the following standards are fulfilled:

(a) The proposed conditional use complies with the applicable

requirements of this ordinance.

(b) The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in that district.

(c) Adequate utilities, access roads, drainage and other necessary site improvements have been or will be provided for the conditional use.

(d) The proposed conditional use shall not significantly adversely affect the environment, cultural resources, or endanger public health or safety.

(5) NOTIFICATION OF DECISION. The Land Management Officer shall notify the applicant for the Conditional Use Permit of the Land Use Boards decision granting the Conditional Use Permit, granting the Conditional Use Permit with conditions, or denying the Conditional Use Permit within fourteen (14) days of the hearing.

(6) APPEAL FROM ACTION BY THE LAND USE BOARD. An applicant may appeal a decision by the Land Use Board to the Tribal Council. The request must be made in writing within fourteen (14) days of the notification of decision in paragraph (4), specifying the grounds of the appeal, and shall be accompanied by a fee set by the Land Use Board. The Tribal Council may reserve, affirm (wholly or in part), or modify the action of the Land Use Board.

(7) RESUBMISSION. No application which has been denied by the Land Use Board shall be considered again within twelve (12) months of the denial of the permit.

62.410 Variances.

(1) GENERAL PROVISIONS. A variance may be issued to build or develop in a way which is inconsistent with the permitted and conditional uses of the ordinance. The Land Use Board shall review the variance applications and make recommendations to the Tribal Council, however, the final decision of the variance shall be made by the Tribal Council.

(2) APPLICATION. An application for a variance shall be filed by a property owner or owner's agent with the Land management officer on a form prescribed by the Land Management Officer, together with a fee set by the Land Use Board. The application shall show that the following conditions exist:

(a) The property cannot be put to a use listed because of limitations in the dimensions of the land or building.

(b) The applicant has unique exceptional circumstances related to the land in question that are not of his/her own making and which would cause

practical difficulties or unnecessary hardships if the ordinance was strictly applied.

(c) The requested change shall not alter the environment or character of the land or surrounding neighborhood.

(d) The requested change shall not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood.

(3) PUBLIC HEARING. A public hearing shall be held within thirty (30) days of the application for the variance, at which persons may present their views orally or in writing to the Land Use Board.

(4) NOTIFICATION OF DECISION. The Land Management Officer shall notify the applicant for the variance of the Tribal Council's decision granting the variance use permit, granting the variance with conditions, or denying the variance within fourteen (14) days of the hearing.

62.415 Permits Obtained Through Misrepresentation.

Any permit obtained through material misrepresentation of the permit application shall be null and void immediately upon discovery of the misinterpretation. Any corrections, anticipated changes, or other amendments to the original permit will require approval by the Land Management Officer prior to starting construction.

62.420 Terms of Permits.

A permit issued pursuant to the provisions of this ordinance shall expire one year from the date of issuance if construction is not started with that time period. A permit issued pursuant to the provisions of this ordinance will expire if construction, once started, does not diligently proceed to completion within three (3) years of the starting time. Upon expiration of the land use or conditional use permit, a new permit must be obtained.

62.425 Temporary Permits.

A temporary permit may be issued owing to unforeseen circumstance arising under special conditions whereby a regular land use permit cannot be secured and/or is not applicable, such as the following, but not limited thereto:

(1) For the parking of mobile homes or other forms of habitation structures during the construction of a dwelling provided the temporary structure is located on the same lot where a land use permit has been issued for the dwelling under construction.

(2) In order to accommodate individuals in emergency situations that could adversely impact the safety, sanitation and welfare of a tribal member or membership.

62.435 Nonconforming Uses of Structure and Land.

(1) Use of lands, waters or buildings which lawfully existed at the effective date of this ordinance which do not comply with the regulations of this ordinance may be continued, but their designated use of the land may not be changed except to a permitted use or to a conditional use if approved by the Land Use Board. For purposes of this section, “use” means to occupy and/or maintain for a certain purpose and does not apply to land that is vacant and is not being used.

(2) Normal maintenance, repair and land improvements associated with a non-conforming use is permitted.

(3) Any building or structure existing as a non-conforming use under the designation of the Official Tribal Land Use Map which is destroyed by fire or the elements may be reconstructed and restored as a non-conforming use on the same footprint, provided the reconstruction or restoration is commenced within one year of the destruction and the proposed reconstruction has been approved by the Land Use Board.

62.440 Land Management Officer.

(1) GENERAL PROVISIONS. The provisions of this ordinance shall be administered by or under the direction of the Land Management Officer. The Land Management Officer, in person or by assistant, shall have the right to enter upon premises affected by this ordinance at reasonable hours for the purpose of inspection. Prior to entry of any premise under this paragraph, the Land Management Officer shall provide written notice then (10) days prior to such entry to the owner at the owners last known address.

(2) DUTIES. The duties and responsibilities of the Land Management Officer shall include:

(a) Receive and review all applications for permits, variances and conditional uses required under this ordinance, advise applicants for permits as to the provisions of the ordinance, and advise applicants that other tribal, Indian Health Services, Bureau of Indian Affairs or other permits may be required.

(b) Issue Land Use Permits as provided in this ordinance.

(c) Inspect buildings under construction for compliance with the regulations of this ordinance.

(d) To take such action as may be necessary for the enforcement of the regulations provided herein, including but not limited to the issuance of citations and forfeitures.

(e) Attend all meetings of the Land Use Board.

(f) Other such activities as may be required from time-to-time in order to effectuate this ordinance.

62.445 Land Use Board.

(1) MEMBERSHIP. The Land Use Board shall consist of five (5) members, appointed by the Tribal Council.

(a) Members shall be appointed to two (2) year staggered terms.

(b) Members may be removed during a term in office only for improper conduct or neglect of duty.

(c) No member of the Tribal Council shall serve simultaneously as a member of the Land Use Board.

(2) DUTIES. The Land Use Board shall have the following duties and responsibilities.

(a) To hold public hearings and render decisions as to the issuance of Conditional Use Permits.

(b) To hold public hearings and decide upon the issuance of Special Permits.

(c) To hear appeals from Land Use Permit denials.

(d) To perform other such duties in connection with this ordinance or land use planning as may be from time-to-time delegated by the Tribal Council.

62.450 Review of Land Management Officer Decisions.

Decisions of the Land Management Officer related to the use of this ordinance are subject to review by the Land Use Board.

(1) The Land Management Officer shall mail the decision to the applicant and such decision shall include:

(a) A statement setting forth the reason for the decision.

(b) The applicant's appeal rights.

(c) The address where the appeal shall be mailed or delivered.

(d) The number of days in by which the appeal must be filed.

- (e) The specific information which must be included in the appeal.
- (f) The name of the official or board who will hear the appeal.

(g) Upon receipt of notice of the appeal, the Land Use Board shall request the Administrative Record from the Land Management Officer, the record shall be available to the applicant appealing the Land Management Officer's decision.

(2) If the Land Management Officer fails to issue a decision regarding the application before him or her within 30 days, the application shall be deemed approved.

62.455 Notice of Appeal.

(1) An Applicant appealing a decision of the Land Management Officer shall include the following information in his or her appeal.

(a) His or her name, address, and phone number.

(b) Clearly label the letter or appeal document with the words, "NOTICE OF APPEAL."

(c) "A STATEMENT IN SUPPORT OF THE APPEAL" which is a written statement explaining why the decision of the Land Management Officer was improper, contrary to law, or arbitrary and capricious.

(d) The decision being appealed shall be attached to the NOTICE OF APPEAL.

(2) The applicant appealing shall provide three copies of the documents to the Land Use Board.

62.460 Finality of the Decision of the Land Use Board.

All decisions and findings of the Land Use Board on appeal or upon application shall, in all instances, be final administrative determination and shall only be subject to review by the Lac du Flambeau Tribal Court.

62.465 Court Review.

(1) The Court may review the decisions of the Land Use Board, and all records thereof, for action which is:

(a) Arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law.

- (b) Contrary to constitutional rights, power, privilege, or immunity.
- (2) The Court may issue action of the applicant.
 - (a) Order the Land Use Board or Land Management Officer to comply with the law.
 - (b) Issue the requested action of the applicant.
 - (c) Remand the matter with specific instructions to the Land Use Board.
 - (d) Issue mandamus or other injunctive relief.
- (4) The Burden of Proof shall be to a preponderance of the evidence and the burden shall be upon the appealing party.

62.470 Penalties.

(1) Any person, firm or corporation, including those doing work for others, who violates any of the provisions of this ordinance shall be subject a minimum forfeiture of fifty (\$50.00) dollars up to a maximum forfeiture of five-hundred (\$500.00) dollars for each violation. Each day a violation exists constitutes a distinct and separate violation of this ordinance and, as such, forfeitures may apply consecutively. The Land Management Officer shall refer violations to the Tribal Prosecutor who shall prosecute violations in accordance with the mandates of this ordinance.

(2) Any use or action which violates the provisions of this ordinance shall be subject to a court injunction prohibiting such violation.

(3) Violation of a permit issued under this ordinance shall be deemed a violation of this ordinance and shall constitute grounds for revocation of the permit, in addition to fines and forfeitures and any other available remedies, including restoration of the property to conditions existing before the violation. Any person who has applied for and received a permit and begins work on the project authorized by the permit acknowledges that they have read, understand and agree to all conditions and requirements of the permit.

62.475 Disposition of Funds.

All penalties collected pursuant to a violation of this ordinance and permit fees collected under this ordinance shall be deposited in the General Fund and shall be used to offset the costs of enforcing this ordinance.

CHAPTER V: DEFINITIONS

62.501 Introduction.

Whenever the following words or terms are used in this ordinance, they shall, unless the context otherwise provides to be held to have the following meaning. In the instance where a work is not defined, the latest edition of Webster's Unabridged Dictionary shall be used to define a word.

62.505 General Definitions.

(1) "Accessory Structure or Use" means a detached subordinate or supplemental structure or use which is clearly incidental to that of the principal structure or use on the same lot as the principal structure or use. Accessory structures shall not occupy more than thirty (30%) percent area of the lot.

(2) "Back lots" means lots that are not located within the shore land area.

(3) "Bed and Breakfast" means any place of lodging that provides eight or less rooms for rent to transient guest, within the owners personal residence, and the only meal served is before noon.

(4) "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.

(5) "Building" means any structure which is built for the support, shelter, or enclosure of persons, animals or personal property of any kind which is permanently affixed to the land.

(6) "Building Height" means the vertical distance, measured from the mean elevation of the finished grade along the front of the building to the highest point on the roof.

(7) "Building Setback Line" means a line measured across the width of the lot at that point where the main structure, including any overhang is located.

(8) "Campground" means the seasonal operation of an area of land managed as a unit, providing temporary short-term accommodations for tents, tent trailers, travel trailers, recreational vehicles and campers used by travelers and tourists. A primitive campground shall be any area or site designated for camping purposes which is accessible only by hiking, boating or canoeing.

(9) "Ceremonial" means specific ceremonial activities that are practiced by Anishinaabe for the practice of traditional Anishinaabe life ways by their present day

adherents, such as ceremonial lodges and pow-wows.

(10) “Cultural” means cultural practices that are rooted in the Anishinaabe history and are important in maintaining the continuing cultural identity of this community, such as subsistence gathering of medicinal plants, harvesting wild rice and maple sap, hunting and fishing.

(11) “Development” means the carrying out of any building, engineering, mining, or other operations in, on, or over land, or the making of any material change in the use of any building or land.

(12) “Dwelling” means any building or portion thereof which is designated or used for residential purposes.

(13) “Dwelling, multi-family” means a dwelling containing two or more dwelling units.

(14) “Dwelling, single-family” means a residential building containing one dwelling unit.

(15) “Existing Structure” means a structure in existence at the time this ordinance was adopted.

(16) “Family” means a body of persons who live together in one dwelling unit.

(17) “Fish hatchery” means any building used for the purpose of aquaculture, owned and operated by the Lac du Flambeau Tribal Government.

(18) “Garage” means a non-habitable structure primarily intended for and used for the enclosed storage or shelter of the private motor vehicles of the families residing upon the premises. Carports are considered garages.

(19) “Hobby farm” means a use which is a pastime, not carried on for income, and may be any size. Animals kept on hobby farms may be horses or domestic animals. One(1) domestic animal will be allowed on any hobby farm of a minimum of two (2) acres. Two (2) to five (5) domestic animals are permitted on farms with a minimum of five (5) acres. No more than (5) animals in total shall be permitted on a hobby farm.

(20) “Home occupations” means a gainful occupation engaged in by persons residing in their dwelling, which is conducted in the principal structure and meets the following criteria:

(a) The total space on a lot used for the home occupation shall not exceed fifty (50%) percent of the gross floor area of the principal building.

(b) There shall not be more than three (3) employees other than

members of the family.

(c) There shall not be any outside storage associated with the home occupation and all occupational activities shall be conducted entirely within the building.

(21) “Lot width” means the average horizontal distance between the side lot line of a lot measured within the lot boundaries, or the minimum distance between the side lot lines within the buildable area at a right angle to the length.

(22) “Manufactured Home” or “Modular Home” means a manufactured or factory built home that conforms to standard building codes and is not equipped with any wheels or axles allowing it to be moved, other than for purposes of moving to a permanent site. A manufactured or modular home must conform to the Tribe’s building code.

(23) “Marina” means an area on a river or lake devoted to marine and related recreation business and service.

(24) “Member” means a person enrolled in the Tribe.

(25) “Mobile home” means a transportable single-family dwelling intended for permanent occupancy that by original design is capable of being moved on public streets and highways. “Mobile home” includes the mobile home structure, its plumbing, heating, air-conditioning and electrical systems and all other equipment carrying a manufacturer’s warranty. A mobile home must conform to the Tribe’s building code.

(26) “Mobile Home Park” or “Manufactured Home Park” or “Modular Home Park” means area or premise on which is provided the required space for accommodations of two (2) or more mobile homes, manufactured homes or modular homes, together with the necessary buildings, driveways, walks or other required adjuncts.

(27) “Pier” means any structure extending channel ward 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.

(28) “Recreational Camp” means areas of land improved with buildings or tents and sanitary facilities used for the accommodation of groups for educational or recreational purposes.

(29) “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.

(30) “Setback Lines” means lines established adjacent to highways, shorelines and side lot lines for the purpose of defining limits within which no building or structure or any part thereof shall be erected or permanently maintained. For the purpose of enforcement, all measurements are to be taken horizontally.

(31) “Shore lands” 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 flood plain, whichever distance is greater.

(32) “Shore land Lots” means lots that are located within the shore lands.

(33) “Solid waste disposal sites and facilities” means commercial and municipal establishments or operations such as, but not limited to, sanitary landfills, dumps, land disposal sites, incinerators, auto junk yards, scrap metal salvage yards, transfer stations, storage facilities, collection and transportation services and other establishments or operations for the storage, collection, transportation, transfer, processing, treatment, recovery or disposal of solid waste. Solid waste disposal sites and facilities does not include a site or facility for the processing of scrap iron, steel or nonferrous metal using large machines to produce a principal product or scrap metal for sale or use for remitting purposes. A solid waste disposal site does not include a site or facility which uses large machines to sort, grade, compact or bale clean wastepaper, fibers or plastics not mixed with other solid waste, or sale or use for recycling purposes. Any solid waste disposal site or facility must conform to the requirements set forth in the Tribal Code Chapter 24: Solid Waste Management Code.

(34) “Structure” means anything constructed or erected having shape, form or utility, the use of which requires a permanent location on the ground.

(35) “Tribal Council” means the governing body of the Lac du Flambeau Lake Superior Chippewa Indians.

(36) “Tribal Court” means the Lac du Flambeau Tribal Court.

(37) “Tribe” means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(38) “Unnecessary hardship” means circumstances where special conditions which were not self-created affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.

(39) “Utility facilities” means utility owned structures not related to the direct

delivery of utility service to households or businesses. utility facilities include electrical utility substations, utility offices, and sanitary stations.

(40) “Yard rear” means a yard paralleling along the full length of the rear lot line between the side lot lines.

(41) “Yard, Side” means a yard paralleling along a side lot line from the front yard to the rear yard.