

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #07/12

MA' IINGAN PROTECTION

Adopted by Resolution #1351/12 of the Fond du Lac Reservation
Business Committee on October 31, 2012.

TABLE OF CONTENTS

CHAPTER 1 INTRODUCTION AND AUTHORITY 1

CHAPTER 2 DEFINITIONS 4

CHAPTER 3 PROHIBITED ACTS 6

CHAPTER 4 ENFORCEMENT AND PENALTIES 7

CHAPTER 5 EFFECTIVE DATE, AMENDMENTS, SEVERABILITY 9

CERTIFICATION 9

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #07/12

MA' IINGAN PROTECTION

CHAPTER 1
INTRODUCTION AND AUTHORITY

Section 101 **Authority**

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

Section 102 **Findings**

The Reservation Business Committee finds and declares that

- (a) The Anishinabe and Ma'iingan (wolf) are brothers who have shared a special relationship since the Creation;
- (b) The Ma'iingan has been a teacher and companion to the Anishinabe from time immemorial;
- (c) The survival and well-being of the Ma'iingan and Anishinabe are inextricably bound;
- (d) In the modern era, the recovery of the Ma'iingan has coincided with the revitalization of the Anishinabe;
- (e) The Ma'iingan is an integral part of the Circle of Life and the ecosystem of the Fond du Lac Reservation, and must be respected as such;
- (f) Because of the serious threats to the continued existence of the Ma'iingan, the federal government listed the Ma'iingan as an endangered species on the first list of species protected by the federal Endangered Species Act of 1973.
- (g) Over the past decade, as the federal government began considering removing the Ma'iingan from the endangered species list, the federal government expressly recognized the cultural significance and traditional value of Ma'iingan to tribes,

including the Fond du Lac Band of Lake Superior Chippewa, 76 Fed. Register 81666, 81713-15 (December 28, 2011). The federal government further stated that following delisting, management of Ma'iingan would be returned to not only the states but also the tribes, *id.* at 81681, 81682, recognizing "the unique status of the federally recognized tribes, their right to self-governance, and their inherent sovereign powers over their members and territory," and expressing the federal government's commitment "to ensure that tribal authority and sovereignty within reservation boundaries are respected." *Id.* at 81684, 81715. The federal government made the same commitments throughout the course of its evaluation of possible delisting of Ma'iingan. See, e.g., 68 Fed. Register 15804, 15838-15839 (April 1, 2003).

- (i) As the federal government considered removing Ma'iingan from the endangered species list, Minnesota provided the federal government with Minnesota's Wolf Management Plan. In that plan, Minnesota advised the federal government that the State recognized that "wolves have always played a prominent role in Native American culture and spirituality" and "were revered by Native Americans." Minnesota Wolf Management Plan at 14 (Feb. 2001). Minnesota further recognized tribal sovereign authority and tribal interests in regulating natural resources within the Reservation stating that "on reservation lands, tribal conservation codes may supercede state laws," and expressed its commitment to consult with tribes on a government-to-government basis regarding wolf management issues. *Id.* at 18.
- (j) Following the removal of the Ma'iingan from the endangered species list by the United States on January 27, 2012, and without consultation with the Fond du Lac Band, the State of Minnesota has unilaterally implemented a wolf hunting and trapping season for the Fall of 2012, including non-Indian fee lands within the Fond du Lac Reservation;
- (k) The Fond du Lac Band has not independently determined that the Ma'iingan has reached optimum recovery on or near the Fond du Lac Reservation; and
- (l) The Fond du Lac Band retains its inherent authority, as affirmed under federal common law, to protect those interests which affect the Band's health, welfare, economic security, and political integrity on all lands within the Reservation.

Section 103 Purpose

The purpose of this Ordinance is to provide a program for the protection of Ma'iingan on the Reseration.

Section 104 Reservation of Rights

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

CHAPTER 2
DEFINITIONS

Section 201 **Definitions**

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

- (a) **"Allotted land"** means land or interests in land the title to which is held, for any individual Indian, in trust by the United States or is subject to restriction against alienation imposed by the United States.
- (b) **"Band"** means the Fond du Lac Band of Lake Superior Chippewa.
- (c) **"Band lands"** means, for the purposes of this Ordinance, land within the Reservation that is:
 - (1) Trust land held for the benefit of the Band or its members;
 - (2) Trust land held for the benefit of the Minnesota Chippewa Tribe or its members;
 - (3) Allotted land;
 - (4) Lands held in fee by the Band or any subdivision of the Band.

For the purposes of this Ordinance, the term "Band lands" does not include public roads for which there is a duly recorded right of way.

- (d) **"Ma'iingan"** means gray wolf.
- (e) **"Person"** means an individual, corporation, partnership, trust, association, or other public or private entity.
- (f) **"Reservation"** means the Fond du Lac Indian Reservation.
- (g) **"Reservation Business Committee"** means the duly elected governing body of the Band.
- (h) **"Take"** means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

- (i) **"Tribal Court"** means the Fond du Lac Band of Lake Superior Chippewa Tribal Court.
- (j) **"Trust land"** means land held in trust by the United States for the benefit of an Indian tribe or its members.

CHAPTER 3
PROHIBITED ACTS

Section 301 Taking and Possession of Ma'iingan

Except as provided in Section 302 of this Ordinance, it is unlawful for any person subject to the jurisdiction of the Band to--

- (a) Take Ma'iingan on Band lands; or
- (b) Possess, sell, deliver, carry, transport, or ship on Band lands, by any means whatsoever, Ma'iingan taken in violation of paragraph (a).

Section 302 Exceptions

- (a) Self-Defense; Defense of Others; Defense of Domestic Animals and Livestock. A person does not violate the provisions of this Ordinance if it can be shown by a preponderance of the evidence that the person committed an act based on a good faith belief that he was acting to protect himself or herself, any other person, domestic animals, or livestock from bodily harm.
- (b) Incidental Taking. A person does not violate the provisions of this Ordinance if it can be shown by a preponderance of the evidence that a taking otherwise prohibited is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.
- (c) Resource Management Division Employees. Conservation Officers and other employees of the Fond du Lac Band of Lake Superior Chippewa Resource Management Division do not violate the provisions of this Ordinance if, in the course of their duties, they act for the purpose of conservation, research, the protection of property, or the protection of the public.

CHAPTER 4
ENFORCEMENT AND PENALTIES

Section 401 Enforcement

The provisions of this Ordinance shall be enforced by Fond du Lac Band of Lake Superior Chippewa Conservation Officers.

Section 402 Citations

Conservation Officers may issue Tribal Court citations to any person if there is probable cause to believe the person has violated Section 301.

Section 403 Searches

- (a) Conservation Officers may enter, open, and search, on Band lands, any motor vehicle or trailer attached thereto, if there is probable cause to believe that Ma'iingan taken or possessed in violation of Section 301 will be found.
- (b) Conservation Officers may as necessary establish check stations on public roads on Band lands to enforce compliance with this Ordinance.

Section 404 Seizure

Conservation Officers have the authority to seize and impound property on Band lands when they have reasonable suspicion to believe that such property has been used in a violation of Section 301. Officers shall prepare an inventory of items seized and furnish a copy to the violator.

Section 405 Search Warrants

The Tribal Court may, upon proper oath and affirmation showing probable cause, issue such search warrants for locations on Band lands as may be required for enforcement of this Ordinance.

Section 406 Tribal Court Proceedings

Any person receiving a citation for a violation of Section 301 shall be entitled to a hearing in Tribal Court. The Tribal Court proceedings shall be governed by Civil Code of the Fond du Lac Band of Lake Superior Chippewa, FDL Ordinance #04/92.

Section 407 Civil Penalties

If, after adjudication in Tribal Court, a person is found to have violated Section 301, the Tribal Court may impose a fine of up to \$1000 per violation and may order the forfeiture of property used in the violation.

CHAPTER 5
EFFECTIVE DATE; AMENDMENTS; SEVERABILITY

Section 501 Effective Date

The provisions of this Ordinance shall become effective immediately upon adoption by the Reservation Business Committee.

Section 502 Amendment or Recission

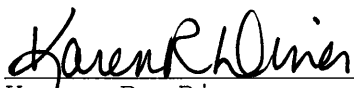
The Reservation Business Committee may amend this Ordinance as it deems necessary to protect the public health, safety and welfare of the Fond du Lac Reservation. The provisions of this Ordinance may be amended by resolution of the Reservation Business Committee.

Section 503 Severability

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

CERTIFICATION

We do hereby certify that the foregoing Ordinance #07/12 was duly presented and adopted by Resolution #1351/12 by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on October 31, 2012, on the Fond du Lac Reservation.



Karen R. Diver
Chairwoman



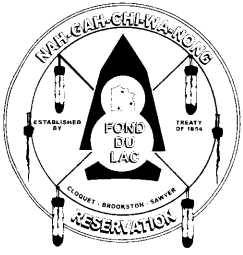
Ferdinand Martineau, Jr.
Secretary/Treasurer

Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee

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

Resolution #1351/12

ENACTING FOND DU LAC ORDINANCE #07/12, MA'IINGAN PROTECTION



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

Chairwoman
Karen R. Diver

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. I Representative
Wally Dupuis

Dist. II Representative
Sandra M. Shabiash

Dist. III Representative
Kevin R. Dupuis Sr.

Executive Director,
Tribal Programs
Chuck Walt

Executive Director,
Enterprises
Michael Himango

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

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

WHEREAS, the Reservation Business Committee has determined that it is necessary and in the best interests of the Band to develop a program for the protection of Ma'iingan on the Reservation;


NOW THEREFORE BE IT RESOLVED, that the Reservation Business Committee hereby enacts Fond du Lac Ordinance #07/12, entitled "Ma'iingan Protection", which shall be effective immediately.

CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on October 31, 2012, on the Fond du Lac Reservation.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer