

TRIBAL CODE
CHAPTER 96
ROAD ACCESS PERMITTING ORDINANCE

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TRIBAL CODE

CHAPTER ---

ROAD ACCESS PERMITTING ORDINANCE

Article 1. Findings, Intent, and Policy

Section 1.1 Findings. The Tribal Council of the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin, the governing body of the Tribe, (the “Tribal Council”) finds as follows:

a. In the mid-1900s, the United States issued right-of-way easements over numerous Access Roads. Many of the right-of-way easements were issued to the Town of Lac du Flambeau or deeded to the Town of Lac du Flambeau by the original recipients.

b. Following the expiration of many of the right-of-way easements, the Town of Lac du Flambeau continued to represent to the public that it owned and operated the pertinent Access Roads. Consequently, those Access Roads continued to be used as public roads without valid right-of-way easements.

c. The Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (the “Tribe”) sustained significant economic loss because of the public’s continued use of the pertinent Access Roads without just compensation for valid right-of-way easements. Further, the Tribe was forced to engage in complicated negotiations and litigation to resolve disputes over access to the pertinent Access Roads without valid right-of-way easements and the Tribe’s sovereign and economic interests over the Access Roads.

d. The Tribal Council has authority to regulate and place conditions on the use of the Tribe’s property under various tribal law, including Article VI of its Constitution.

e. The Tribal Council finds that it is in the Tribe’s best interests to adopt a permitting system for allowing access to Access Roads, while preserving for the Tribe a clear and expeditious means to enforce its rights to regulate and place conditions on the use of Access Roads and to receive just compensation for that use.

Section 1.2 Purpose. The purpose of this Chapter is as follows:

- a. Affirm the Tribe’s sovereign and economic interests in the Access Roads.
- b. Provide for access of Access Roads under terms and conditions that are fair and reasonable.
- c. Establish clear limitations on the access of Access Roads.
- d. Establish procedures to implement the purposes listed in this Section 1.2.

Article 2: Definitions and Construction

Section 2.1 Definitions. The following terms when used in this Chapter shall have the meanings assigned to them below:

- a. “Access Roads” means those roads that traverse lands that are owned by the Tribe or by the United States of America as trustee for the Tribe.
- b. “BIA” means the United States Bureau of Indian Affairs.
- c. “Department” has the meaning given to it in Section 3.1.
- d. “Director” means the Director of the Department.
- e. “Industry” means economic activity concerned with the processing of raw materials and manufacture of goods in factories.
- f. “Permit” means a written, non-assignable agreement between the Tribe and a permittee, whereby the permittee is granted a temporary, revocable privilege to use Access Roads for specified purposes.
- g. “Reservation” means all land within the boundaries set out pursuant to the Treaty with the Chippewa, 10 Stat. 1109 (1854), as those boundaries may change from time to time.
- h. “Towns” means any and all towns that have a geographic boundary that overlaps all or any part of the Reservation and that are political subdivisions of the State of Wisconsin.
- i. “Tribal Council” has the meaning given in Section 1.1.
- j. “Tribe” has the meaning given in Section 1.1.

Section 2.2 Construction. The definitions of the terms listed in Section 2.1 shall apply equally to the singular and the plural forms of their respective defined terms. The words “include”, “includes”, and “including” shall be deemed to be followed by the phrase “without limitations”. All references Articles and Sections shall be construed to refer to Articles and Sections of this Chapter.

Article 3. Implementing Authority

Section 3.1 Delegation of Authority; Responsibility. The Land Management Department (the “Department”) is hereby authorized and directed to implement this Chapter.

Section 3.2 Reporting. The Department will provide the Tribal Council with an annual report regarding matters pertinent to this Chapter, including violations of this Chapter or Permits issued under this Chapter, volume of use of Access Roads, and maintenance issues on Access Roads.

Article 4. Prohibited Conduct

Section 4.1 Access Prohibited. It shall be unlawful for any person, other than a member of the Tribe, to use or access an Access Road without the existence of a Permit issued for that Access Road under Article 5.

Section 4.2 Conditions of Use. It shall be unlawful for any person, other than a member of the Tribe, to use or access an Access Road in violation of any provision in this Chapter of a Permit authorizing use or access to the Access Road.

Article 5. Permit Application; Issuance

Section 5.1 Qualifications. Only a Town may receive a Permit. A Town may only apply for a Permit for access to Access Roads within its boundaries.

Section 5.2 Application Contents.

- a. An application for a Permit must include the following information:
 - i. The legal name of the Town.
 - ii. The name and title of the officer or employee completing the Permit application on behalf of the Town.
 - iii. The Access Roads to which the Permit would apply.
 - iv. The proposed effective date for the Permit.
 - v. An acknowledgment of understanding of the provisions of this Chapter.
 - vi. A statement under oath that the contents of the Permit application are true and correct.
 - vii. A notarized signature of the officer or employee completing the Permit application.
- b. An application must be accompanied by:
 - i. A duly adopted and valid resolution authorizing the Town to apply for and receive a Permit for the Access Roads specified in the Permit application and authorizing the officer or employee identified in the application under Section 5.2(b) to complete and submit the application on behalf of the Town.
 - ii. A Land Use Application under Chapter 62.
 - iv. A \$100 application fee for processing.

c. An application must be submitted at least 60 days before the proposed effective date of a Permit.

Section 5.3 Department Review. Within 30 days of an application submission, the Department will review and approve or disapprove the application and mail its decision to the Town within 3 business days of its decision. If the Department approves a Permit application or Permit renewal application, the decision will be accompanied by a Permit executed by the Department for the Town to execute and return to the Department. If the Department disapproves a Permit application or Permit renewal application, the decision will specify the reasons for the disapproval and notify the Town of its right to request review by the Tribal Council under Section 5.4.

Section 5.4 Tribal Council Review. If the Department disapproves a Permit application, the Town may request review by the Tribal Council by delivering a notice to the Department and the Tribal Council within 30 days of the Department's decision. The notice shall be accompanied by a copy of the original application and submission materials, excluding the \$-- application fee. Within 30 days of receipt of the notice, the Tribal Council will review anew and approve or disapprove the application and mail its decision to the Town within 3 business days of its decision. The decision of the Tribal Council is final.

Section 5.5 BIA Review. When a Town returns a fully executed Permit to the Department, the Department will submit the same to the BIA for its review and records. A Permit will not be valid unless and until the BIA approves it or it is deemed approved by the BIA's inaction.

Section 5.6 Permit Fee. 1.5% of the state assessed fair market value amount as published by each annual property tax bill issued to property owners who utilize an Access Road to access their fee simple lands.

Section 5.7 Issuance. A Permit shall be effective on the latter of the proposed effective date in the Permit application or approval or deemed approval by the BIA under Section 5.5 and the Town's remittance of the Permit fee under Section 5.6.

Article 6. Permits; Conditions

Section 6.1 Permit Term.

- a. A Permit may have a term of up to one year.
- b. The Department may revoke a Permit at any time for any reason or without reason. If the Department revokes a Permit without reason, then it shall reimburse the Town a pro rata amount for the remaining portion of the Permit term. If the Department revokes a Permit under Section 7.3, then it shall retain the entirety of the Permit fee.

Section 6.2 Access and Use of Specified Access Roads Authorized. A Permit shall authorize access and access to Access Roads that are specified in the Permit.

Section 6.3 Permitted Uses.

a. A Permit may only authorize access and access to Access Roads for the following purposes:

- i. Ingress and egress to a residential property, including home offices;
- ii. Delivery of goods to residential property; and
- iii. Governmental services.

Section 6.4 Road Maintenance. A Town is responsible for all maintenance of Access Roads for which it has a Permit, including repair, snow removal, and debris removal.

Section 6.5 Assignability. A Town may not assign a Permit.

Article 7. Remedies

Section 7.1 Remedies Generally. The remedies and procedures remedies under Chapter --- shall apply to violations of Section 5.1 and 5.2.

Section 7.2 Permit Revision; Revocation. When an Access Road is used in violation of Section 5.2 and the violation is substantial or ongoing, the Department may revise the applicable Permit to remove the Access Road. When substantial or ongoing violations under Section 5.2 are pervasive within a Town, the Department may revoke the Town's Permit. The Department must give the applicable Town 30-days' notice of its intention to act under this Section, during which time the Town may assist the Tribe with remedying the violation.

Section 7.3 Tribal Council Review. If the Department decides to revise or revoke a Permit under Section 7.2, the Town may request review by the Tribal Council by delivering a notice to the Department and the Tribal Council within 30 days of the Department's decision. The notice shall be accompanied by an explanation of the Town's efforts to remedy the applicable violation(s). Within 30 days of receipt of the notice, the Tribal Council will uphold or vacate the Department's decision and mail its decision to the Town within 3 business days of its decision. The decision of the Tribal Council is final. Before and during the pendency of review under this Section, the revised Permit shall be in effect.

Article 8. Miscellaneous

Section 8.1 Sovereign Immunity. Nothing in this Chapter shall be construed as a waiver of the Tribe's sovereign immunity.

Section 8.2 Severability. If a provision of this Chapter is deemed invalid, such provision will be invalid only to the extent of such invalidity without invalidating the remainder of such provision or the remaining provisions of this Chapter.