

**CHAPTER 37 - LAND USE**

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## CHAPTER 37: LAND USE

**37.1 SECTION 1: TITLE.** This Chapter shall be known as the Land Use Ordinance of the Red Cliff Band of Lake Superior Chippewa.

**37.2 SECTION 2: PURPOSE.** This Chapter is for the purpose of controlling land use within the Red Cliff Reservation boundaries for the protection of the health, safety and welfare of the people who live within the Reservation. Its aim is to encourage the most appropriate use of the land, the protection of the Reservation's economic and social stability, the promotion of orderly development on the Reservation, and the preservation of natural areas.

**37.3 SECTION 3: ORGANIZATION.**

**37.3.1 Planning Board.** The Tribe herein establishes a Planning Board which shall have the powers and duties prescribed in Section 4 of this Chapter. The board shall be composed of five members, who shall be appointed by majority vote of the Tribal Council.

**37.3.2 Zoning Administrator.** The Tribe hereby establishes the position of Zoning Administrator who shall be nominated by the Chairperson of the Tribal Council and approved by majority vote of the members of the Tribal Council, and may be removed by a majority vote of the Tribal Council.  
(Revised 12-02-03)

**37.3.3 PAC Team.** The Tribe hereby establishes the PAC Team through approval of the PAC Policies and Procedures by the Tribal Council. The PAC Team will review land use activities defined in Appendix 1 of the PAC prior to approval by the Tribal Council.

**37.4 SECTION 4: DUTIES.**

**37.4.1 Planning Board.** The Planning Board shall have the following powers and duties:

- (a) have custody of the Official Red Cliff Reservation Zoning District Map; and
- (b) have the power to approve petitions for Special Permits and to hear and decide appeals from denial of Land Use Permits in accordance with Section 8 and 9 of this Chapter, provided that such approval shall require the affirmative vote of at least three disinterested Board members and the permit has already been reviewed by the PAC Team and approved by the Tribal Council.
- (c) have the power by majority vote to adopt such rules and regulations

governing the conduct of hearings before the Board as it deems necessary; provided, however, that all meetings and votes of the Board and all hearings it conducts, shall be open to the public; and further provided that written minutes of all such meetings and hearings shall be available to the public.

37.4.2 Zoning Administrator. The Zoning Administrator shall have the following powers and duties:

- (a) To investigate violations, give notice thereof, and recommend prosecution in cases where violations remain uncorrected.
- (b) After permit review by the PAC Team is forwarded and subsequently approved by the Tribal Council, the Zoning Administrator shall issue Land Use Permits required by Section 8 of this Chapter.
- (c) The Zoning Administrator may make recommendations to the Planning Board or the Tribal Council concerning appeals from the denial of Land Use Permits or concerning applications for Special Permits after the permit has been vetted by the PAC process, including prior decision by Tribal Council.

**37.5 SECTION 5: TRIBAL ZONING MAP.**

37.5.1 Effect. For the purpose of this chapter, the Reservation s divided into the following zoning districts: Residential-1, Residential-2, Residential-3, Residential-4, Commercial, Agricultural, Forestry, Preserved, Municipal/Institutional and Recreational. The zoning district into which each parcel of land in the Reservation is placed shall be determined by reference to the Official Red Cliff Reservation Zoning District Map, which shall consist of one or more maps adopted by the Tribal Council and in custody of the Planning Board.

37.5.2 Public Examination. The Official Red Cliff Reservation Zoning District Map, or the exact copy thereof, in custody of the Planning Board, shall be available for examination by any member of the public at all reasonable times.

37.5.3 Amendment. The Official Red Cliff Reservation Zoning District Map may be amended through review by the PAC Team and approval by the Tribal Council.

**37.6 SECTION 6: PERMITTED USES.** In the zoning districts established by Section 5 of this Chapter, the following purposes are permitted:

37.6.1 Residential Permitted Uses. Within a Residential zone, no building or land shall be used except for the following uses:

- (1) Residential purposes or accessory to a residential use.
- (2) No farming or raising livestock may be carried on in a Residential district, but this restriction shall not apply to gardening. A Special Permit shall be required for any small animal husbandry for home use in a Residential district.

### 37.6.2 Residential Zones.

**R-1 Residential-1 (dark red).** The Residential-1 zone is intended to provide an area which will allow residential development on smaller lots (.5 to 1.5 acres) and that are served by municipal water and sewer within those areas of Reservation most suited for such development.

**R-2 Residential-2 (light red).** The Residential-2 zone is intended to provide an area which will allow residential development on larger lots (1.23 acre minimum and larger) in wooded settings that are not served by municipal water and sewer within those areas of the Reservation most suited for such development.

**R-3 Residential-3 (striped red).** The Residential-3 zone is intended to provide an area which will allow residential development within a mobile home park served by municipal water and sewer within those areas of Reservation most suited for such development. Small animal husbandry is not permitted in Residential-3 zone.

**R-4 Residential-4 (red dotted).** The Residential-4 zone is intended to provide an area which will allow residential development for apartments and multi-unit housing served by municipal water and sewer within those areas of Reservation most suited for such development. Small animal husbandry is not permitted in the Residential-4 zone.

### 37.6.3 Commercial. (yellow)

(a) Purpose. The Commercial zone is intended to provide an open commercial zone for commercial and light industrial activity from gas stations and supermarkets to warehousing and light manufacturing.

(b) Permitted Uses. Permitted uses include, but are not limited to: grocery stores, general retail and specialty shops, laundromats, cafes, entertainment facilities, inns, lodges and rooming houses, light auto repair, boat repair and construction, fish processing and merchandising, and arts and crafts. All proposed commercial and light industrial activities shall require review, approval and issuance of a Land Use Permit and Business Permit.

(c) Auto Salvage-Scrap Yards. The purpose of this section is to assure that any business of this type will use the utmost care in protecting the environment. The permit application must show:

- (1) A fence 15 feet high around the site so as to obstruct the view from the roadway or a screening barrier of evergreen vegetation;
- (2) A bermed wall four feet high within the perimeter of the fence;
- (3) A poly mat with a clay liner;
- (4) A control system for water runoff;
- (5) Fluid collection and short term storage capability for vehicles entering the yard;
- (6) A minimum site size of two acres;
- (7) Storage areas for batteries, and storage system protection tires from rain; and
- (8) Adequate assurances that all mercury switches will be removed and properly disposed of.

#### 37.6.4 Agriculture. (brown)

(a) Purpose. The Agriculture zone is intended to provide a zone which will allow areas of the Reservation to be retained in a lower population density for purposes of farming and raising livestock and crops.

(b) Permitted Uses. Within the Agriculture zone, no building or land shall be used except for one or more of the following uses: single family residence, farming, raising livestock and crops, and structure accessory to an agriculture permitted use. A Special Permit shall be required to construct any new single family dwelling in an Agriculture district.

(c) Size Requirement. The minimum size for agriculture purposes shall be ten (10) contiguous acres.

#### 37.6.5 Forestry. (green)

(a) Purpose. The Forestry zone is intended to allow forestry management and its related activities.

(b) Permitted Uses. In the Forestry zone, no uses or structures shall be permitted unless for forestry uses as described in the Integrated Resource Management Plan.

#### 37.6.6 Preserved. (orange)

(a) Purpose. The Preserved zone is intended to retain the natural and cultural environment.

(b) Permitted Uses. In the Preserved zone, the following uses shall be permitted: hiking,

wildlife viewing, scenic viewing, activities of cultural significance, spiritual ceremonies and quiet enjoyment by tribal members.

37.6.7 Municipal/Institutional. (gray)

(a) Purpose. The Municipal/Institutional zone is intended to provide areas for Tribal Government and non-profit organization buildings and facilities.

(b) Permitted Uses. Within the Municipal/Institutional zone, permitted uses include, but are not limited to: governmental buildings, police and fire stations, health care facilities, schools, libraries, child care facilities, community centers, museums, churches and cemeteries.

37.6.8 Recreational. (blue)

(a) Purpose. The Recreational zone is intended to provide areas for Tribally-owned and other publically-owned land and facilities used for recreational activities.

(b) Permitted Uses. Permitted uses include, but not limited to: Parks, picnic areas, boat launches and docks, marinas, ball fields, recreational trails, campgrounds, and other recreational facilities.

37.6.9 Home-Based Business.

(a) A Home-Based Business is defined as a business conducted out of a residential dwelling unit.

(b) A Home-Based Business shall require a Special Permit and shall occupy not more than twenty-five percent (25%) of the residential floor space or seventy-five percent (75%) of the floor space of an accessory structure.

37.6.10 Setbacks. In all zones, the following rules concerning setbacks from the lake shore shall apply.

(a) Lake Superior. There shall be a 150 foot setback from the ordinary high water mark. All structures and major ground cover disturbances shall be prohibited.

(b) Streams. On all streams a minimum setback of 100 feet is required.

(c) Decks and Building Prohibited. Decks, observation platforms and buildings are expressly prohibited in the shoreline setback area. Docks within the exterior boundaries of the reservation proposed in the shoreline setback area require review by the PAC Team and approval by Tribal Council on a case by case basis.

(d) Greater Setback. In cases of adverse soil to topographical conditions, the Zoning Administrator and/or Planning Board may require greater setbacks. Project review by the PAC Team may also recommend greater setbacks to the Tribal Council before their approval.

### 37.6.11 Signs.

(a) Requirements. No outdoor advertising sign visible to the traveling public may be erected or maintained except as provided in this section.

(b) Number. The number of signs of off premise signs permitted for any one applicant shall be limited to one (1) sign on each highway approach to that applicant's place of business.

(c) Size. On business premises, signs shall not exceed 50 square feet. Off premise signs shall not exceed 100 square feet.

(d) General Requirements.

(1) Flashing, intermittent, or moving lights or moving parts shall not be used with any sign unless for safety purposes.

(2) Signs shall not be placed as to interfere with official traffic signs of driver visibility.

(3) Signs shall not be closer than three (3) feet to a property line or right of way, and shall not extend more than fifteen (15) feet above ground level, or if fastened to a building not higher than the highest part of the building.

(4) No advertising sign shall be designed or erected to seen or read from any navigable water, except signs advertising a specific parcel for sale, or signs indicating the names and services of a business established on that site. Such signs shall be a maximum of twelve (12) square feet and shall be unlighted or indirectly lighted.

(5) All signs, sign faces and supports, shall be maintained in a good state of appearance and repair, as determined by the Zoning Administrator.

(e) Noncompliance. The Zoning Administrator may revoke any permit of order any sign removed for noncompliance with the provisions of this section.

(f) Removal Notice. A time limit on not less than thirty (30) days shall be given prior to the removal of any sign.

(g) Penalty. If a person does not remove a sign, the Zoning Administrator will do so, and

any cost incurred will be charged to the individual.

**37.7 SECTION 7: NON-CONFORMING USES.**

37.7.1 General. At the discretion of the owner and subject to Section 37.7.2 through 37.7.7 of this Section, the use of any parcel of land or any structure which was lawful at the time of adoption of the Official Red Cliff Reservation Zoning District Map may continue after the adoption although such use does not conform with the provisions relating to the zoning district in which the land of structure is situated.

37.7.2 Discontinuance. A non-conforming use existing at the time of adoption of the Official Red Cliff Reservation Zoning District Map may be discontinued; but if it is discontinued for one year or more it shall then be deemed abandoned, and any further use must be in conformity with the use permitted in the zone in which the use exists.

37.7.3 Uncompleted Uses. Any structure intended or designed for a non-conforming use, the construction for which has been started but not completed at the time of adoption of the Official Red Cliff Reservation Zoning District Map, may be completed and put to such non-conforming use, provided it is completed within one year after the adoption of the Map. A Non-conforming use that constitutes an environmental, health or safety hazard shall come into compliance with requirements of this Chapter within 90 days.

37.7.4 Destruction. Any building or structure existing as a non-conforming use under the terms of the Official Red Cliff Reservation Zoning District Map which is destroyed by fire or the elements may be reconstructed and restored as a non-conforming use under 37.7.1, provided the owner secures appropriate permits, and reconstruction or restoration is commenced within 6 months and completed with 18 months of the destruction. Debris from the destroyed structure is required to be removed from the site and properly disposed of within 18 months.

37.7.5 Maintenance. Normal maintenance and repair associated with a non-conforming use is permitted, provided that no enlargement or extension of such a use may be included as part of such maintenance and repair.

37.7.6 Changes. The Planning Board may authorize a change from one non-conforming use to another non-conforming use, provided that the proposed use would be more suitable to the zoning district in which it would be located than the non-conforming use which it would appear.

37.7.7 Expansion. No expansion or enlargement of a non-conforming use is permitted by this Section.

**37.8 SECTION 8: LAND USE PERMITS REQUIRED.**

37.8.1 Applications. Any individual or organization must apply for and receive a Land Use Permit before commencing any construction of a new building or structure, or any alteration of an existing structure which will require more land area than does the existing structure, or any moving or destruction of any structure, or other change in the use of land which may potentially affect traffic patterns, population density, or otherwise impact on the adjoining physical or social environment, within the exterior boundaries of the Reservation. Application for Land Use Permits shall be made to the Zoning Administrator through submittal of a PAC Application and payment of the applicable permit fee(s) in Appendix 5 of the PAC. Completion of Section 1 of the PAC Application shall be accompanied by a statement of the purpose, nature and extent of the proposed construction or alteration. Chapter 12 describes additional land use permits required for activities that involve pollution, dangerous environmental activities, or environmental change.

37.8.2 Issuance. After a PAC Team review and Tribal Council Approval, the Zoning Administrator shall issue a Land Use Permit for the proposed activity if, upon reviewing the application and its accompanying statement, the planned construction or alteration will be in conformity with the requirements of the zoning district in which it will be situated. If the Zoning Administrator is not satisfied that such conformity will result, s/he may either require more information from the applicant or deny the application.

37.8.3 Appeal. In any case where the Zoning Administrator has denied a Land Use Permit under this Section after the permit has already been reviewed by the PAC Team and approved by the Tribal Council, the applicant may appeal the denial to the Planning Board. The Planning Board shall uphold the Zoning Administrator unless, by vote of at least three disinterested members, it decides that the planned activity will be in conformity with the requirements of the zoning district in which it will be situated. The following procedures shall apply in such appeals:

(a) Appeals must be filed in writing within fifteen (15) days after the applicant receives written notice of the Zoning Administrator's decision. Appeals shall be filed in writing with the Zoning Administrator.

(b) Upon receipt of an appeal, the Zoning Administrator shall set a time and place for a hearing before the Planning Board which hearing shall be held within thirty (30) days after its filing. Notice of the time and place shall be mailed at least ten (10) days before the hearing to the applicant, and shall be posted in a conspicuous place at the Tribal Administration Office.

(c) At the hearing on an appeal the Planning Board shall hear such persons as wish to be heard and shall take minutes of the meeting.

(d) After a hearing on an appeal the Planning Board shall make its decision on the appeal and shall within fifteen (15) days serve a copy of its decision on the appellant and forward

a copy to the Tribal Council.

**37.9 SECTION 9: SPECIAL PERMITS.**

37.9.1 General. The Planning Board shall have the power to grant Special Permits for uses which otherwise would not be permitted under this Chapter. However, the Planning Board shall not grant a Special Permit unless they find the following facts:

(a) That there are special circumstances or conditions affecting the land, building, or use referred to in the application for the variance; and

(b) That granting the Special Permit will not be materially detrimental to the public welfare or injurious to property on the area adjacent to the property for which the variance is sought; and

(c) That granting the Special Permit will maintain the spirit and intent of this chapter, and will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

(d) That the PAC Team has already reviewed the application for a Special Permit.

37.9.2 Conditions. The Planning Board, in granting a Special Permit, may impose conditions to insure compliance and to protect adjacent property. Such condition may include but shall not be limited to a limited duration; periodic review of the Special Permit and conditions; and restrictions upon the operation or the use for which the Special Permit is issued. An application for a Special Permit must first be reviewed by the PAC Team and approved by the Tribal Council before the Planning Board can decide to review and place conditions onto the Special Permit. Conditions placed on a Special Permit by the Planning Board should be in reference to zoning or planning and not in reference to matters reviewed by the PAC Team, i.e. cultural/historic preservation, environment, natural resources, water resources, water and sewer, or realty/land lease/land recovery matters.

37.9.3 Applications. An application for a Special Permit shall be made through submittal of a PAC Application and shall be filed with the Zoning Administrator together with a fee as designated in Appendix 5 of the PAC Application. Upon receipt of an application for a Special Permit the procedures set forth in Section 37.8.3(b) through (d) shall apply.

37.9.4 Resubmission. No application for a Special Permit which has been denied wholly or in part shall be resubmitted for a period of six (6) months from the date of the order of denial, except on the grounds of new evidence or proof of change of conditions found to be valid by the Planning Board.

37.9.5 Transferability. The Planning Board may order that a Special Permit may be transferable,

non-transferable, or transferable only upon a specific showing of fact; however, if the Board's order does not specifically refer to transferability, the Special Permit shall be non-transferable.

**37.10 SECTION 10: TRIBAL COUNCIL REVIEW.**

The Tribal Council may review and revise or reverse any decision of the Planning Board.

In reviewing such decisions the Tribal Council may conduct such hearings in such manner as it may deem advisable, and shall prescribe what notice, if any, shall be given of such hearings; provided, however, that the Council shall conduct any review within sixty (60) days after receipt by it of the notice of appeal and the decision of the Planning Board.

**37.11 SECTION 11: COMPUTATION OF TIME.**

In computing time periods throughout this Chapter, "days" shall mean calendar days, unless another definition is specifically set forth in a particular section.

**37.12 SECTION 12: ENFORCEMENT AUTHORITY.**

The Tribal Prosecutor and the Tribal Attorney shall have the authority to prosecute violations of this Chapter.