

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #05/10, AMENDED

TRIBAL ENVIRONMENTAL POLICY

Adopted by Resolution #1343/10 of the Fond du Lac Reservation Business Committee on September 21, 2010.
Amended by Resolution #1078/13 of the Fond du Lac Reservation Business Committee on March 6, 2013.

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

CHAPTER 1
AUTHORITY, PURPOSES AND SCOPE

Section 101 **Authority.**

This Ordinance is enacted by the Fond du Lac Reservation Business Committee pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa, as recognized and reserved under the Treaty of LaPointe, 10 Stat. 1109, and as exercised in accordance with Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and the common law of the United States of America.

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

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

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

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

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

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

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

Section 104 **Scope.**

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

Section 105 **Severability.**

If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

Section 106 Reservation of Rights.

The Reservation Business Committee (RBC) reserves the right to amend or repeal all or any part of this Ordinance at any time and there shall be no vested rights of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the power of the Reservation Business Committee to amend or repeal this Ordinance or any part herein at any time. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or consent to jurisdiction by any forum not expressly authorized to exercise jurisdiction under this Ordinance. Any provision of this Ordinance which is inconsistent or incompatible with applicable federal law shall be invalid and unenforceable to the extent of such inconsistency or incompatibility, provided, however, that all remaining provisions shall be given full force and effect.

Section 107 Tribal Governments and NEPA.

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

CHAPTER 2
DEFINITIONS AND INTERPRETATION

Section 201 **Definitions.**

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

- a. **Adoption:** The Band may adopt an existing Tribal Environmental Policy Ordinance (TEPO) or National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS) if the document is complete, adequately describes the proposal, and assesses significance of impacts. The Band does this by preparing a Finding of No Significant Impact (FONSI) for an EA or Record of Decision (ROD) for an EIS and it may be done cooperatively with a federal agency(s).

- b. **Anishanaabe:** The people of the Fond du Lac Band Of Lake Superior Chippewa.

- c. **Area of Potential Effect (APE):** The term “area of potential effect” is normally associated with determining effects to historic properties for compliance with Section 106 of the National Historic Preservation Act (NHPA). But it is also a useful concept for helping to determine environmental effects for this ordinance. While Section 103 of this ordinance indicates the scope of this ordinance applies to areas within the Fond du Lac Reservation, it is possible that a major federal action may have an APE that extends onto the Reservation.

- d. **Band:** The Fond du Lac Band of Lake Superior Chippewa, governed through the Fond du Lac Reservation Business Committee (RBC).

- e. **Categorical exclusion (CATEX)** means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in the TEPO process and for which, therefore, neither an EA nor EIS is required for compliance with TEPO. The Band may decide, in complying with this Ordinance, to prepare environmental assessments for reasons such as those stated in 40 CFR §1508.9 even though it is not required to do so. An exception checklist is included in Appendix A to help determine whether there are extraordinary circumstances in which a normally excluded action may have a significant environmental effect and for which an EA or EIS should be prepared to determine the significance of the impacts at question. Similarly, federal agencies can use a CATEX as a compliance document for compliance with their NEPA process.

- f. **Concurrent federal action:** The case when the Band proposal undergoing an environmental compliance review under this Ordinance has a simultaneous major federal action that triggers the need for compliance document(s) for both NEPA and this TEPO. To minimize duplication of effort for related major Band actions and concurrent federal action(s), the TEPO team should consider the potential for preparing a joint compliance document(s) with the federal agency(ies).

- g. **Cooperating agency** Is the Fond du Lac Band or any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to resources impacted by a proposal (or a reasonable alternative) for major federal action potentially significantly affecting the quality of the environment. This ordinance and NEPA authorize roles for cooperating agencies to be involved in the process. The duties and responsibilities of a given cooperating agency are explained in CEQ regulations 40 CFR 1501.6.

- h. Cultural assessment: An evaluation of the potential effects of a proposed action and its practical alternatives on the historic and cultural attributes of a particular geographical area. Actions proposed by the RBC or individual members that involve federal funding or other federal actions must comply with the regulations 36 CFR 800 for Section 106 of the National Historic Preservation Act to determine the level of impact of the proposed action on cultural resources either eligible for or listed on the National Register of Historic Properties.
- i. Cumulative impact Is the impact on the environment which results from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of whether the Band, agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.
- j. Effects Include:
 - 1. Direct effects, which are caused by the action and occur at the same time and place.
 - 2. Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
 - 3. Cumulative effects, which result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of whether the Band, agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

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

- k. Endangered Species Act of 1973 (ESA): 16 U.S.C.A. §§1531 to 1599 is a federal statute that aims to conserve the ecosystems upon which endangered and threatened species depend. Section 7 of the ESA requires federal agency decision makers to consider whether the effects of their actions are likely to jeopardize the continued existence of any listed threatened or endangered species or their critical habitat. The ESA is administered by the US Fish and Wildlife Service (FWS) and federal agencies consult with the FWS regarding potential impacts of alternatives and mitigation of those effects.
- l. Environment or Environmental Resources: Is the human environment, including: socio-economic conditions, air, water, living and other resources needed to support a healthy, sustainable quality of life in the tribal homeland of the Fond du Lac Band.

- m. Environmental Compliance Review: The review of a proposed action and practicable alternatives for compliance with applicable mandates for the protection of the environment and cultural resources, including concurrent preparation of a Categorical Exclusion (CATEX), Environmental Assessment (EA) or Environmental Impact Statement (EIS), whichever is appropriate for the level of significance of impacts of the alternatives.
- n. Environmental Assessment (EA): To increase the compatibility of the Fond du Lac Band's EA with the federal NEPA process, for purposes of this Ordinance, an EA is defined in the President's Council on Environmental Quality (CEQ) NEPA regulations 40 CFR 1508.9. Further, an EA is:
 1. A concise public document for which the Fond du Lac Band, federal agency or another is responsible to prepare individually or as a team. An EA:
 - a. Is to help determine that an environmental impact statement is not required because of a Finding of No Significant Impact (FONSI); or conversely that an environmental impact statement is needed because an effect(s) is determined in the EA to be significant. Chapter 7 of this Ordinance describes the process used to determine the significance of effects of the alternatives.
 - b. Is the Fond du Lac Band's or government agency's NEPA compliance document when no environmental impact statement is normally required and no categorical exclusion is possible. Section 801(b) of this ordinance lists the major band actions that normally require an EIS. Section 501 of this Ordinance explains how to determine whether or not a categorical exclusion is possible.
 - c. Has the same basic chapters and categories of contents as an environmental impact statement so the contents of the EA can be used in preparing the EIS. Normally one does not need to entirely complete an EA before beginning the EIS. It is more common that an EA process is stopped and an EIS immediately begun when a significant impact is determined.
 2. Shall include brief discussions of the purpose and need for the proposal; the alternatives as required by section 102(2)(E), including mitigation; assessment of the significance of effects of the proposed action and alternatives; and a listing of agencies and persons consulted.
- o. Environmental Assessment for the U.S. Department of Housing and Urban Development (HUD): When the proposal involves HUD funding or other major federal actions by HUD, the EA will be prepared using unique HUD regulations and procedures for preparing an environmental assessment found in 24 CFR Part 58 and described in HUD's *Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities*.
- p. Environmental document: The NEPA definition is adopted and includes the documents specified in 40 CFR §1508.9 (environmental assessment), 40 CFR §1508.11 (environmental impact statement), 40 CFR §1508.13 (finding of no significant impact), and 40 CFR §1508.22 (notice of intent).
- q. Environmental Effects: Effects of the proposal and practicable alternatives on the human environment, including socio-economic conditions, air, water, living and other resources needed to support a healthy, sustainable quality of life in the tribal homeland of the Fond du Lac Band.
- r. Environmental Impact Statement (EIS): A detailed, in-depth study of effects of a proposed action and its practical alternatives on the physical, biological, cultural and socio-economic attributes of a particular

geographical area. An EIS also includes analysis of compliance with Band, federal and other jurisdictional requirements for the protection of environmental resources and historic properties. An EIS is done when required (See Section 7.1) or when significant impacts are predicted using the significance determination procedure in Chapter 6.

- s. Federal agency: Means all agencies of the Federal Government in the Executive Branch. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. For purposes of this Ordinance, the definition of the term federal agency also includes the Fond du Lac Band and units of general local government when they assume NEPA responsibilities of HUD under section 104(h) of the Housing and Community Development Act of 1974 (AKA HUD's Part 58 NEPA Regulations). Note that in cases of assumed HUD responsibilities, documents should explain the delegation of authority as explained in HUD's Part 58 NEPA Regulations.
- t. Finding of No Significant Impact (FONSI): Finding of No Significant Impact means a document by the Fond du Lac Band briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it.
- u. Fond du Lac Band of Lake Superior Chippewa: A federally recognized Indian tribe which retains the powers of self-government over the Fond du Lac Reservation in accordance with the laws of the United States.
- v. Fond du Lac Reservation: All lands set aside under treaty or statute as the lands of the Fond du Lac Band of Lake Superior Chippewa that lie within the exterior reservation boundary. See Section 101 of this Ordinance for the citations for treaties and statutes.
- w. Foreseeable: Is being able to dependably anticipate that actions or plans by the Fond du Lac Band or others exist because they are publicly documented in some manner. Foreseeable actions or plans should be considered in the TEPO process, such as for analyzing cumulative impacts. Such public documentation could include, but is not limited to, official correspondence or resolutions of the Fond du Lac Band or other government bodies, master plans, Fond du Lac Integrated Resource Management Plan, site development plans, detailed construction plans and specifications, transportation improvement plans, housing plans, land consolidation plans, land use maps, regulations or official meeting minutes. Without public documentation, the existence of actions and plans is speculative, rather than foreseeable.
- x. Government-to-Government Consultation: For the limited purposes of this Ordinance, it is defined as consultation between the Fond du Lac Band and the Federal Government with regard to impact of federal actions on the trust resources of the Fond du Lac Band. Such consultative impact analysis will be conducted as described in Executive Order 13175 *Consultation and Coordination With Indian Tribal Governments*, dated November 6, 2000, in conformance with this Ordinance, at a minimum. The Fond du Lac Band may seek further extent or additional methods of consultation, depending on the gravity of impacts and issues of a given major federal action.
- y. Historic Properties: Cultural resources that are either eligible for inclusion in the National Register of Historic Places or already listed on the National Register of Historic Places. See Section 106 of the

National Historic Preservation Act for the compliance requirements for federal agencies regarding historic properties.

- z. Housing and Urban Development (HUD): An agency of the Federal Government that specializes in helping tribal and local housing authorities to develop public housing and related community services infrastructure. Congress has authorized NEPA regulations that are unique to HUD (24 CFR Part 58) and thus HUD is generally not able to adopt NEPA documents from other federal agencies for compliance on cooperative housing development projects. However, some other agencies may be able to adopt NEPA documents completed under HUD Part 58 regulations. Further, HUD Part 58 NEPA documents satisfy the environmental compliance review requirements of this ordinance.
- aa. Human environment: Shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. See the definition of “effects”. This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment. For TEPO purposes, the human environment more specifically includes all socio-economic, natural and physical environmental resources needed to support a healthy, sustainable quality of life in the tribal homeland as determined by the Band.
- bb. Integrated Resource Management Plan (IRMP): Means the Fond du Lac Bands’ Integrated Resource Management Plan. The Fond du Lac Band’s IRMP may be revised or updated periodically. This definition means the most current IRMP that is approved by the Fond du Lac Band.
- cc. Jurisdiction by law: Means Band or agency authority to approve, veto, or finance all or part of a proposal.
- dd. Lead agency: Means the Fond du Lac Band for the scope and content of the compliance documents for the TEPO process. For the NEPA process, “lead agency” means the federal agency or agencies responsible for the scope and content and preparing or having taken primary responsibility for preparing the NEPA compliance documents. The duties and responsibilities of the lead agency are explained in CEQ regulations 40 CFR § 1501.5.
- ee. Major Federal Action: Major federal actions include actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (40 CFR § 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the federal Administrative Procedure Act or other applicable federal law as agency action. (Note that major federal actions may be concurrent with a related major Band action or an action similar or linked in scope by another governmental entity with a proposal that affects the Fond du Lac Band.)
 - 1. Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (40 CFR § 1506.8; 40 CFR § 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal

Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

2. Federal actions tend to fall within one of the following categories:
 - a. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.
 - b. Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.
 - c. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
 - d. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

- ff. Major Band Action: Similar in nature to a major federal action, but a major Band action includes actions with effects that may be major and which are potentially subject to control and responsibility of the Fond du Lac Band of Lake Superior Chippewa. Note that major Band actions may be concurrent with a related major federal action or an action similar in scope by another governmental entity with a proposal that affects the Fond du Lac Band.

- gg. Mitigation: Includes:
 1. Avoiding the impact altogether by not taking a certain action or parts of an action.
 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
 3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
 4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
 5. Compensating for the impact by replacing or providing substitute resources or environments.

- hh. National Environmental Policy Act of 1969 (NEPA): As amended (42 U.S.C. 4321, et seq.) is the basic national charter for protection of the human environment. It established policy that federal decision makers must consider public input and quality environmental information before making decisions to implement major federal actions, such as funding, approving permits or otherwise making decisions at the core of proposed major federal actions. This Ordinance is modeled after some of the key aspects of NEPA.

- ii. NEPA process: Means all measures necessary for compliance with the requirements of Section 2 and Title I of the National Environmental Policy Act of 1969 (NEPA): as amended (42 U.S.C. 4321, et seq.)

- jj. NEPA's Forty Most Asked Questions: This is a publication prepared by the President's Council on Environmental Quality (CEQ) that answers forty frequently asked questions regarding the NEPA process and the environmental compliance review process set out in this ordinance. This document is incorporated into this ordinance by reference. Where it refers to NEPA, that is also to be taken as

applicable to environmental reviews conducted in compliance with this ordinance. The document can be found at <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm> and other federal agency websites.

- kk. **Notice of Intent (NOI)**: Means a public notice that an environmental impact statement will be prepared and considered. The notice shall briefly:
1. Describe the proposed action and possible alternatives.
 2. Describe the proposed scoping process including whether, when, and where any scoping meeting will be held.
 3. State the name and address of a person within the Fond du Lac Band or federal agency who can answer questions about the proposed action and the environmental impact statement.
- ll. **Other Laws**: Ordinances, resolutions and the Integrated Resource Management Plan of the Fond du Lac Band of Lake Superior Chippewa and laws or requirements of federal agencies, Congress or the President imposed for the protection of the environment. Other laws also include case law of the Fond du Lac Tribal, Federal and Supreme Courts applicable to the Band and the Fond du Lac Reservation.
- mm. **Proposal**: Exists at that stage in the development of an action when the Band is subject to TEPO or a federal agency is subject to TEPO and NEPA, has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of a TEPO and/or NEPA compliance document on a proposal should be timed so that the final document may be completed in time for the document to be included in any application, recommendation or other information on the proposal can be adequately considered prior to implementation of a major Band action, potentially with a concurrent major federal action. A proposal may exist in fact, as well as by Band or federal agency written declaration that one exists.
- nn. **Public**: Any federal, state or local government agency, individual, firm, association, organization, partnership, trust, company or corporation, family, individual household or U.S. citizen other than the RBC and the Band government employees. While the Band is one level of government that represents individual tribal members as U.S. citizens, Band members, when acting as individual U.S. citizens, are members of the public for the purposes of the TEPO public involvement process.
- oo. **Record of Decision (ROD)**: Is used in cases when major Band actions result in preparation of an environmental impact statement in order to comply with this Ordinance. At the time of its decision, the Fond du Lac Band shall prepare a concise written public record of decision. The record, which may be integrated into any other record prepared by the Fond du Lac Band shall, at a minimum:
1. State what the Fond du Lac Band's decision was.
 2. Identify all alternatives considered by the Fond du Lac Band in reaching its decision. The ROD may summarize preferences among alternatives based on relevant factors including economic and technical considerations and Fond du Lac Band goals, objectives and opportunities, such as those expressed in the Fond du Lac Integrated Resource Management Plan. The ROD shall identify and discuss all such factors including any essential considerations of Band policy which were balanced by the Band in making its decision and state how those considerations entered into its decision. The balancing of Band policy generally relates to the trade-off(s) of natural resources that tend to come with community development actions. Where the selected alternative is anticipated to have significant impacts, the ROD shall refer back to specific sections of the IRMP where a particular goal, objective or opportunity is described. For

example, the decision to proceed with a specific housing subdivision might interfere with an opportunity for some increment of transition to pre-European settlement vegetation on a given parcel. If that is found to be a significant impact of the housing project, the ROD shall spell out the significant impact and trade-off of an opportunity described in IRMP Chapter 4. Natural Resources - Section F3 Forestry.

3. State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

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

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

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

1. Actions (other than unconnected single actions) which may be:
 - a. Connected actions, which means that they are closely related and therefore should be discussed in the same EAs or EISs. Actions are connected if they:
 1. Automatically trigger other actions which may require EAs or EISs.
 2. Cannot or will not proceed unless other actions are taken previously or simultaneously.
 3. Are interdependent parts of a larger action and depend on the larger action for their justification.
 - b. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
 - c. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single EA or EIS.

2. Alternatives, which include:
 - a. No action alternative.
 - b. Other reasonable courses of actions.
 - c. Mitigation measures (not in the proposed action).

 3. Impacts or effects, which may be direct, indirect or cumulative.
- rr. Section 106 of the National Historic Preservation Act: Says: “The head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking in any state and the head of any federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.” 16 U.S.C. 470(f), Advisory Council on Historic Preservation, comment on federal undertakings.
- ss. Significantly: Has a specific meaning in NEPA and this ordinance. It is strongly recommended that the terms significant or significantly not be used in environmental compliance documents to describe effects of alternatives except when used as defined here and further explained in Chapter 6 of this ordinance. The level of significance of effects of the proposal and alternatives is what determines what kind of environmental document must be prepared for compliance with this ordinance. A categorical exclusion is used for proposals that normally do not cause significant impacts. An environmental impact statement is used when significant impacts are anticipated in order to study the impacts and to determine mitigation. An environmental assessment is used to help predict whether significant impacts exist or when significant impacts can be mitigated as a normal course of action with the proposal. For example, to construct on-site waste water disposal facilities simultaneously with construction of a cluster of homes because the community waste water system is already projected to soon be at capacity and there are no other foreseeable alternatives to provide waste water disposal.
- tt. Special expertise: Means statutory responsibility, agency mission, or related program experience. When the Band entities or a federal agency has special expertise for specific resources, they should be invited to participate on the team or cooperate in preparing environmental compliance documents. Also see cooperating agency.
- uu. TEPO process: Means all measures necessary for compliance with the requirements of this Ordinance.
- vv. Tiering: Refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower EISs or EAs, or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:
 - a. From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.
 - b. From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at

a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

- ww. Tribal Environmental Policy Ordinance (TEPO): The name of this Fond du Lac Band Ordinance that requires an environmental compliance review of proposals and applications for Band land use permits and other major Band actions prior to their formal approval by Band officials.
- xx. Wetland: Those areas that are comprised of hydric soils and are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of hydrophytic vegetation. Wetlands include but are not limited to shallow and deep marshes, wet meadows, swamps, bogs, and forested wetlands.

Section 202 **Interpretation**

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

- a. The singular number includes the plural and the plural the singular.
- b. The word "shall" is mandatory and the word "may" is permissive.
- c. Whenever a word or term defined appears in the text of this Ordinance, its meaning shall be construed as set forth in the definition given.
- d. All measured distances expressed in feet shall be rounded to the nearest foot.
- e. All measured distances, unless otherwise specified, shall be measured horizontally.
- f. The phrase "used for" shall include the phrases "arranged for", "designed for", "intended for", "maintained for", and "occupied for".

CHAPTER 3
ESTABLISHMENT OF THE FOND DU LAC ENVIRONMENTAL REVIEW COMMITTEE;
DISTRIBUTION AND EXERCISE OF ENVIRONMENTAL REVIEW AUTHORITY

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

- a. The Fond du Lac Reservation Business Committee hereby establishes the Fond du Lac Reservation Environmental Review Committee as a subcommittee of the Land Use Committee. The Environmental Review Committee shall be comprised of the following members:
1. Four (4) employees of the Fond du Lac Band, regardless of their membership status with the Band, who shall serve as part of their employment position with the Band: (1) Tribal Historic Preservation Officer; (2) the Water Regulatory Specialist; (3) the Environmental Specialist; and (4) the Fond du Lac Reservation Forester
- If any of these positions are vacant, then a person(s) is designated by the Land Use Committee Chair to fill the vacant position(s) on the Environmental Review Committee.
- b. The Environmental Review Committee shall hereby be established as a subcommittee of the Land Use Committee, subject to the by-laws of the Land Use Committee.

Section 302 **Distribution of Environmental Review Authority**

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

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

b. The Fond du Lac Reservation Business Committee hereby designates the following powers and duties to the Fond du Lac Reservation Environmental Review Committee:

1. Together with the Director of the Resource Management Division and such persons as may be deemed appropriate by the Reservation Business Committee, to monitor natural resource goals, objectives and opportunities expressed by the Band in its Integrated Resource Management Plan (IRMP), and as such make recommendations and keep the RBC informed on environmental compliance review and natural resource issues;
2. To maintain custody of the Official Fond du Lac IRMP;
3. To review environmental compliance documents for major Band actions and/or major federal actions; and to make sure the RBC, Land Use Administrator and other decision making entities of the Band have quality information on environmental effects prior to approving land use permits or other major Band actions in accordance with the provisions of this Ordinance;
4. To make recommendations to the RBC on environmental and natural resource factors regarding appeals from permit decisions made by the Land Use and Zoning Administrator, other major Band actions and/or major federal actions that affect the interest of the Band;
5. To adopt by a majority vote such rules and regulations governing the conduct of hearings before the Environmental Review Committee as it deems necessary, with the approval of the RBC and subject to all applicable requirements of due process, **provided** that all meetings and votes of the Environmental Review Committee and all hearings it conducts shall be open to the public (with the exception of Executive Sessions), and **further provided** that written minutes of all such meetings and hearings shall be prepared and shall be available to the public; and
6. To review decisions and actions of the Director of the Resource Management Division; and teams assembled by the RMD Director to prepare environmental review documents in compliance with this Ordinance, in such manner and at such time as the Committee may determine.
7. To make recommendations to the Land Use Committee and the RBC on the effect of a proposed Conditional Use, Special Use, Shoreland or Variance upon the human environment and the Band's natural resource goals, objectives and opportunities documented in the Fond du Lac IRMP;
8. To conduct inspections of mitigation and other protective measures specified in environmental review documents in accordance with this Ordinance, at project impact locations to help ensure the protection of the human environment and the Band's natural resources as stipulated in a FONSI or ROD; and to report to the entity with jurisdiction by law for each identified violation any problems with improper or ineffective implementation of enforceable or other mitigation;

c. The Fond du Lac Reservation Business Committee does hereby delegate the following powers and duties to the Director of the Resource Management Division:

1. To consult and cooperate with the Environmental Review Committee during its assessment of the significance of effects of proposed land use permits and other major Band actions and/or major federal actions; and in conducting those assessments of effects, the consideration of the natural resource goals, objectives and opportunities documented in the Fond du Lac IRMP;
2. To provide a report listing all environmental reviews underway and the status of each to the RBC and the Land Use Committee upon request;
3. To approve Categorical Exclusions (CATEX) and Finding of No Significant Impact (FONSI) for each environmental assessment following the procedures of this Ordinance. To be clear, the approval of the RBC Chair is required for RODs resulting from EISs.

4. To make recommendations to the Land Use Committee and the RBC concerning any matter under appeal;
 5. To investigate cases where major Band actions and/or major federal actions have been partially or entirely implemented prior to completion of the environmental review in compliance with this Ordinance; and to make recommendations to the RBC regarding potential consequences and alternate responses to such non-compliance.
 6. To provide such administrative, technical and professional assistance as may be required by the Environmental Review and Land Use Committees in the exercise of their duties;
 7. To provide the necessary assistance to ensure that the project applicant complies with all applicable environmental review requirements of this Ordinance;
- d. The Fond du Lac Reservation Business Committee does hereby delegate the following powers and duties to the Tribal Environmental Policy Ordinance (TEPO) Coordinator:
1. To maintain permanent and current administrative records pertaining to this Ordinance, including, but not limited to, all Environmental Review Committee meeting minutes and other Committee documents such as monthly status reports, categorical exclusions, environmental assessments, FONSI, environmental impact statements, RODs; government-to-government consultation on environmental review matters, together with correspondence and documentation of coordination on environmental review matters with applicants, the public, cooperating agencies, lead agencies, and Band comments on the environmental compliance documents published by others for public comment;
 2. To receive, file and forward all applications for appeals received on EIS Records of Decision regarding variances, conditional uses, special uses, shoreland uses, subdivisions, or other environmental review matters pertaining to the Environmental Review and Land Use Committees;
 3. To request that the project applicant furnish additional information as may be necessary to properly perform all environmental review duties in compliance with this Ordinance;
 4. To facilitate communication with county, state, federal and other entities as appropriate for compliance with this Ordinance.

CHAPTER 4
TEPO & NEPA PROCEDURES PRIOR TO
MAJOR BAND ACTIONS

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

- a. The first step in the TEPO process for major Band actions is to verify that someone proposing an action needs to comply with this Ordinance at all. The need to comply with this Tribal Environmental Policy Ordinance (TEPO) is triggered by a major Band action, as defined in this Ordinance. If the Band intends to hire an employee or buy office supplies, that is not a major Band action and thus no TEPO process is triggered. But approving a land use permit for new housing or economic development probably meets the definition of major Band action and such major Band actions shall not be implemented until this Tribal Environmental Policy Ordinance (TEPO) process is complete. So, in order to keep development proposals on time, early application of the TEPO process is important. The TEPO process may also help refine the proposal to better satisfy the purpose and need for the project while better protecting the human environment.

- b. One key purpose of this Ordinance is to require the Band to conduct the TEPO process before implementation of every major Band action. This includes major Band actions that have an area of potential effect (APE) within Reservation boundaries, or impacts that extend onto the Reservation.

- c. Another key purpose of this Ordinance is to minimize the amount and duplication of compliance paperwork. This includes preparing compliance documents with other entities, such as federal agencies, who may have a concurrent major federal action that triggers the Agency(s) need for compliance with NEPA for a proposal that must also comply with this TEPO. The following sections summarize what happens when there is, and when there is not a concurrent major federal action. There is also a special case when the federal agency with the concurrent major federal action is HUD, which has unique NEPA regulations from all other federal agencies. HUD indicates that it can't accept NEPA documents from other federal agencies, but other federal agencies may be able to accept HUD documents, if the HUD document spells out the actions of the other federal agency and the significance determination of the resulting effects on the environment.

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

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

- b. In this Ordinance, the Band establishes that the minimum government-to-government consultation process for federal agencies to consult the Band shall be for federal agencies to comply with this

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

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

Section 403 **Environmental Compliance Review Process When Major Federal Action, or Concurrent Federal Action is Foreseeable.**

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

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

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

Section 405 Responsibility for TEPO Compliance Matters.

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

CHAPTER 5
INITIATING THE TEPO PROCESS

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

Section 501 Actions Not Requiring an EA or EIS :

- a. Categorical Exclusion Adequate: If a categorical exclusion can be prepared for the proposal using the process in Chapter 6 of this TEPO, then it is not necessary to prepare an EA or EIS.

- b. Actions Analyzed in Existing Environmental Documents: If the environmental impacts of a proposed action are sufficiently covered in an existing compliance document for this TEPO, federal NEPA or other EA or EIS, it may not be necessary to prepare new TEPO documents. The use of such earlier documents is referred to as adoption. In order to adopt an existing environmental document prepared previously, the Band shall prepare its own, or cooperatively prepare and sign a Finding of No Significant Impact (FONSI) for an adopted EA or Record of Decision (ROD) for an adopted EIS.

- c. Emergencies: In an emergency, short-term or immediate response actions with significant environmental impacts may be taken without observing the provisions of the TEPO, if the action is necessary to control the immediate impacts of the emergency, particularly to protect human health and safety. Such actions, however, must be documented. In an emergency situation, contact the Fond du Lac Resource Management Division as soon as possible. The Resource Management Division will consult and coordinate with the RBC and the Legal Affairs Office on alternative compliance actions. All other emergency actions remain subject to the TEPO process. TEPO compliance documents are required for longer-term recovery, planning and mitigation implementation phases of an emergency. Note that many recovery activities for emergencies can be categorically excluded using category A. Operation, Maintenance, and Replacement of Existing Facilities, or category L (5) Emergency transportation repairs under 23 U.S.C. 125.

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

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

- a. EIS Required. The primary requirement of TEPO is that an EIS be prepared for every major Band action that would or may significantly affect the quality of the human environment. There are three ways to determine if an EIS is required.
 1. List of actions in Section 901 (b) of this Ordinance that normally require an EIS.

 2. An EA finding that the proposed action would significantly affect the quality of the human environment and the significant impact(s) cannot be mitigated to below significant levels. This case is when a FONSI is not appropriate for an EA, but rather that an EIS needs to be done.

3. Using the significance criteria and process in Chapter 8 of this TEPO, available information indicates that the proposed action would significantly affect the quality of the human environment and cannot be mitigated to below significant levels. Under these circumstances, there is no need to first complete an EA.
- b. **EA Required.** An EA must be prepared for all major Band actions, except those covered under Section 501 and Section 502 A. Also, if an EIS has been initiated and it becomes apparent that the action will not have significant impacts, the document may be released as an EA in support of a FONSI. The notice of cancellation for the EIS shall explain the reasons for not completing the document as an EIS and include a statement that the EA and FONSI will be made available for public review.

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

- a. **Significance Determination Considers Compliance with Other Laws:** Note that the criteria to determine significance in Section 803(10), includes consideration of “Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.” If the action has significant effects because it threatens violation of other ordinances or mandates, then an EIS may need to be prepared for detailed study of the impacts and compliance with other laws. Copies of compliance documents or correspondence regarding compliance with other laws need to be attached to the TEPO documents including a CATEX, EA or EIS.
- b. **Major Band Action with No Foreseeable Concurrent Major Federal Action:** Other Band ordinances or federal statutes that protect environmental and cultural resources may also need to be considered when completing the TEPO CATEX or environmental documents. It is best to initiate consultation on these compliances early in the TEPO process. For example, the major Band action may also trigger the need for compliance with the Clean Water Act Section 404 wetland fill permit or construction storm water permit if the disturbance area is one acre or more.
- b. **Concurrent Major Federal Action is Foreseeable:** Note that compliance documents for Section 106 and the Endangered Species Act (ESA) should always be attached to the NEPA document for federal compliance with NEPA. Consultation under Section 106 of National Historic Preservation Act (Section 106) and Section 7 of the Endangered Species Act (ESA) consultation should be started at the beginning of the TEPO/NEPA process. The consultation for these two specific statutes is the responsibility of the federal agencies, but the Fond du Lac Historic Preservation Office and RBC will be contacted by the agency(s) for compliance with Section 106. The Band may enter an agreement with the U.S Fish and Wildlife Service regarding compliance with the ESA on the Fond du Lac Reservation.

CHAPTER 6
CATEGORICAL EXCLUSIONS (CATEX) FOR COMPLIANCE WITH TEPO

Section 601 **Summary of CATEX Process.**

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

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

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

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

- a. On the *Exception Checklist for Fond du Lac Categorical Exclusions* in Appendix A, the preparer fills in the blanks for the project name, date and concise description of the proposed action.
- b. The preparer inspects the list of possible categorical exclusions in Section 603 to find one that fits the case exactly for the proposed action. Is the proposed action specifically listed?
 1. If yes, the preparer inserts the letter and name of the category on the EXCEPTION CHECKLIST following the text: "Exclusion Category and number:" Example: A. Operation, Maintenance, and Replacement of Existing Facilities
 2. If no, use Section 502 to determine whether to prepare an EA or an EIS.
- c. When an earlier TEPO or NEPA analysis is a provision of the exclusion (such as stated in categorical exclusion number F[1]), then write in the title and date of the earlier TEPO or NEPA document(s) . Note that earlier NEPA documents likely need to be adopted by the Band with a Band approved FONSI for an earlier EA or ROD for an EIS.

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

Section 603 Categorical Exclusion List.

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

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

- a. Operation, Maintenance, and Replacement of Existing Facilities. Examples are normal renovation of existing buildings, road maintenance and limited rehabilitation of irrigation structures.
- b. Transfer of Existing Federal Facilities to Other Entities. Transfer of existing operation and maintenance activities of federal facilities to the Band when no change in operations or maintenance is anticipated.
- c. Human Resources Programs. Examples are social services, education services, employment assistance, tribal operations, law enforcement and credit and financing activities not related to development.
- d. Administrative Actions and Other Activities Relating to Trust Resources. Examples are: management of trust funds (collection and distribution), budget, finance, estate planning, wills and appraisals.

- e. Self-Determination and Self-Governance. Self-Determination Act contracts and grants or Self-Governance Compacts for federal programs listed as categorical exclusions, or for programs in which environmental impacts are adequately addressed in earlier TEPO or NEPA analysis.
- f. Rights-of-Way.
1. Rights-of-Way inside another right-of-way, or amendments to rights-of-way where no deviations from or additions to the original right-of-way are involved and where there is an existing TEPO or NEPA analysis covering the same or similar impacts in the right-of-way area.
 2. Service line agreements to an individual residence, building or well from an existing facility where installation will involve no clearance of vegetation from the right-of-way other than for placement of poles, signs (including highway signs), or buried power/cable lines.
 3. Renewals, assignments and conversions of existing rights-of-way where there would be essentially no change in use and continuation would not lead to environmental degradation.
- g. Minerals.
1. Approval of permits for geologic mapping, inventory, reconnaissance and surface sample collecting for sand and gravel borrow pits.
 2. Approval of unitization agreements, pooling or communitization agreements.
 3. Approval of mineral lease adjustments and transfers, including assignments and subleases.
 4. Approval of royalty determinations such as royalty rate adjustments of an existing lease or contract agreement.
- h. Forestry.
1. Approval of free-use cutting, without permit, to Indian owners for on-Reservation personal use of forest products, not to exceed 2,500 feet board measure when cutting will not adversely affect associated resources such as riparian zones, areas of special significance, etc.
 2. Approval and issuance of cutting permits for forest products not to exceed \$5,000 in value.
 3. Approval and issuance of paid timber cutting permits or contracts for products valued at less than \$25,000 when in compliance with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
 4. Approval of annual logging plans when in compliance with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
 5. Approval of Fire Management Planning Analysis detailing emergency fire suppression activities.
 6. Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres and not including approval of salvage sales of damaged timber.
 7. Approval of forest stand improvement projects of less than 2,000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
 8. Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
 9. Approval of prescribed burning plans of less than 2,000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.

10. Approval of forestation projects with native species and associated protection and site preparation activities on less than 2,000 acres when consistent with policies and guidelines established by a current management plan addressed in earlier TEPO or NEPA analysis.
- i. Land Conveyance and Other Transfers. Approvals or grants of conveyances and other transfers of interests in land where no change in land use is planned.
 - j. Reservation Proclamations. Lands established as or added to a reservation pursuant to 25 U.S.C. 467, where no change in land use is planned.
 - k. Waste Management.
 1. Closure operations for solid waste facilities when done in compliance with other federal laws and regulations and where cover material is taken from locations which have been approved for use by earlier TEPO or NEPA analysis.
 2. Activities involving remediation of hazardous waste sites if done in compliance with applicable Band ordinance or federal laws such as the Resource Conservation and Recovery Act (P.L. 94-580), Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-516), Toxic Substances Control Act (P.L. 94-469) or similar.
 - l. Roads and Transportation.
 1. Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.
 2. Construction of bicycle and pedestrian lanes and paths adjacent to existing highways and within the existing rights-of-way.
 3. Activities included in a "highway safety plan" under 23 CFR 402.
 4. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
 5. Emergency repairs under 23 U.S.C. 125.
 6. Acquisition of scenic easements.
 7. Alterations to facilities to make them accessible for the elderly or handicapped.
 8. Resurfacing a roadway without adding to the existing width.
 9. Rehabilitation, reconstruction or replacement of an existing bridge structure on essentially the same alignment or location (e.g., widening, adding shoulders or safety lanes, walkways, bikeways or guardrails).
 10. Approvals for changes in access control within existing right-of-ways.
 11. Road construction within an existing right-of-way which has already been acquired for a HUD housing project and for which earlier TEPO or NEPA analysis has already been prepared.
 - m. Residential Leases and Land Assignments. Approvals of leases, land assignments, or easements for single family homesites and associated improvements, including, but not limited to, construction of homes, outbuildings, access roads, and utility lines, which encompass five acres or less of contiguous lands, provided that such sites and associated improvements do not adversely affect any tribal cultural resources or historic properties and are in compliance with applicable federal and tribal laws. Home construction may include up to four dwelling units, whether in a single building or up to four separate buildings.

n. Other.

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

CHAPTER 7
ENVIRONMENTAL ASSESSMENT

Section 701 **Introduction.**

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

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

- a. **Internally Initiated Proposals.** Internally initiated proposals are actions that the Band itself takes, such as the construction of housing or economic development. An EA is normally prepared by the Resource Management Division program staff in conjunction with the department within the Band which has identified the need for the proposed action and which has lead responsibility for implementing the action. Depending upon the complexity of the proposed action, the responsibility for preparation of, or oversight of a contract for the preparation of the EA may be assigned to either an individual or an interdisciplinary team.

- b. **Externally Initiated Proposals.** Externally initiated proposals trigger Band review in compliance with the TEPO process. The Band may also have a concurrent or linked major Band action, such as approval of a Fond du Lac land use permit. The applicant (Band and/or federal agency) normally prepares the EA. For the case when the applicant is a Band member without the resources to prepare the EA, then the Band will consider whether the Resource Management Division has the resources to prepare the EA on behalf of the Band member. The EA should be submitted with the application for Band land use permit, or as soon thereafter as possible. Even if the EA was primarily drafted by a federal agency applicant, the Band shall make its own evaluation of the environmental issues and take responsibility for the scope, content and adequacy of the EA for the purposes of supporting the Band's decision regarding the proposed action.

Section 703 **EA Contents and Format.**

The Band's EAs shall include brief discussions of the purpose and need for the proposed action, alternatives, including no action, the affected environment, and the environmental consequences, plus a listing of agencies and persons consulted. An EA may include enforceable and reasonable mitigation measures that will reduce impacts to a level less than significant and thus support a FONSI so that no EIS is needed.

NOTE: It is important to keep in mind that an EA is not supposed to be a short EIS. An EA is intended to be analytic, not encyclopedic. The analysis in an EA need not go beyond that needed to determine whether impacts will or may be significant. This analysis should rely on existing data. The need for major new studies to

assess the significance of effects infers that an EIS might be the better choice as the compliance document for the TEPO process.

- a. Incorporation by Reference. All or portions of any pertinent, publicly available document, including, but not limited to existing EAs, EISs or state environmental documents, may be incorporated by reference into an EA. The text of the EA need only include a brief synopsis of such incorporated information. However, a FONSI must rely only on the information contained in the EA itself. Be sure to properly cite the reference. If there are a number of references cited, it is good practice to make a list of references and include it in an appendix or chapter that lists the consultation and coordination contacts for the EA. Cite only references that are readily available to preparers as they will be needed if challenges or litigation arises.
- b. Combining Documents. An EA may be combined with another planning or decision making document. The analysis of the environmental impacts of the proposed action and alternatives, however, must be clearly and separately identified in the combined document, and not spread throughout or interwoven into other sections.

Section 704 EA Organization.

An EA is typically organized as follows:

- a. Cover Sheet. This will include the title and location of the proposed action; date; office(s) for which EA was prepared; and office(s) preparing EA. If the EA is to be circulated as a draft, this should be clearly marked on the cover sheet.
- b. Table of Contents. This lists chapter and section headings, along with tables, figures and illustrations.
- c. Chapter 1- Purpose of and Need for Action. In this section, explain in a few sentences why the proposed Band action is being considered. The purpose of and need for the action should, at a minimum, clearly answer the questions: Is there a major Band action that triggered the need to comply with TEPO? Or is there a major federal action that triggered the need to comply with TEPO and NEPA? Why here? Why now? In EA Chapter 1, it is not enough to state that the purpose and need for the EA is TEPO compliance.
- d. Chapter 2- Alternatives. Consideration of alternatives should not be a mere exercise, but a good faith effort to find an adequate range of ways to fully and realistically meet the identified need or purpose of the proposed action. The proposed action and no action alternatives are mandatory and must be analyzed throughout an EA. The discussion of the proposed action should clearly answer the questions: Who? What? Where? and When?
 1. A range of other reasonable alternatives should also be considered. Some alternatives can be summarized but included in a section in EA Chapter 4 called: "Alternatives Eliminated from Further Consideration". Alternatives can be placed in this EA section with reasons given for not considering them further. Reasons can include, but are not limited to: does not adequately address the purpose and need; illegal; technologically infeasible; or remote and speculative.

- e. Chapter 3 - Description of the Affected Environment. In this section, succinctly describe existing conditions and resources in the area of potential effect in which the proposed action and alternatives would occur. Note that existing conditions don't necessarily mean that all conditions will remain exactly the same as they are now. Existing conditions may need to predict conditions over a specific timeframe, say to five or ten years from present, in order to adequately explain impacts of the alternatives. For example, erosion will continue to occur. Another example is that traffic engineers may predict growth in traffic levels for the next five years. Use page-sized maps, photos and other illustrations as much as possible. Existing documents regarding existing resources and conditions may also be incorporated by reference, along with a summary of the key facts included in these references. Also, it is a common mistake for preparers to want to describe the environmental impacts and consequences of the alternatives in Chapter 3. But the evaluation of impacts of alternatives and the assessment of the level of significance of those impacts goes in EA Chapter 4 - Environmental Consequences.

NOTE: The following outline of resources is essentially a menu of the components of the human environment that should be considered in preparing Chapters 3 and 4 of the EA. In preparing Chapter 3, select only those resource categories from the menu that will actually be affected by at least one of the alternatives. Some topics, such as cultural resources and endangered species shall always be included for major federal actions so that compliance can be established with specific other laws. EA Chapter 4 uses the same outline of Resources as EA Chapter 3, but EA Chapter 4 predicts the impacts of the alternatives on those resources.

1. Land Resources
 - a. Topography (land forms, drainage, gradients)
 - b. Soils (types, characteristics)
 - c. Geologic Setting, Mineral and Paleontological Resources
2. Water Resources (surface and ground; quality, quantity, use, rights)
3. Air (quality standards attainment or not, visibility)
4. Living Resources
 - a. Wildlife (terrestrial, aquatic, threatened/endangered)
Note: Section 7, Endangered Species Act consultation should be completed at this point by federal agency in NEPA process.
 - b. Vegetation (terrestrial, aquatic, riparian, threatened/endangered)
 - c. Ecosystems and Biological Communities
 - d. Agriculture (livestock, crops, prime and unique farmlands)
5. Cultural Resources
 - a. Historic, Cultural and Religious Properties
 - b. Archeological Resources
NOTE: For the purposes of Section 106, National Historic Preservation Act compliance by federal agencies for NEPA, the Area of Potential Effect should be determined and all potentially affected cultural resources be identified at this point. This includes initial inquiry to the Fond du Lac Tribal Historic Preservation Officer. Surveys needed to locate resources require consultation with Fond du Lac Band and potentially other tribes. Ground disturbing cultural surveys on trust lands require an Archeological Resources Protection Act (ARPA) permit from BIA, depending on who conducts the survey. Contact the BIA Regional Archeologist for more information.

6. Socioeconomic Conditions
 - a. Employment and Income
 - b. Demographic Trends
 - c. Lifestyle and Cultural Values
7. Resource Use Patterns
 - a. Hunting, fishing, gathering
 - b. Timber Harvesting
 - c. Agriculture
 - d. Mining
 - e. Recreation
 - f. Transportation Networks
 - g. Land Use Plans and Jurisdiction
8. Other Values
 - a. Wilderness
 - b. Noise and light
 - c. Visual
 - d. Public Health and Safety
 - e. Climate Change and Greenhouse Gas Emissions

f. Chapter 4 - Environmental Consequences. In EA Chapter 4, solid analysis of the significance of impacts is key to a good EA. Determine the significance of impacts using the process described in Chapter 8 of this Ordinance, including the consideration of threatened non-compliance with other laws. Analyze all potentially significant effects, both beneficial and adverse. The analysis of significance of impacts shall be done for the (1) proposed alternative; (2) no action alternative; and (3) each additional alternative considered in detail. The analysis is also to compare the significance of impacts between the alternatives and trade-offs of benefits for adverse effects. For example, the proposed alternative increases the amount of housing available compared to no action, while reducing the quantity of undisturbed forest habitat compared to no action. Organize EA Chapter 4 using the same outline of existing resources that was used for EA Chapter 3. Discuss the consequences of each alternative on a component of the environment before moving on to the next component. The types of effects to be analyzed follow. For each type of effect, consider those that are short term, long term, irreversible and irretrievable.

1. Direct Effects. Direct effects occur at the same time and place as the triggering action. For example, application of a pesticide kills a listed endangered plant.
2. Indirect Effects. Indirect effects occur later or away from the triggering action. For example, listed endangered birds die from eating seeds contaminated by the application of a pesticide.
3. Cumulative Effects. Cumulative effects equal past actions, plus proposed action, plus present actions by others, plus reasonably foreseeable future actions by anyone. Identify reasonably foreseeable future actions through documents, such as tribal resolutions, zoning ordinances, Integrated Resource Management Plans or Natural Resource Restoration Plans; and through consultation with tribal and local planning offices. Put boundaries on the cumulative effects analysis for both time and location (e.g. over the next 5-10 years within the X watershed).

NOTE: In order to minimize the need for NEPA documentation on specific actions, a reasonable grouping of related actions should be considered in the same EA. For example, prepare one EA for a subdivision of 20 houses rather than 20 individual EAs. This would be particularly appropriate if there are impacts from individual actions which do not appear to be significant, but which may be significant when cumulative effects are considered. EPA and CEQ publish guidance on assessing cumulative effects.

4. Disproportionate Effects (Environmental Justice). These effects are disproportionately high and adverse for low income or minority communities. The Fond du Lac Band Government is not a minority or low income community, but Band members may be one or both a minority and low income.

NOTE: Any consultation to determine effects under Section 7 of the Endangered Species Act or Section 106 of the National Historic Preservation Act should be completed by the time the environmental consequences analysis is completed.

- g. Chapter 5 - Mitigation Measures. When adverse effects are noted in EA Chapter 4 Environmental Consequences, mitigation measures to reduce or eliminate such effects may be identified where possible. Mitigation measures, however, may only be relied upon to support a FONSI if they are imposed by statute or regulation, or are an integral part of the action as originally proposed. Other mitigation measures may support a FONSI if they are enforceable. Discussion of mitigation measures must explain how each measure will be enforced. (See question number 40 of CEQ's *NEPA's FORTY MOST ASKED QUESTIONS* for more detailed discussion.)

NOTE: Extensive mitigation measures in an EA indicate that the proposed action warrants an EIS.

1. Consultation on and development of Memorandums of Agreement under Section 106 of the National Historic Preservation Act should be completed at this point if cultural resources would be adversely affected.
 2. Mitigation of Disproportionate Effects (Environmental Justice): Mitigation measures shall address, whenever necessary, high and adverse environmental effects to minority communities and low income communities.
- h. Chapter 6 - Consultation and Coordination. In this section, include agencies, organizations and individuals consulted, and coordination with applicable statutes, regulations and Executive Orders. Affected tribes and appropriate tribal agencies should always be included in this consultation.

1. Consultation. Federal, tribal, state, and local agencies, such as those having jurisdiction by law or special expertise, and the interested public should be consulted in preparing the EA. This effort must involve all minority communities /low income communities that might be affected by the proposed action. All affected tribes, the State or Tribal Historic Preservation Officer(s) and the U.S. Fish and Wildlife Service shall always be included in this consultation. List in this section the agencies, organizations and individuals consulted. Include all correspondence in appendices.

NOTE: The EA should contain documentation showing completion of the consultation processes under Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

2. Coordination. Coordinate compliance with statutes and executive orders that apply to the proposed action with the preparation of the EA. A partial list of such statutes and executive orders follows. Because of the time that may be required for compliance, this coordination should begin early in the EA process. If compliance cannot be achieved by the time the EA is completed, explain in the EA how compliance will ultimately be accomplished. Be aware,

however, that non-compliance at the time of the EA may lead to a finding of significant impacts.

- a. National Historic Preservation Act *
- b. Endangered Species Act *
- c. Clean Water Act
- d. Safe Drinking Water Act
- e. Clean Air Act
- f. Fish and Wildlife Coordination Act
- g. Comprehensive Environmental Response, Compensation and Liability Act
- h. Resource Conservation and Recovery Act
- i. Federal Insecticide, Fungicide and Rodenticide Act
- j. Toxic Substances Control Act
- k. Asbestos Hazard Emergency Response Act
- l. E.O. 13101 Greening the Government
- m. E.O. 13007 Sacred Sites
- n. Indian Gaming Regulatory Act (Part 20)
- o. Bald and Golden Eagle Protection Act

3. Coordination on Integrated Resource Management Plan: The TEPO process shall also be coordinated with the goals, objectives and opportunities contained in the Fond du Lac Band's Integrated Resource Management Plan. Coordination of TEPO processes and documents shall be completed with appropriate natural resources staff of the Fond du Lac Resource Management Division. The IRMP is a statement of priorities for management and protection of natural resources on the Fond du Lac Reservation and lands. When the Fond du Lac Band makes decisions regarding major band actions, particularly for development, the TEPO process shall include discussion of the trade-off of the goals, objectives and opportunities for natural resources management as described in the IRMP.

* These statutes are always required for federal agencies complying with NEPA. Actions that trigger NEPA also trigger the need for the agencies to consider compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act. Note that compliance with TEPO and NEPA are independent of compliance with these laws and vice-versa. But it is good practice to summarize the compliance activities for the other laws in EA Chapter 4 – Environmental Consequences as one considers the criteria in Section 703 in determining the significance of effects. Significance criteria number 10 requires consideration of compliance with other laws, so it is proper to consider compliance with other laws.

- i. List of Preparers. List all persons, with position title and area of expertise/discipline, who contributed to the development of the EA. This is often included in Chapter 6.
- j. Appendices. Include correspondence and reports resulting from consultation and coordination, a list of references cited, and any other pertinent material. Documents incorporated by reference do not have to be included in their entirety in the appendices.

Section 705 EA Processing.

- a. When the EA is completed for TEPO compliance, present it to the Director, Fond du Lac Resource Management Division for review. When the EA is completed for NEPA compliance, present it to the federal agency decision maker, along with recommendations for a finding. The decision maker may then:

1. Sign a FONSI. A FONSI is appropriate if the decision maker determines that the proposed action will not have a significant impact on the quality of the human environment. See Section 607 of this Ordinance for directions on how to prepare a FONSI.
 2. Direct Further Work on the EA. The decision maker may decide that the EA is not sufficient to determine whether or not an EIS is required. In such a case, he or she may direct the preparer(s) to revise analyses, consider new alternatives or mitigation measures, seek public involvement, or take other measures to make the EA adequate for making a decision.
 3. Initiate an EIS. An EIS shall be prepared if the RMD Director and RBC Chair together determine that the proposed action may or will have a significant impact on the quality of the human environment. Chapter 8 of this Ordinance describes the process to determine significance.
- b. An EIS may be initiated at any time during the EA process, without completing the EA, if it becomes apparent that the proposed action will have a significant impact on the quality of the human environment. Chapter 9 of this Ordinance describes how to initiate an EIS.
 - c. For compliance with TEPO, the FONSI shall be signed and approved by the Director, Fond du Lac Resource Management Division (RMD).

Section 706 Public Review.

- a. For the TEPO process, the Notice of Availability (NOA) of the FONSI and EA shall be made available to all Band departments, tribal members, and federal agencies with jurisdiction by law or special expertise, or that have requested participation in the process. The notice shall be provided in a method that provides reasonable assurance of distribution, such as publication in a local newspaper and notices sent to Band offices and Band community areas for posting. The Notice of Availability of the FONSI and EA shall be made available for 30 days before implementation of the proposed action. If applicable, a Band notice that it intends to proceed with the proposed action may be issued simultaneously with the NOA for the FONSI. Substantive comments received during the waiting period that have not yet been considered in the EA shall be responded to by revising the FONSI or revising or appending the EA. For EAs when there is either: (1) controversy regarding impacts or alternatives; or (2) mitigation required to reduce impacts to less than significant levels; then Notice of Availability for review and written comment of the draft EA will be made available to all Band departments, tribal members, and federal agencies with jurisdiction by law or special expertise for a period of no less than 30 days before publishing the Notice of Availability of the FONSI for 30 days.
- b. For the NEPA process, the lead federal agency's NEPA procedures will guide the public review process.

Section 707 Finding of No Significant Impact (FONSI).

For the TEPO process, if it is determined that implementation of a proposed action will not significantly affect the quality of the human environment, prepare a FONSI for the signature of the Band's Director of the Resource Management Division (RMD).

NOTE: The FONSI shall be based only on information included in the EA. If new information is developed

between the EA and FONSI stages, then amend the EA.

a. Contents of a FONSI.

1. The statement: "Based on the [title and date of EA], it has been determined that the proposed action will not have a significant impact on the quality of the human environment, therefore, an Environmental Impact Statement is not required."
2. A brief statement of the reasons, with references to pertinent portions of the EA, supporting the finding.
3. References to all other environmental documents related to the EA.
4. Signature line for the Director of the Resource Management Division (RMD), or designee.

b. Decision Package With FONSI. The decision package to be presented by the Band's Director of RMD to the Band decision makers, either the RBC Chair, Chair of the Fond du Lac Land Use Committee, or other Band official authorized to implement a major Band action, shall include:

1. The FONSI.
2. The EA.
3. Notice of Availability. The CEQ regulations require that there shall be a public notice of availability of the FONSI (40 CFR § 1506.6(b)). This notice shall not be issued before consultation under Section 106 of the National Historic Preservation Act (meaning a determination of no adverse effect or the signing of a Memorandum of Agreement) and under Section 7 of the Endangered Species Act have been completed. The notice shall:
 - a. Briefly describe the proposed action;
 - b. State that based on an EA, it has been determined that the action will not result in significant impacts to the quality of the human environment, therefore, an EIS is not required;
 - c. Identify a person to contact for further information or to obtain a copy of the FONSI and EA; and
 - d. Include the following statement: "This FONSI is a finding on environmental effects, not a decision to proceed with an action, therefore the FONSI determination cannot be appealed. An appeal may be made regarding the subsequent Band decision to proceed with the implementation of the major Band action."

c. Example FONSI. See Appendix B.

d. Record Keeping. Copies of all FONSI's generated within the Resource Management Division shall be provided to, and retained by the TEPO Coordinator in the Fond du Lac Resource Management Division.

f. Decision to Proceed With Major Band Action. It is advisable to make the decision to proceed with the major Band action publicly available at the same time as the Notice of Availability for the FONSI. The time between the Notice and the time when the action may be implemented will then correspond to the 30-day appeal period on the decision to proceed.

Section 708 **EA Supplements and Revisions.**

An EA and FONSI that have not been acted upon must be reviewed to determine whether revision or supplementing is needed when:

- a. They are more than three years old;

- b. Substantial changes have been made in the proposed action that may be relevant to environmental concerns; and/or
- c. New circumstances or information relevant to environmental concerns and potentially significant effects are present that need to be assessed.

CHAPTER 8
DETERMINATION OF SIGNIFICANCE OF EFFECTS

Section 801 **Significance Criteria.**

The criteria used to determine significance of effects of the proposal and alternatives on environmental resources, in NEPA and this Tribal Environmental Policy Ordinance, are found in Section 803 of this Ordinance. If effects of the proposal or any practical alternative are anticipated to be significant then a categorical exclusion cannot be used as the compliance document for this ordinance. If significant effects can be mitigated as a normal course of development of the proposal, then a mitigated EA can be used, but additional public involvement may be needed to explain the mitigation and proposal to parties with interest(s) in the area of potential effect. If significant impacts are not or cannot be mitigated to less than significance, then an EIS shall be prepared.

Section 802 **Context.**

The determination of significance of impacts shall consider the context of the predicted effects. Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant. As an example of context, consider the effects of a proposal on wetlands. In the context of Nevada, impacts on one acre of high quality wetland is much more likely to be significant than say the impacts on three acres of wetlands in the context of the Fond du Lac Reservation, which is fortunate to have a relative abundance of highly productive wetlands.

Section 803 **Significance Criteria.**

Intensity. This refers to the severity of impact. The following should be considered in evaluating intensity. Each significance criteria below is measured with specific standard procedures used by the professionals who are trained for that particular standard. For example, a transportation engineer uses specific highway standards to design public roads and signage to help protect public safety, the subject of criteria number two below. If the proposed action would not satisfy applicable transportation design standards, then the proposed action would threaten public safety and some environmental effects would likely be found significant.

Some of the other significance criteria below are embodied in other laws or mandates that were put in place to protect specific resources, such as the Endangered Species Act, Clean Water Act or Section 106 of the National Historic Preservation Act.

Responsible officials of the Band and federal agencies should bear in mind that more than one entity may make decisions about partial aspects of a major action. In the case of multiple entities causing impacts, the intensity of impact for individual resources needs to be assessed cumulatively. Criteria number ten specifically says that any proposal that threatens to violate such environmental mandates, the effects may be found significant. Unmitigated significant impacts require preparation of an EIS.

The significance criteria for this TEPO are:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Band believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety. This criterion includes, but is not limited to, standards for highway safety, water supply and waste water disposal, airports, pipelines, fire protection, law enforcement, food safety and electrical and other utility services.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial. For this ordinance, controversial means a disagreement between those with jurisdiction by law or special expertise as to the context or intensity of effects, making it impossible for the Band or federal agencies to determine the significance of the effects of their proposal. Controversial can also mean a disagreement regarding the range of alternatives. (See questions 1 through 5 of *NEPA's Forty Most Asked Questions*.)
5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
10. Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment. The term "protective requirements" includes Fond du Lac Band ordinances, resolutions and the Integrated Resource Management Plan.

Section 804 Examples of Significant Effects.

Below are general examples of how the significance criteria in Section 803 might be used to decide what environmental effects might be significant and what kind of TEPO environmental document needs to be prepared.

- a. Exceed Infrastructure Capacity: Whenever a proposal is predicted to exceed the capacity of any community infrastructure, then the TEPO process needs to consider the possibility of significant effects using Section 803, criteria number two regarding public safety. Say that the community is growing at a rate such that Band planners predict that the waste water plant will have no excess capacity to treat waste water within three years. But the proposal is to build 12 new housing units located adjacent to an existing waste water interceptor line. The original plans were that the 12 new homes be connected to the existing interceptor, increasing the demand on the existing waste water treatment plant, threatening to exceed the plant's designed capacity sooner and to a greater degree. If there were no mitigation for treating waste water from the 12 new homes, then you may need to consider doing an EIS to study the waste water impacts, alternative proposals and mitigation. On the other hand, waste water treatment technology is well understood and mitigation could be made a part of the initial proposal, at additional cost. Such mitigation might be either planning an expansion of the community plant or some kind of on-site technology for the home sites.

- b. Highly Controversial Impacts: In Section 803, criteria four deals with significant effects because of controversy. Controversy means a disagreement among jurisdictional entities or those with special expertise. For example, if a tribe was located in an area of fairly rapid development and everyone including the tribe depended on the first major aquifer, closest to the surface. The tribe or band proposes trust acquisition of 160 acres with community and economic development foreseeable in the next five years. In the NEPA process with BIA, a local municipality complains to BIA and EPA that the proposed development will create too much demand for the subject aquifer. The municipality says that the tribe should either find its own source of water or not be allowed to develop. Of course, the tribe or band has the right to use groundwater for its trust lands. But the capacity of and effects on the aquifer are unclear and in disagreement between the tribe and municipality. This is a controversy under NEPA definition and the effects are public safety oriented. The predicted effects may be significant, and EPA raises the question to BIA of whether to do an EIS to focus on significant effects to the aquifer. The tribe proposes a study and invites the municipality, U.S. Geological Survey, Minnesota Department of Natural Resources, the Minnesota Geological Survey and county to help assess the aquifer's capacity, predict demand on the aquifer and consider alternatives. This could be done in an EIS or because the standard procedure to assess aquifers is well established, the study could be done as an independent assessment to provide key capacity information for an EA. But if an EA is to be used, effective and enforceable mitigation would need to be identified. Perhaps there is a deeper aquifer available with substantial capacity, but great expense to reach. The enforceable mitigation might be an MOU among those that use the aquifer regarding future development using the deeper aquifer in a way to fairly share the expense.

CHAPTER 9
ENVIRONMENTAL IMPACT STATEMENT (EIS)

Section 901 **Introduction and Major Band Actions Normally Requiring an EIS.**

- a. **Introduction.** The purpose of this chapter is to provide guidance on how to prepare an EIS when the decision has already been made to prepare an EIS to comply with this Tribal Environmental Policy Ordinance (TEPO). To determine whether an environmental impact statement (or an alternate kind of TEPO document) is needed for a specific proposal, use the process in Chapter 4 – Initiating the TEPO Process. The purpose of an EIS is to provide: (1) quality information to Band decision makers on the significance of potential impacts of a specific proposed major Band action, and (2) discloses that information to Band members and others. Much of the guidance given in the previous section on the process to prepare an EA is very similar to the process to prepare an EIS, so this chapter will refer the reader to the environmental assessment process when needed. Two basic differences between an EA and an EIS is that an EIS has much greater depth of new analysis and is more formal regarding involvement of Band members and the public. An environmental assessment is generally completed using existing information and an environmental impact statement generally requires new or revised studies. Typically, environmental assessments are needed far more frequently than an environmental impact statement. Environmental impact statements tend to be more expensive and take more time to prepare because of the need for new studies and more formal process.
- b. **Major Band actions that normally require an Environmental Impact Statement (EIS) include:**
1. Proposed mining contracts (other than for oil or gas), or the combination of a number of smaller contracts comprising a mining unit for new mines of 640 acres or more; This does not include sand and/or gravel borrow pits;
 2. Proposed water development projects which would, for example, inundate more than 1,000 acres or store more than 30,000 acre-feet;
 3. Construction of a treatment, storage or disposal facility for hazardous waste or toxic substances;
 4. Construction of a solid waste facility for commercial purposes;

Section 902 **Lead and Cooperating Agency.**

- a. **Lead.** When the decision has been made to prepare an environmental impact statement (EIS) for compliance with this Tribal Environmental Policy Ordinance, then the Fond du Lac Resource Management Division (RMD) will normally take lead responsibility for preparing and administratively processing the EIS.
- b. **Cooperating.** The applicant for the major Band action and other impacted Band divisions and offices should work together in the preparation of the environmental impact statement (EIS). Any federal

agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a major Band action may be invited to become a cooperating agency, at the Band's invitation. Duties of a federal agency as a cooperating agency are summarized in the federal National Environmental Policy Act regulations at 40 CFR §1501.6. Under this Ordinance, an affected Indian tribe or state or local agency may similarly become a cooperating agency to the Band, at the Band's discretion. For an EIS, cooperating agencies should be identified and confirmed in writing by the Band before the scoping process is completed.

Section 903 Designation of EIS Team and Team Leader.

When the decision has been made to prepare an environmental impact statement (EIS), the Director of the Fond du Lac Resource Management Division (RMD) will appoint an EIS team leader. The Band will use an interdisciplinary team approach. Environmental and Natural Resources Programs and staff from the Fond du Lac Band entity making the proposal, as appropriate, shall be represented on the EIS team. The team is responsible for developing the preliminary draft and draft EIS. The team leader, in consultation with the EIS team, will make recommendations to the Director, Fond du Lac RMD to ensure proper selection of other EIS team members. Federal and other external staff may also be invited, contracted or otherwise involved as team members to ensure the appropriate disciplines and experience levels are involved. If a contractor or consulting firm will be hired to prepare the EIS or assist with specific portions, then the team leader may also need to be the technical representative for the Band's contracting officer to help specify scope of work and evaluate work products for adequacy.

Section 904 Preparation.

- a. Notice of Intent (NOI). The first formal step in preparing an EIS is distribution of a Notice informing the public that the Band intends to prepare an EIS for compliance with this Ordinance. The normal method of distributing notices and to whom notices are sent is summarized in Section 606 of this Ordinance. The NOI should be published as soon as possible after the decision is made to prepare an EIS. The NOI shall briefly describe the proposed action and possible alternatives, and the Band's proposed scoping process, including whether, when, and where any scoping meeting(s) will be held. It shall also include the name and telephone number of a contact person within the Band, normally the team leader. The Band office initiating the EIS should make the NOI available through other media, such as local newspapers, that will provide adequate notice to the affected parties.
 1. Notice of Correction. Corrections may be required if there are omissions, errors or changes in the information provided in the NOI. The notice must reference the date and method of the previous notices relating to the proposed action.
 2. Notice of Cancellation. A notice of cancellation shall be prepared and distributed promptly if a decision is made to terminate the EIS process.

- b. Scoping. Scoping is an early and open process through which cooperating agencies and interested persons are identified, and the significant issues and alternatives to be addressed in the EIS are determined. The short definition of scoping is to document the intended range of proposed actions, alternatives, and impacts to be considered in the EIS. The process includes input from the EIS team, applicant, Band government offices, Band members, federal agencies that have jurisdiction by law or special expertise and perhaps others at the Band's invitation. The team leader for the EIS should:

1. Invite the participation of affected federal, state and local agencies, any affected Indian tribe, any affected minority or low income community (environmental justice), the proponent of the action, and other interested persons, including those who might not be in accord with the action on environmental grounds. In addition, the Band Legal Affairs Office should be invited.
 2. Determine the alternatives and significant issues to be analyzed in depth in the EIS.
 3. Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review.
 4. Allocate assignments for preparation of the EIS among the lead and cooperating offices, agencies and other staff with the lead agency retaining responsibility for the EIS.
 5. Indicate any Band or others' EAs or EISs that already exist, are being prepared or will be prepared that are related to, but are not currently part of the scope of the EIS under consideration.
 6. Identify other environmental review and consultation requirements for compliance with other laws so that other required analyses and studies may be prepared concurrently and integrated with the EIS.
 7. Establish the anticipated timeline for preparing and completing the EIS.
- c. Scoping Meetings. Scoping meetings in various formats are a useful, but optional tool for scoping. Other techniques for the scoping process could include: local partnerships, collaborative workgroups, interactive web sites and other mechanisms to provide a timely exchange of information with the public so that the scoping process and follow-up activities continue to reflect the input. If scoping meetings are held, the required public notice shall be included in the Notice of Intent. The NOI shall be published at least 15 days in advance of scoping meetings. The Fond du Lac Resource Management Division must be contacted before meeting dates are set to ensure proper lead time in the NOI.
- d. Scoping Reports. When the scoping process is completed, the team leader for the environmental impact statement submits a scoping report to the Director of the Fond du Lac Resource Management Division. A copy of the scoping report shall be provided to the EIS team, applicant, Band government offices, Band members, federal agencies that have jurisdiction by law or special expertise, any cooperating agencies, and any person who requested a copy. The scoping report shall include:
1. A statement of the purpose and need for the proposed action; See Section 704 (c) of this Ordinance on how to determine the purpose and need.
 2. The alternatives being considered; See Section 704 (d) of this Ordinance on how to determine the purpose and need.
 3. A summary of the significant issues identified during the scoping process;
 4. A list of the federal agencies or others who have agreed to be cooperating agencies;

5. A summary of any scoping meetings that were held; and
 6. Any information that the EIS team leader deems appropriate.
- e. Environmental Impact Statement (EIS) Format.
1. Cover Sheet/Letter. The cover sheet/letter shall not exceed one page. It shall include the following:
 - a. The names of the lead agency(s);
 - b. The title of the proposed action. This title must include the name of the Fond du Lac Indian Reservation and other pertinent jurisdiction(s) where the proposed action is located, and must state whether the EIS is a preliminary draft, draft, final, or a draft or final EIS supplement, if needed;
 - c. Cooperating agency(ies);
 - d. Name, address and telephone number of the team leader or other Band contact;
 - e. A one-paragraph abstract of the EIS; and
 - f. The date by which comments must be received.
 2. Cover/Title Page. The cover/title page must contain items 1(a) through 1(c) above, plus the name(s) of the preparing entity(s), and the date of issue. The title page is signed by the Chair of the RBC or designee.
 3. Executive Summary. This summary shall stress the major conclusions, areas of environmental controversy and the issues to be resolved, including the choice among alternatives. Matrices, tables, and other graphic displays may be useful to include in the Summary. Specific analysis regarding the impacts and other data will be found in the body of the EIS.
 4. Table of Contents.
 5. Purpose of and Need for Action. In this section, explain why the proposed Band action is being considered. The purpose of and need for the action should, at a minimum, clearly answer the questions: What major Band action triggered TEPO? Why here? and Why now? The proposed action and alternatives must address the purpose and need directly. See Section 704 (c) for similar information regarding the purpose and need section for environmental assessments.
 6. Alternatives. In this section, describe, but do not analyze, the proposed action, the no action alternative, and reasonable and feasible alternatives for meeting the purpose and need for action. In a final EIS, a preferred alternative must be identified. Ordinarily, this would be the environmentally preferred alternative, which one is judged to be the least damaging to the biological and physical environment. If the Band's preferred alternative differs from the applicant's proposed action, both alternatives must be identified in this section. Note that the differences in the proposed action, such as size or location, are appropriate alternatives to consider, but by themselves may not be sufficient. Viable alternatives are other possible means to meet the purpose and need, such as an ice hockey sports arena complex instead of a casino to meet the purpose and need for stable band income. If one of the alternatives clearly addresses the purpose and need better than the other alternatives, that outcome will be displayed in Chapter 4 – Environmental Consequences. See Section 704 (d) for similar information for the alternatives section for environmental assessments. As in the

environmental assessment, this chapter in the EIS may include a section that describes "Alternatives Eliminated from Further Consideration." Include the rationale for eliminating each of these alternatives.

7. Affected Environment. For this section, follow the guidance in Section 704 (e). The information in an EIS should be more detailed than that in an EA, but no more than what is needed to understand the impacts to be analyzed in the Environmental Consequences section. As with an EA, only those components of the environment that will actually be affected require detailed description. For each of the remaining components, a brief discussion of why the component will not be affected is sufficient. See Section 704 (e) for similar information for the alternatives section for environmental assessments. For the outline of the affected environment, use the menu of resources from Section 704 (e).
8. Environmental Consequences. This section forms the scientific and analytic basis for comparing the impact of the proposed action and other alternatives, including the no action alternative, on the environment. For this section, follow the guidance in Section 704 (f). The information in an EIS should be more detailed than that in an EA, and must also include discussion of:
 - a. Any adverse effects that cannot be avoided;
 - b. The relationship of the human environment and the maintenance and enhancement of long-term productivity;
 - c. Any irreversible and irretrievable commitment of resources;
 - d. Possible conflicts between the proposed action and the objectives of federal, tribal, regional, state and local land use plans, policies and controls for the area(s) of concern;
 - e. Energy requirements and conservation potential of alternatives and mitigation measures;
 - f. Natural or depletable resource requirements and conservation potential of alternatives and mitigation measures; and
 - g. The design of the built environment, including the reuse and conservation potential of alternatives and mitigation measures.
9. Mitigation. Analysis of alternatives must include a discussion of mitigation measures where mitigation is feasible, and of any monitoring designed for adaptive management. For this section, follow the guidance in Section 704 (g). The purpose of including mitigation measures is to permit a full and accurate comparison of the environmental effects of the alternatives. Note that mitigation of adverse environmental impacts is not required to implement a proposed action. The purposes of NEPA are met by analyzing these impacts and disclosing them to the public in the environmental impact statement (EIS). However, mitigation may be mandated if required by requirements other than this Ordinance, such as Section 404 of the Clean Water Act.
10. Consultation and coordination. For this section, follow the guidance in Section 704 (h). In addition, this section shall include a list of federal agencies, organizations and individuals receiving a copy of the document. The final environmental impact statement (FEIS) should have an "*" before those entities and individuals that commented on the draft environmental impact statement (DEIS).

11. List of Preparers. List all persons, with position title and area of expertise/discipline, who contributed to the development of the EIS.
12. Appendices. Appendices shall include, but not be limited to correspondence and reports resulting from consultation and coordination; a list of references cited; studies generated specifically in connection with the proposed action; and any other appropriate material.

f. Other Environmental Impact Statement (EIS) Guidance.

1. Data.
 - a. Methodology. The methods used in collecting and analyzing data must be described in the EIS.
 - b. Incomplete or Unavailable Information. Every effort must be made to obtain the information needed to fully evaluate all reasonably foreseeable impacts. The Band should not move ahead on proposals without having all of the relevant obtainable information. Information needs should be identified early, to enable timely completion of required studies and integration of the information into the EIS. Where information relevant to adverse impacts is unobtainable due to exorbitant costs, or the means to obtain it are not known, the EIS shall state that the information is lacking and explain why. Note that some information may not be available to the Band because it is proprietary information maintained by an applicant or others. The Band should work closely with the applicant or others on proprietary issues or information. Proprietary information may be withheld under this Ordinance. Federal agencies are, however, expected to have and report sufficient information for the NEPA process to allow informed public review and enable the Band to make responsible decisions.
 - c. Combining Documents. Section 102 (d) of this Ordinance encourages combining documents to reduce duplication and paperwork. Following are some techniques:
 1. Tiering. Tiering is where a site specific action references a program, policy, or plan covered in an EIS of broad scope. The EIS (or EA) for the narrower action need only address the issues specific to that action. Action items identified in general in the Fond du Lac IRMP and then later proposed for site specific implementation can be considered tiered.
 2. Transferred Analysis. Transferred analysis is where environmental impact information learned in one circumstance can be used in the analysis of a similar project or circumstance. Transferred analysis can be assisted by the exchange of environmental information with others with similar proposed actions and environmental resources. But the resulting EIS must be site specific.
 3. Incorporation by Reference. All or portions of any pertinent, publicly available document, including, but not limited to existing EAs, EISs, Integrated Resource Management Plans, or state or other environmental documents, may be incorporated by reference into an EIS. The text of the EIS need only include a brief synopsis of such incorporated information and how the information fits into the assessment of significance of effects of the alternatives.

2. **Funding and Contracts.** Funding the EIS and choosing a consulting firm, if needed, to prepare the EIS may be done by any of the following means. While the consulting firm may have a team leader and do much of the analysis, the Band's team leader and EIS team shall make their own evaluation of the environmental issues and take responsibility for the scope and content of the EIS by direct involvement with the consulting firm.
 - a. **Band Procurement Using Band's Funding.** The Fond du Lac Band may fund the environmental impact statement (EIS) and may choose the consulting firm under the Band's procurement regulations. The EIS team leader and EIS team members would be responsible for the scope of work and evaluation of adequacy of product.
 - b. **Band Procurement Using Applicant's Funding.** The project applicant, potentially including federal agencies, may transfer funds for the EIS to the Band. Then the Band may choose the consulting firm under the Band's procurement regulations.
 - c. **Third Party Contract.** A project applicant may fund the EIS and solicit proposals from consulting firms. The proposals received are passed along to the Band's EIS team leader and EIS team, which choose the consulting firm and inform the project applicant of their choice. The project applicant informs the firm of this choice and enters into a contract with the firm. The contract must contain a provision that the consulting firm is preparing the EIS for, and under the direction of the Band, and the EIS must in fact be prepared fully under the direction of the Band and its EIS team. A three party agreement may also be used to confirm this arrangement.
 - d. **Disclosure Statement.** Any consulting firm chosen to prepare an EIS for the Band must prepare a statement disclosing that it has "no financial or other interests in the outcome of the project."

Section 905 Review.

- a. **Preliminary Draft Environmental Impact Statement.** After the EIS team determines that a preliminary draft of the EIS is complete, it is distributed to other affected offices within the lead, joint lead and cooperating agencies for critical review and comment. The purpose of this review is to insure legal adequacy, policy consistency, and technical accuracy. Internal Band distribution should at least include the EIS team members, involved Band entities and the Legal Affairs Office. Sufficient time should be allowed for resolving conflicting views, evaluating new data or addressing significant concerns raised during review.
- b. **Draft Environmental Impact Statement (DEIS).**
 1. **Printing.** After revising the preliminary draft environmental impact statement, as needed, in response to the review comments, prepare the draft environmental impact statement (DEIS) for printing. At least 25 percent more copies of the DEIS should be printed than the project mailing list indicates are needed. It is acceptable to prepare CD-ROM copies and post the DEIS on the internet.
 2. **Distribution.** Transmittal letters and packaging (e.g. labels, containers) for mailing the DEIS should be prepared while the DEIS is being printed. The following parties shall be sent copies of, and requested to review and comment on the DEIS.

- a. Any federal agency with jurisdiction by law or special expertise with respect to the issue involved in, or impacts resulting from, the proposed action;
 - b. Any federal, tribal, state or local agency responsible for environmental review, consultation, coordination, clearance, or permit requirements associated with the project;
 - c. Affected/involved Band entities;
 - d. The applicant if different than the Band; and
 - e. All other parties on the project mailing list requesting a copy of the draft environmental impact statement (DEIS).
3. Notice of Availability (NOA). The Fond du Lac Resource Management Division serves as the repository for all EISs prepared in accordance with this Ordinance. RMD is responsible for publishing the NOA for the DEIS. RMD's NOA officially starts the comment period for the DEIS.
 4. DEIS Review and Comment Period. The review period for a draft environmental impact statement (DEIS) is at least 45 days following the date on which the Fond du Lac Resource Management Division publishes the NOA. The Band's EIS team leader may allow a longer comment period, as appropriate, in consultation with the Director, Fond du Lac Resource Management Division. Note that all extensions of review and waiting periods must be processed through the Resource Management Division. Any changes from dates published in the NOA require a revised NOA to be published at least as in the same manner as the original NOA.
 - a. Public Hearing. During the DEIS review period, at least one public hearing must be held. This hearing may be held no sooner than 15 days following RMD's publication of the NOA. A court stenographer should record all statements made at the public hearing(s). Note that it would be best to hold the public hearing(s) near the middle of the comment period, to allow those attending time to prepare comments they may wish to submit in writing.
- c. Final Environmental Impact Statement (FEIS).
 1. Respond to Comments on Draft EIS and Prepare Preliminary Final EIS. After the comment period for the draft environmental impact statement (DEIS) has ended, a preliminary version of the final EIS is prepared. All comments received during the comment period, including those submitted or recorded at the public hearing(s), and responses to the comments must be exhibited in the Final EIS (FEIS). If the changes made in response to the public comments are minor, the FEIS may consist of comments, responses and errata sheets to show changes from the DEIS. In such cases, only the comments, responses and errata sheets need to be circulated. The preliminary FEIS should be circulated for review, as in Section 905 a in this Ordinance.
 2. Printing. After revising the preliminary version of the FEIS, as needed, in response to the review comments, prepare the FEIS for printing. See Section 905 (b)(1) in this Ordinance.
 3. Distribution. Follow the guidance in Section 905 (b)(2) of this Ordinance. In addition to the parties listed in Section 905 (b)(2), the FEIS should also be sent to anyone who submitted comments on the DEIS.

4. **Notice of Availability (NOA).** Follow the guidance in Section 905 (b)(4) of this Ordinance. This NOA officially starts the waiting period for the FEIS.
5. **No Public Hearing Needed.** No public hearing is needed for a FEIS.
6. **Final Environmental Impact Statement (FEIS) Waiting Period.** The waiting period for a FEIS is 30 days following the date on which the Fond du Lac Resource Management Division (RMD) publishes the Notice of Availability (NOA). If comments are made on the FEIS within the 30-day waiting period, they need not be considered in making the final decision on the proposed action, unless a significant issue has been raised. RMD will help in making this determination, along with the Fond du Lac Legal Affairs Office, if necessary. The comments, however, must be answered in the record of decision (ROD).

Section 906 Record of Decision (ROD).

The ROD, which constitutes the decision on the proposed action, is signed by the Chair of the RBC. No implementing action, having either an adverse environmental effect or which would limit the choice of alternatives, may be taken before the ROD is issued.

- a. **Issuing the Record of Decision (ROD).** The ROD may be issued at any of the following times, but not before compliances have been completed for other laws that have been triggered by the proposed action.
 1. **Immediately After the Close of the 30-day Waiting Period for the Final EIS (FEIS).** The advantage of this timing is that it allows comments requiring response that are received during the waiting period to be addressed in the ROD. The disadvantage is that the 30 day appeal period for the ROD means that the project cannot be implemented for a total of 60 days from the date on which the NOA for the FEIS is published.
 - a. When the Chair of the RBC signs the ROD at the close of the 30-day waiting period for the FEIS, the project may be implemented immediately, as there is no appeal period in a ROD signed by the Chair of the RBC.
 2. **Concurrently with NOA for the FEIS.** The Band has an appeal period, so the ROD can be issued at the same time as the NOA is published, so that the waiting period and the appeal period may run concurrently. The advantage of this timing is that it allows the earliest possible timing for implementation of the proposal, which is 30 days from the publication date of the NOA for the FEIS. The disadvantage is the risk that comments requiring a response may be received during the waiting period for the FEIS. In that event, the ROD may have to be reissued to address substantive comments not already addressed in the FEIS, and would require a new 30 day appeal period. This could result in a period of more than 60 days from the date on which the DRM publishes its NOA before the project may be implemented.
 - a. When using this option, the FEIS, the ROD and the Band's Notice must explain the timing of the ROD's issuance and the right of appeal.

- c. As a variation on this option, the Record of Decision (ROD) may be issued anytime during the waiting period for the FEIS. In this case the project could not be implemented at the close of the waiting period, but only after 30 days (the appeal period) from the date the ROD was signed.
 - c. The RBC Chair may not sign a ROD prior to the close of the 30-day waiting period for the FEIS, as there is no appeal period in a ROD signed by the Chair.
3. Any Time After the Close of the 30-day Waiting Period for the FEIS. There is no maximum time limit on how long after the close of the 30-day waiting period for the FEIS the ROD may be issued. Depending upon the amount of time that has passed since issuance of the FEIS, however, the FEIS may need to be reviewed for freshness according to the guidance in Section 907 of this Ordinance before the ROD is issued.
- b. Record of Decision (ROD) Contents. In addition to answering any comments received during the 30-day FEIS waiting period, the ROD must state which alternative has been selected for implementation and briefly discuss the other alternatives considered. There is no requirement to select the environmentally preferred alternative in the EIS. If it is not selected, however, it must be identified as the environmentally preferred alternative in the discussion of the other alternatives considered and the reason it was not selected must be given. If the selected alternative includes mitigation measures, these must be incorporated in the ROD. The decision should provide for monitoring or other means, including adaptive management, to insure that these measures are implemented.
 - c. Record of Decision (ROD) Distribution. The Fond du Lac Resource Management Division publishes the ROD. The ROD should be published and/or posted (including on web sites), as needed, to reach the widest possible affected public, including minority or low income communities, but does not need to be published in the Federal Register or any other specific media. It must also be mailed to entities with jurisdiction by law, special expertise and to any additional parties who submitted comments on the final environmental impact statement (FEIS).

Section 907 EIS Supplements and Revisions.

Draft and final environmental impact statements (EISs) must be reviewed to determine if they need to be revised or supplemented under the conditions listed in A - E below. Supplemental and revised draft and final EISs are subject to the same preparation (see Section 904 of this Ordinance) and review (see Section 905 of this Ordinance) requirements, except for scoping, as regular draft and final EISs, unless they are determined to be for information purposes only. Note that A. or B. alone do not trigger the requirement for a supplemental draft or final EIS. One or more of C., D. or E. must also have occurred.

- a. A DEIS is more than three (3) years old and the FEIS has not been completed.
- b. An FEIS is more than five (5) years old for an action not yet taken.
- c. Substantial changes have been made in the proposed action that may be relevant to environmental concerns.
- d. Significant new circumstances or information relevant to environmental concerns.

- e. **Comments received result in the inclusion of a new preferred alternative which was not detailed as a reasonable alternative in the draft or final EIS.**

CHAPTER 10
REVIEW OF ACTIONS PROPOSED BY FEDERAL AGENCIES AND OTHERS

Section 1001 **Introduction.**

The purpose of this chapter is to provide guidance on reviewing environmental documents of others, particularly federal agencies complying with the National Environmental Policy Act (NEPA) for major federal actions with potential substantial impacts to the Fond du Lac Reservation. Chapter 10 also explains the process for referral to the President's Council on Environmental Quality (CEQ) when environmental impacts of an action proposed by a federal agency would have adverse consequences for the Band or its trust resources.

Section 1002 **Reviewing and Commenting on EAs and EISs.**

- a. **Band Should Make Independent Comments and Consult Government-to-Government.** The President's Council on Environmental Quality (CEQ) regulations for the National Environmental Policy Act (NEPA) (40 CFR §1503) require that the lead federal agency for a NEPA EIS obtain comments from federal agencies with jurisdiction by law or special expertise, and request comments from affected tribes and appropriate state and local agencies. Since the Band has jurisdiction by law and special expertise in matters affecting the Band and Fond du Lac Reservation, federal agencies frequently need to request comments from the Band on their (the federal agencies') EISs for compliance with the National Environmental Policy Act (NEPA). In such cases, the Band should comment. Note that other federal agencies often request that the Bureau of Indian Affairs (BIA) also comment on proposals that impact trust lands administered by BIA. In those cases, BIA may comment, but such comments must be provided to the Department of the Interior's Office of Environmental Policy and Compliance (OEPC) who prepares and submits comments on EISs on behalf of the entire Department of the Interior. In doing so, OEPC must also consider comments from the other bureaus within the Department of the Interior who may have views not entirely consistent with the Band or BIA. Thus, it is always better for the Band to not depend on BIA or the Department of the Interior to make comments on the Band's behalf. Rather, the Band should provide its own comments on NEPA documents directly to the proposing federal agency using government-to-government consultation. The Band may also consider acting as a cooperating agency in the federal agency's NEPA process. The Band can also consult with BIA and OEPC directly and try to influence their comments, but the Band should not rely solely on BIA and OEPC to represent the Band's position.

- b. **Early and Often Involvement in NEPA Process.** The best way for the Band to influence the decision-making of a federal agency is to become involved early in that federal agency's NEPA process. It is far more effective to participate in scoping and/or become a cooperating agency than to wait until the DEIS is written and then submit comments. Also, the Band can establish working relationships with federal agencies wherein the Band becomes routinely consulted on proposed actions that may affect the Band and its trust resources.

Section 1003 **Pre-decision Referrals to CEQ.**

The President's Council on Environmental Quality's (CEQ) regulations (40 CFR §1504) establish a procedure through which, following the filing of a final NEPA EIS, but prior to a decision based thereon, a federal agency which objects to the proposed action on environmental grounds may refer the matter to CEQ. In such

situations, CEQ may take a range of actions including submitting the matter to the President. The Band may ask the Environmental Protection Agency (EPA) to consider accomplishing such a referral. There is nothing in the CEQ regulations that authorizes the Band to accomplish the referral directly, but there is also nothing in the CEQ regulations that prohibits the Band from referring a final EIS to EPA.

1. Basis for Referral. Pre-decision referral may be triggered by controversy over the material facts in an EIS, or by the likelihood that the proposed action will violate environmental requirements or policies (40 CFR §1504.3(c)(2)(i and ii), such as the federal trust responsibility to manage and conserve trust resources for beneficial use by Indian tribes.
2. Timing and Process. Except where the lead agency has granted an extension, referral of another agency's action must be done within 25 days of the filing of the federal NEPA FEIS with EPA. EPA must, therefore, be contacted without delay when a referral to CEQ appears warranted. In consulting with EPA, the Fond du Lac Resource Management Division (RMD) should be prepared to discuss their position regarding the information needed for a referral at 40 CFR §1504.3(a) - (c), and the Band's significant issues with the federal agency's EIS.

Section 1004 Pre-decision Referral of Major Federal Actions by Other Federal Agencies.

Consider the case where a federal agency is conducting NEPA/TEPO compliance procedures with the Band for a proposed concurrent major federal action. If a dispute develops with another federal agency(s) and notifies the first agency of its intent to refer the NEPA document to CEQ, then the Band should consider requesting government-to-government consultation with both federal agencies to ensure that they understand the Band's position on the issue and the relative priority of their trust responsibility to the Band over and above each agency's needs. With those ground rules in place, the Band and agencies may be able to resolve the issue(s) that triggered the intent to refer the action to CEQ.

Section 1005 Post-Decision Referrals to EPA.

Pursuant to Section 309 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to refer to CEQ any major federal action that the Administrator of EPA believes to be unsatisfactory from the standpoint of public health, welfare, or environmental quality. If at any phase of the federal agency's proposed action it becomes apparent that an unacceptable environmental impact is expected or is occurring on the Fond du Lac Reservation, the Band may request that EPA initiate action under Section 309. This action would be subject to demonstration by the Band that the impact is not in compliance with Fond du Lac Band Ordinances, resolutions, IRMP or otherwise inconsistent or unsatisfactory.

CERTIFICATION

We do hereby certify that the foregoing ordinance #05/10 was duly presented and adopted by Resolution #1343/10 by a vote of 4 for, 0 against, 0 silent, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on September 21, 2010 on the Fond du Lac Reservation; and subsequently amended as follows: by Resolution #1078/13 on March 6, 2013.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer

Appendix A

Exception Checklist for Band Categorical Exclusions



**Fond du Lac Band
Of Lake Superior Chippewa**
1720 Big Lake Road
Cloquet, MN 55720

IN REPLY REFER TO:
FDL Resource Management
Division

EXCEPTION CHECKLIST FOR CATEGORICAL EXCLUSIONS

Project: _____ Date: _____

Nature of Proposed Action:

Exclusion Category and Number:

Evaluation of Exceptions to use of Categorical Exclusion:

1. This action would have significant adverse effects on public health or safety. No _____ Yes _____
2. This action would have an adverse effect on unique geographical features, such as wetlands, wild & scenic rivers, refuges, flood plains, rivers placed on nationwide river inventory, or prime or unique farmlands. No _____ Yes _____
3. This action would have highly controversial environmental effects. No _____ Yes _____
4. This action would have highly uncertain environmental effects or involve unique or unknown environmental risks. No _____ Yes _____
5. This action will establish a precedent for future actions. No _____ Yes _____
6. This action is related to other actions with individually insignificant, but cumulatively significant environmental effects. No _____ Yes _____
7. This action will affect properties listed or eligible for listing in the National Register of Historic Places. No _____ Yes _____
8. This action will affect a species listed, or proposed to be listed as endangered or threatened. No _____ Yes _____
9. This action threatens to violate federal, tribal, state, or local law or requirements imposed for protection of the environment. No _____ Yes _____

10. This action will have a disproportionately high and adverse effect on low income or minority populations. No _____ Yes _____
11. This action will limit access to, and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners, or significantly adversely affect the physical integrity of such sacred sites. No _____ Yes _____
12. This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction, growth, or expansion of the range of such species. No _____ Yes _____

A "yes" to any of the above exceptions will require that an EA be prepared.

NEPA Action -- Categorical Exclusion _____ Environmental Assessment _____

Preparer's Name and Title: _____

Approval: _____ Date _____

Director, Fond du Lac Resources Management Division

Fond du Lac Tribal Historic Preservation Officer
 concurrence with item 7 _____

Regional Archeologist concurrence with item 7 _____

Concur: _____ Date _____

Regional Director/Superintendent

Concur: _____ Date _____

Regional Environmental Coordinator

Appendix B

Sample of a FONSI

**Fond du Lac Band
Of Lake Superior Chippewa
1720 Big Lake Road
Cloquet, MN 55720**

Finding of No Significant Impact

Pima Freeway (Loop 101) Project
Salt River Pima-Maricopa Indian Community

Based on the attached Environmental Assessment (EA) for the Pima Freeway (Loop 101) project for a proposal to grant an easement for a 183 acre right-of-way for the development of a two-lane, three mile freeway across the Salt River Pima-Maricopa Indian Community lands in Maricopa County, Arizona, I have determined that by implementation of the agency proposed action and environmental mitigation measures as specified in the EA, the proposed Pima Freeway (Loop 101) will have no significant impact on the quality of the human environment. In accordance with Section 102 (2) (c) of the National Environmental Policy Act of 1969, as amended, an Environmental Impact Statement will not be required.

This determination is supported by the following findings:

1. Agency and public involvement was conducted and environmental issues related to development of Pima Freeway (Loop 101) were identified. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues.
2. Chapter 4 of the Environmental Assessment (EA) discloses the environmental consequences of the proposed action and three potentially viable alternatives, which include the "no action" alternative.
3. Protective measures will be levied to protect air, noise and water quality, as outlined in Chapter 5 of the Environmental Assessment on Mitigation Measures.
4. The proposed action is planned not to jeopardize threatened and endangered species. See EA Chapter 4, Section E.
5. Chapter 4 describes that there are no adverse effects on historic properties for the purpose of 36 CFR Part 800.9 (b) by preserving archeological value through conduct of appropriate research in accordance with applicable standards and guidelines. Should undiscovered archeological remains be encountered during project ground-disturbing activities, work will stop in the area of discovery and the stipulations 36 CFR 800.11 be followed.
6. Impacts to public health and safety are mitigated through implementation of safety measures described in EA Chapter 5, Section A (6) on mitigation.
7. Impacts to floodplains affected by the proposed alternative have been evaluated in accordance with E.O. 11988. A wetland area would be affected, however, mitigation has been established in the form of a land exchange to compensate for the loss of habitat. See EA Chapter 4, Section A (4), Section LB (2) and Section C (6).

Fond du Lac Band of Lake Superior Chippewa

Reservation Business Committee

RESOLUTION # 1343/10

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



Chairwoman
Karen R. Diver

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. I Representative
Wally Dupuis

Dist. II Representative
Sandra M. Shabiash

Dist. III Representative
Mary S. Northrup

Executive Director,
Tribal Programs
Chuck Walt

ADOPTION OF A TRIBAL ENVIRONMENTAL POLICY ORDINANCE

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

WHEREAS, the Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854, 10 Stat. 1109, as the perpetual home of the Fond du Lac Band of Lake Superior Chippewa, which possesses the inherent jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the Governing Body of the Fond du Lac Band, under the Indian Reorganization Act, 25 U.S.C. §461 et seq., and in accordance with the Indian Self-Determination Act, 25 U.S.C. § 450 et seq., to assume responsibilities of self-government; and

WHEREAS, the Fond du Lac Reservation Business Committee has demonstrated its commitment to protect, preserve and enhance the human environment of the Band homeland through the adoption of the Fond du Lac Integrated Resource Management Plan, the Fond du Lac Land Use Ordinance, the Water Quality Standards Ordinance, and the Wetland Protection and Management Ordinance; and

WHEREAS, Band decision makers require quality information to help them fully recognize environmental impacts to the Reservation when major Band actions are considered; and

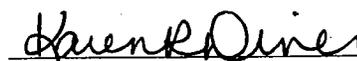
WHEREAS, compliance with the Fond du Lac Tribal Environmental Policy Ordinance will ensure that environmental issues are fully considered prior to the implementation of major Band actions; and

WHEREAS, the Reservation Business Committee has received and reviewed the proposed Fond du Lac Tribal Environmental Policy Ordinance;

NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee hereby enacts FDL Ordinance #05/10, the "Fond du Lac Tribal Environmental Policy Ordinance" to provide additional environmental protections for lands within the Band's jurisdiction.

CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and enacted upon by a vote of 2 for, 0 against, 0 silent, with a quorum of 3 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on September 21, 2010, on the Fond du Lac Reservation.



Karen R. Diver
Chairwoman

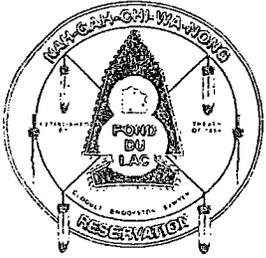


Ferdinand Martineau, Jr.
Secretary/Treasurer

Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee

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

RESOLUTION #1078/13



AMENDING FOND DU LAC ORDINANCE #05/10, TRIBAL ENVIRONMENTAL POLICY ORDINANCE

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

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

WHEREAS, on September 21, 2010, the Reservation Business Committee enacted FDL Ordinance #05/10, entitled "Tribal Environmental Policy", to govern environmental compliance review; and

WHEREAS, the Reservation Business Committee has determined that it is in the best interests of the Fond du Lac Band to amend the ordinance in order to provide for categorical exclusions of certain residential leases and land assignments by amending Section 603 as follows:

Section 603 Categorical Exclusion List.

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

Chairwoman
Karen R. Diver

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. I Representative
Wally Dupuis

Dist. II Representative
David Tiessen, Jr.

Dist. III Representative
Kevin R. Dupuis, Sr.

Executive Director,
Tribal Programs
Chuck Walt

Executive Director,
Tribal Enterprises
Michael Himango

then a TEPO EA or EIS should be accomplished following the process in Section 502.

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

a. Operation, Maintenance, and Replacement of Existing Facilities. Examples are normal renovation of existing buildings, road maintenance and limited rehabilitation of irrigation structures.

...
m. Residential Leases and Land Assignments. Approvals of leases, land assignments, or easements for single family homesites and associated improvements, including, but not limited to, construction of homes, outbuildings, access roads, and utility lines, which encompass five acres or less of contiguous lands, provided that such sites and associated improvements do not adversely affect any tribal cultural resources or historic properties and are in compliance with applicable federal and tribal laws. Home construction may include up to four dwelling units, whether in a single building or up to four separate buildings.

m.n. Other.

1. Data gathering activities such as inventories, soil and range surveys, wetland delineation, timber cruising, geological, geophysical, archeological, paleontological and cadastral surveys.
2. Establishment of non-disturbance (less than significant effect) environmental quality monitoring programs, shallow monitoring wells and field monitoring stations including testing services.

3. Band actions where there is concurrent federal action and the action is categorically excluded for that federal agency.

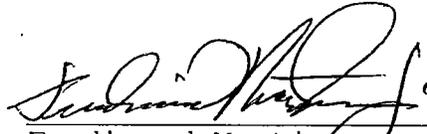
NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee does hereby adopt the above amendments to the Tribal Environmental Policy ordinance, to become effective immediately, and further directs said amendments be incorporated into FDL Ordinance #05/10.

CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 4 for, 0 against, 0 silent, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on March 6, 2013, on the Fond du Lac Reservation.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer