

CHAPTER 25 – RIGHTS OF WAY, SERVICE LINES AND TRESPASS

(12-19-17)

RIGHTS OF WAY AND SERVICE LINES

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CHAPTER 25 – RIGHTS OF WAY, SERVICE LINES AND TRESPASS
(12-19-17)
RIGHTS OF WAY AND SERVICE LINES

25.1 SECTION 1: AUTHORITY AND PURPOSE

25.1.1 PURPOSE. The purposes of this Ordinance are;

- (a) To take advantage of opportunities for greater self-determination presented by the BIA’s 2016 revision of right-of-way regulations;
- (b) To strengthen Tribal sovereignty and increase Tribal control over Tribal lands and resources; and
- (c) To provide rules governing eligibility the issuance of rights-of-way and service line permits over Tribal Lands.

25.1.2 AUTHORITY. The Tribal Council enacts this Ordinance pursuant to its authority under Art. VI, Sections 1(c), (e), (g), (i) and (m) and Article VIII, Section 12 of the Tribe’s Constitution.

25.1.3 EFFECTIVE DATE. This Ordinance shall take effect upon approval by the Tribal Council and shall have retroactive effect in accordance with its provisions.

25.1.4 SCOPE. This ordinance governs right-of-ways and service line agreements over Tribal Lands. **(8-21-18)**

25.1.5 APPLICABLE LAW. This ordinance and other laws of the Tribe shall govern all matters arising under this ordinance to the extent not preempted by federal law. In the absence of applicable Tribal or federal law, the Court may apply common law principles in interpreting any matter arising under this ordinance. The Court shall remit or modify any damages, assessments or penalties prescribed by this Chapter, as may be necessary to assure compliance with the Indian Civil Rights Act and the requirements of Due Process. **(8-20-19C)**

25.1.6 SOVEREIGN IMMUNITY. The Tribe, by adoption of this Ordinance, does not waive its sovereign immunity in any respect.

25.2 SECTION 2: DEFINITIONS

The following terms, wherever used or referred to in this Ordinance, shall have the following meanings, unless a different meaning clearly appears from the context:

- 25.2.1** “Administrator” means the administrator of the Tribe’s Treaty Natural Resources Division, or person to whom the Administrator has delegated his or her duties under this ordinance.
- 25.2.2** “BIA” means the Bureau of Indian Affairs.
- 25.2.3** “Chairperson” means the person elected to that position pursuant to Art. III, Section 3 of the Tribe’s Constitution. The Vice-Chair may act for the Chairperson as provided in the Constitution.
- 25.2.4** “Court” means the judicial branch of the Tribe’s government.
- 25.2.5** "Effect" means a material and demonstrable impact on the environment on or near Tribal Land. Effects include (a) direct effects, which are caused by the action and occur at the same time and place and (b) 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. 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 agency believes that the effect will be beneficial.
- 25.2.6** “Enforcement Officer” means a Tribal Law Enforcement Officer or other agent of the Tribe authorized to carry out evictions under this ordinance.
- 25.2.7** “Improvements” refer to permanent structures affixed to the land. Improvements do not include mobile homes and other movable personal property.
- 25.2.8** “Land Specialist” means tribal official whose duties are described at Section 18.4.1.B of the Tribe’s Land Lease Regulations.
- 25.2.9** “LTRO” means the Land Titles and Records Office of the BIA.
- 25.2.10** “Member” means an enrolled member of the Tribe.
- 25.2.11** “Mitigate” or “Mitigation” means action or non-action to diminish the environmental impact of an activity and may include (a) avoiding the impact altogether by not taking a certain action or parts of an action, (b)

minimizing impacts by limiting the degree or magnitude of the action and its implementation, (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action and (e) compensating for the impact by replacing or providing substitute resources or environments.

- 25.2.12** “Natural Resources Department” means the Tribe’s Treaty Natural Resources Department.
- 25.2.13** “Occupancy Right” means the right to enter and occupy or use Tribal Land pursuant to this ordinance.
- 25.2.14** “Public,” used as a noun, means Members of the Tribe and other persons or entities upon whom a Lease-related activity may reasonably be expected to have a particular and material impact.
- 25.2.15** “Public Interest” means the interest of the Tribe’s current and future Members, including strengthening Tribal sovereignty, preserving and promoting Tribal culture and traditions, safeguarding Tribal air, water and other natural resources and developing and assisting the Tribe’s public and private sector economy, all as determined by the Tribal Council.
- 25.2.16** “RCCL” means the Red Cliff Band of Lake Superior Chippewas Code of laws.
- 25.2.17** “Reservation” shall have the meaning set forth in RCCL Chapter 2.
- 25.2.18** “Right-of-Way Agreement” means the authorization and agreement for right of way prescribed by 25 C.F.R. § 169.107, or successor regulation, constituting Tribal consent for the BIA’s grant of a Right-of-Way over Tribal Land.
- 25.2.19** “Right-of-Way” means an easement or a legal right to go over or across Tribal Land for a specific purpose, including but not limited to building and operating a line or road. Right-of-way does not include Service Lines.
- 25.2.20** “Secretary” means the Secretary of the Interior of the United States or his or her designee.
- 25.2.21** “Service Line” means a line that branches off from facilities for which a Right-of-Way must be obtained. A service line is a utility line running from a main line, transmission line, or distribution line that is used only for supplying telephone, water, electricity, gas, internet service, or other

utility service to a house, business, or other structure. In the case of a power line, a service line is limited to a voltage of 14.5 kv or less, or a voltage of 34.5 kv or less if serving irrigation pumps and commercial and industrial uses.

25.2.22 “Service Line Agreement” means the agreement between the Tribe and a service provider required by 25 C.F.R. Part 169, Subpart B, pursuant to which a service provider may install a Service Line over Tribal Land to provide services to the owners or authorized occupants or users of land.

25.2.23 “Tribe” means the Red Cliff Band of Lake Superior Chippewa Indians

25.2.24 “Tribal Attorney” means the Tribe’s chief legal officer.

25.2.25 “Tribal Council” means the Tribe’s governing body.

25.2.26 “Tribal Entity” means (i) the Tribe’s designated housing entity for purposes of the Native American Housing Assistance and Self-Determination Act, 25 U.S.C. 4101 et seq., (ii) a for-profit entity owned and controlled, directly or indirectly, by the Tribe, (iii) a nonprofit entity controlled, directly or indirectly, by the Tribe, (iv) an entity formed by the Tribe for the purpose of developing, financing and operating an energy production or distribution facility, or (v) an entity formed for the purpose of developing, financing and/or operating Housing for Public Purposes. For purposes of this definition, “control” means appointment of board members, “directly” means by the Tribe government and “indirectly” means by an entity that is ultimately owned and controlled by the Tribal government.

25.2.27 “Tribal Environmental Laws” means Tribal laws, regulations and procedures relating to the environment, including, but not limited to RCCL Chapter 11 (Logging, Burning, and Woodcutting), RCCL Chapter 12 (Pollution and Environmental Protection), RCCL Chapter 20 (Historic Preservation), RCCL chapter 37 (Land Use) and other Tribal laws relating to air, water, land, including drainage, significant and rare animal and plant species, and historic, traditional, or cultural properties.

25.2.28 “Tribal Land” means any tract, or interest therein, in which the surface estate is owned in whole or part by the Tribe in fee simple status within the Reservation or in trust or restricted status, including the surface estate of lands held by the United States in trust for a Member or for a corporation chartered by the Tribe under section 17 of the Indian Reorganization Act, 25 U.S.C. §§ 461 et seq.

25.2.29 “Trust land” means any tract, or interest therein, held in trust status. Trust status means the United States holds title to the tract or interest in trust for the benefit of the Tribe or a Member.

25.3 **SECTION 3: ADMINISTRATION**

25.3.1 Tribal Council. The Tribal Council shall:

- (a) Approve all realty-related interests authorized by this ordinance, as evidenced by the signature of the Chairperson on all such documents; and
- (b) Adopt rules, policies, forms, and procedures, consistent with this Ordinance, governing the issuance of Rights-of-Way and Service Line Agreements consistent with this ordinance.

25.3.2 Land Specialist. The Land Specialist shall:

- (a) Provide information to interested persons or entities regarding the process for obtaining a Right-of-Way and make available to such persons forms of Rights-of-Way and Service Line Agreements that conform with the requirements of this ordinance;
- (b) Process applications for Rights-of-Way and Service Line Agreements for submission to the Tribal Council for final approval;
- (c) Facilitate the approval and recording of documents by the BIA to the extent required by federal law;
- (d) Maintain an inventory of Tribal Lands and develop and maintain a land records system for the filing and recording of documents that affect interests in Tribal Land;
- (e) Serve as the custodian of Tribal Lands for those lands designated by the Tribal Council;
- (f) Record all Rights-of-Way and Service Line Agreements under a land records system approved by the Tribal Council; and
- (g) Perform such additional duties as may be necessary in order to fulfill the purposes of this ordinance.

25.3.3 Treaty Natural Resources Administrator. The Administrator shall:

- (a) Perform the environmental reviews and other environmental functions required under section 25.14.8; and
- (b) Adopt policies and procedures, including time lines, and forms for the purposes of carrying out his her duties under this ordinance.

25.3.4 Tribal Attorney. The Tribal Attorney shall:

- (a) Perform the legal reviews and other legal functions required by this ordinance; and
- (b) Adopt policies and procedures, including time lines, and forms for the purposes of carrying out his her duties under this ordinance.

25.4 **SECTION 4: RIGHTS OF WAY**

25.4.1 Definitions. Terms not defined in this ordinance shall have the meanings set forth at 25 C.F.R. Part 169.

25.4.2 Application. An applicant for Right-of-Way Agreement shall submit to the Land Specialist a complete application, including:

- (a) The applicant's name and address;
- (b) The purpose of the Right-of-Way and a statement describing the Public Interest(s) it serves;
- (c) The requested duration of the Right-of-Way;
- (d) The permanent Improvements associated with the Right-of-Way and the proposed responsibility for constructing, operating, maintaining, and managing permanent Improvements and how the applicant proposes to meet the due diligence requirements prescribed at 25 C.F.R. § 169.105;
- (e) The proposed ownership and disposition of Improvements upon termination of the Right-of-Way;
- (f) An accurate legal description of the Right-of-Way, its boundaries, and parcels associated with the Right-of-Way;
- (g) A map of definite location of the Right-of-Way;

- (h) Bonds, insurance, and/or other security meeting the requirements of section 25.5 and federal regulations;
- (i) If the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a Tribal Entity, information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:
 - (1) The representative has authority to execute the application;
 - (2) The Right-of-Way will be enforceable against the applicant; and
 - (3) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;
- (j) Environmental and archaeological reports, surveys, and site assessments, as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements.

25.5 SECTION 5: APPLICATIONS RELATING TO UNAUTHORIZED FACILITIES.

25.5.1 An applicant who owns, operates, licenses or otherwise benefits from, unauthorized existing facilities on Tribal Land, or any applicant who is the successor-in-interest of such owner, operator, licensee or beneficiary, shall include in the application a notarized statement describing:

- (a) The date and the circumstances under which the facilities were placed on Tribal Lands,
- (b) Whether the facilities whether the siting of the facilities on Tribal Lands was approved;
- (c) If the siting of the facilities on Tribal Lands was previously approved, when that approval ended, and;
- (d) Copies of any documentation related to the above matters.

25.5.2 No Right-of-Way application shall be considered complete for an applicant described under section 25.5.1 unless the applicant first pays to the Tribe an amount not less than \$0.50 multiplied by the length (in

feet) of the unauthorized line or road, multiplied by the number of years, or fraction thereof, that facility was present without authorization.

25.6 **SECTION 6: BOND REQUIREMENTS.**

25.6.1 Unless the Tribe determines that the best interests of the Tribe will be served by waiving the requirement, an applicant must provide bonds, insurance or alternative forms of security in amounts that cover:

- (a) The highest annual rental specified in the grant, unless compensation is a one-time payment made at the time the Right-of-Way is approved;
- (b) The estimated damages resulting from the construction of any Improvements;
- (c) The estimated damages and remediation costs from any potential release of contaminants, explosives, hazardous material or waste;
- (d) The operation and maintenance charges for any land located within an irrigation project;
- (e) The restoration of the premises to their condition at the start of the Right-of-Way or reclamation to some other specified condition if agreed to by the landowners.

25.6.2 The bond or other security must be deposited with and made payable to the Tribe and may not be modified without the approval of the Tribe. Any insurance must identify both the Tribe and the United States as additional insured parties.

25.6.3 The Right-of-Way Agreement will specify the conditions under which the bond, insurance, or security requirements may be adjusted to reflect changing conditions.

25.6.4 The Tribe may require that the surety provide any supporting documents needed to show that the bond, insurance, or alternative form of security will be enforceable, and that the surety will be able to perform the guaranteed obligations.

25.6.5 The bond, insurance, or other security instrument must require the surety to provide notice to the BIA and the Tribe, at least 60 days before canceling a bond, insurance, or other security.

25.6.6 Bonds or alternative security must satisfy the requirements of 25 C.F.R. § 169.103.

25.7 **SECTION 7: DUE DILIGENCE.**

25.7.1 If permanent Improvements are to be constructed, the Right-of-Way Agreement must include due diligence requirements that require the grantee to complete construction of any permanent Improvements within the schedule specified in the Right-of-Way grant or general schedule of construction, and a process for changing the schedule by mutual consent of the parties. If construction does not occur, or is not expected to be completed within the time period specified in the grant, the grantee must provide the Tribe and BIA with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

25.7.2 Failure of the grantee to comply with the due diligence requirements of the grant is a violation of the grant and may lead to termination of the Right-of-Way Agreement.

25.8 **SECTION 8: COMPENSATION.**

25.8.1 Subject to section 25.8.2, the Right-of-Way Agreement shall provide for annual payment of just compensation that is in the Public Interest, as determined by the Tribe, but not less than \$ 0.50 per year in 2017 dollars, adjusted annually in accordance with the consumer price index, multiplied by the length (in feet) of the line or road.

25.8.2 The Tribe may require or permit alternatives to the compensation identified in section 25.8.1 that it deems in the Public Interest, including, but not limited to:

- (a) In-kind consideration;
- (b) Payments based on throughput or percentage of income;
- (c) Payments at specific stages during the life of the Right-of-Way grant, such as fixed annual payments during construction, payments based on income during an operational period; or
- (d) Bonuses.

25.8.3 Payments due under a Right-of-Way Agreement shall be made directly to the Tribe.

25.9 **SECTION 9: MANDATORY PROVISIONS.**

25.9.1 Each Right-of-Way Agreement must address:

- (a) The permissible uses of the Right-of-Way;
- (b) Whether the Right-of-Way may be assigned or mortgaged and the associated consent requirements;
- (c) Ownership of Improvements; and
- (d) The duration of the Right-of-Way and the conditions, if any, for renewal.

25.9.2 Every Right-of-Way Agreement shall include substantially the following provisions:

- (a) The Tribe maintains its existing jurisdiction over the land, activities, and persons within the Right-of-Way and reserves the right to reasonable access to determine grantee's compliance with the terms of the Right-of-Way Agreement or to protect public health and safety;
- (b) The grantee shall not bill, charge or collect from the Tribe, or any Tribal member, any tax, assessment, fee or charge of any kind imposed by the State of Wisconsin or any political subdivision of the State of Wisconsin, relating to goods or services provided under authority of a Right-of-Way granted under this Ordinance;
- (c) The grantee has no right to any of the products or resources of the land, including but not limited to, timber, forage, mineral, and animal resources, unless otherwise provided for in the Right-of-Way Agreement;
- (d) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the Right-of-Way Agreement, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the grantee will contact the

Tribal Historic Preservation Office and the BIA to determine how to proceed and appropriate disposition;

- (e) The grantee must:
- (1) Construct and maintain Improvements within the Right-of-Way in a professional manner consistent with industry standards;
 - (2) Pay promptly all damages and compensation, in addition to bond or alternative form of security prescribed in the Right-of-Way Agreement, determined by the Tribe to be due as a result of the granting, construction, and maintenance of the Right-of-Way;
 - (3) Upon completion of construction, restore the land as nearly as possible to its original condition, to the extent compatible with the purpose for which the Right-of-Way was granted, or reclaim the land if agreed to by the Tribe;
 - (4) Clear and keep clear the land within the Right-of-Way, to the extent compatible with the purpose of the Right-of-Way, and dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project;
 - (5) Comply with all applicable laws and obtain all required permits;
 - (6) Not commit waste;
 - (7) Operate, repair and maintain Improvements consistent with the Right-of-Way grant;
 - (8) Build and maintain necessary and suitable crossings for all roads and trails that intersect the Improvements constructed, maintained, or operated under the Right-of-Way;
 - (9) Upon cancellation or termination of the right-of-way, restore the land to its original condition, to the maximum extent reasonably possible, or reclaim the land if agreed to by the Tribe;

- (10) At all times keep the Tribe informed of the grantee's address;
- (11) Refrain from interfering with the Tribe's use of the land, provided that the Tribe's use of the land is not inconsistent with the Right-of-Way;
- (12) Comply with due diligence requirements imposed by the Right-of-Way Agreement;
- (13) Notify the Tribe and the BIA if it files for bankruptcy or is placed in receivership;
- (14) Hold the United States and the Tribe harmless from any loss, liability, or damages resulting from the applicant's use or occupation of the premises; and
- (15) Indemnify the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the premises that occurs during the term of the grant, regardless of fault, with the exception that the applicant is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct.

25.10 **SECTION 10: ASSIGNMENTS, AMENDMENTS AND MORTGAGES**

25.10.1 Unless otherwise specifically provided in the Right-of-Way Agreement, a Right-of-Way may be assigned, amended or mortgaged only with the approval of the Tribe.

25.11 **SECTION 11: TAXES, FEES AND ASSESSMENTS**

25.11.1 The Tribe reserves the right to impose fees, taxes or assessments in connection with an application for Right-of-Way Agreement or in connection with a grantees use of a Right-of-Way pursuant to a Right-of-Way Agreement. The Tribe may also agree in a particular Right-of-Way Agreement to waive such taxes, fees and assessments.

25.11.2 No tax, assessment, fee or charge of any kind imposed by the State of Wisconsin or any subdivision of the State of Wisconsin shall apply to

goods or services provided under authority of a Right-of-Way granted under this Chapter.

25.12 **SECTION 12: REVIEW AND DECISION**

25.12.1 Initial Land Specialist Review. Within fifteen business days after receipt of a complete application, the Land Specialist shall:

- (a) Deliver a copy of the application packet to the Administrator for review pursuant to section 25.14;
- (b) Prepare a form of Right-of-Way Agreement; and
- (c) Deliver a copy of the application packet to the Tribal Attorney for legal review.

25.12.2 Legal Review. The Tribal Attorney shall review and make any appropriate modifications to the Right-of-Way Agreement and provide the Land Specialist with a written report including the attorney's statement whether the Right-of-Way Agreement complies with this ordinance, including its Public Interest requirements, and any recommendations or concerns.

25.12.3 Environmental Review. The Administrator shall assess the environment impact of a proposed Right-of-Way in accordance with the standards of section 25.14. In the event that a proposed Right-of-Way is not categorically excluded, the Administrator shall perform an environmental review. The Administrator shall report the results of his or her determination to the Land Specialist.

25.12.4 Final Land Specialist Review.

- (a) After receipt of the final environmental review report prepared pursuant to section 25.14.8, the Land Specialist shall determine whether the applicant has satisfied all application requirements of this ordinance. If the Land Specialist identifies deficiencies in the application, the Land Specialist shall so advise the applicant and provide a reasonable period of time for the applicant to cure the deficiencies.
- (b) If the Land Specialist determines that the application meets the requirements of this ordinance, the Land Specialist shall submit the application packet, together with the environmental review report, to the Tribal Council for a final decision whether to approve or disapprove the Right-of-Way Agreement. The application packet submitted to the Tribal Council shall include:

- (1) The proposed Right-of-Way Agreement document(s), together with the Land Specialist's recommendation, if any, whether to approve the Right-of-Way Agreement;
- (2) The application packet to be submitted to the BIA pursuant to 25 C.F.R. § 169.102;
- (3) The Tribal Attorney's statement as to legal compliance and any comments or recommendations;
- (4) The Administrator's environmental review statement, including the recommendations;
- (5) Any documents that the Tribal Council may specifically request; and
- (6) Any other relevant documents.

25.12.5 Tribal Council Decision.

- (a) The Tribal Council shall have the sole authority to approve or disapprove the Right-of-Way Agreement application by resolution based on its judgment whether the benefits of the Right-of-Way Agreement outweigh any identified adverse impacts and whether the Right-of-Way is in the Public Interest.
- (b) Triplicate originals of an approved Right-of-Way Agreement shall be executed by the Chairperson, on behalf of the Tribe, and by the applicant.

25.12.6 Land Specialist's Post Execution Duties. Following the execution of an approved Right-of-Way Agreement by the Chairperson, the Land Specialist shall:

- (a) Provide an original Right-of-Way Agreement to the BIA for recording and return to the Tribe;
- (b) Provide an original or certified copy of the Right-of-Way Agreement to the applicant;
- (c) Preserve original and digital copies of executed Right-of-Way Agreement documents;
- (d) If the BIA grants a Right-of-Way pursuant to the Tribe's Right-of-Way Agreement, obtain and record a copy of the approved Right-of-Way; and

- (e) Monitor the grantee's compliance with the Right-of-Way.

25.13 **SECTION 13: SERVICE LINE AGREEMENTS**

25.13.1 Requirement. Before a utility provider may begin any work to construct Service Lines across Tribal Land, the utility provider must enter into a Service Line Agreement in accordance with this Chapter and federal regulations set forth at 25 C.F.R. Part 169, Subpart B or successor regulations of the BIA.

25.13.2 Application. A service provider shall submit to the Land Specialist a proposed Service Line Agreement, including:

- (a) Applicant's name, address, phone number, email address;
- (b) Services the provider will supply;
- (c) Name, addresses and contact information for the persons or buildings to be served; and
- (d) Proposed Mitigation of any damages incurred during construction and the restoration of the premises at the termination of the agreement, if appropriate.

25.13.3 If the service provider does not provide a proposed Service Line Agreement, the Land Specialist may prepare a form of Service Line Agreement.

25.13.4 Land Specialist Review. After receipt of an application for Service Line Agreement, the Land Specialist shall:

- (a) Determine whether to require a survey or, alternatively, to identify the relevant premises by means of a legal description, survey-grade positioning system or other description prepared by a registered land surveyor sufficient to describe the premises.
- (b) Unless a categorical exclusion applies, deliver a copy of the application packet to the Administrator for review pursuant to section 25.13.5;
- (c) Deliver a copy of the application packet to the Tribal Attorney for legal review.

- 25.13.5** Legal Review. The Tribal Attorney shall review the proposed Service Line Agreement and provide the Land Specialist with the attorney’s recommendations or concerns, if any.
- 25.13.6** Environmental Review. The Administrator shall assess the environment impact of a proposed Service Line Agreement in accordance with the standards of section 25.14. In the event that a proposed Right-of-Way is not categorically excluded, the Administrator shall perform an environmental review. The Administrator shall report the results of his or her determination to the Land Specialist.
- 25.13.7** Final Land Specialist Review.
- (a) Within fifteen business days after receipt of the final environmental review report prepared pursuant to section 25.14.8, the Land Specialist shall determine whether the applicant has satisfied all requirements of this Chapter. If the Land Specialist identifies deficiencies in the application, the Land Specialist shall so advise the applicant and provide a reasonable period of time for the applicant to cure the deficiencies.
- (b) If the Land Specialist determines that the application meets the requirements of this Chapter, the Land Specialist shall submit the application packet, together with the environmental review report, to the Tribal Council for a final decision whether to approve or disapprove the Service Line Agreement. The application packet submitted to the Tribal Council shall include:
- (1) The proposed Service Line Agreement, together with the Land Specialist’s recommendation, if any, whether to approve the Service Line Agreement;
- (2) The Tribal Attorney’s statement as to legal compliance and any comments or recommendations;
- (3) The Administrator’s review statement, including the recommendations, if any;
- (4) Any documents that the Tribal Council may specifically request; and
- (5) Any other relevant documents.
- 25.13.8** Tribal Council Decision.

- (a) The Tribal Council shall have the sole authority to approve or disapprove a Service Line Agreement based on its judgment whether the benefits of the agreement outweigh any identified adverse impacts and whether the agreement is in the Public Interest.
- (b) Triplicate originals of an approved Service Line Agreement shall be executed by the Chairperson, on behalf of the Tribe, and by the service provider.

25.13.9 Land Specialist’s Post Execution Duties. Following the execution of an approved Service Line Agreements by the Chairperson, the Land Specialist shall:

- (a) Provide an executed copy of the Service Line Agreement together with a plat or diagram, to the BIA within 30 days after the date of execution for recording in the LTRO. The plat or diagram;
 - (1) Must show the boundary of the ownership parcel and point of connection of the Service Line with the distribution line; and
 - (2) Include the signatures of the parties if the plat is on a sheet separate from the Service Line Agreement.
- (b) Provide an original or certified copy of the Service Line Agreement to the applicant;
- (c) Preserve original and digital copies of the executed Service Line Agreement; and
- (d) Assure proper recording in accordance with this ordinance.

25.14 **SECTION 14: ENVIRONMENTAL REVIEW**

25.14.1 Draft Environmental Review Statement. Except in the case of categorical exclusions, the Administrator shall prepare a draft environmental review statement in connection with each proposed Right-of-Way or service line agreement, which statement shall include:

- (a) A statement of the purposes for which the right-of-way or Service Line Agreement is sought;
- (b) A description of the physical environmental conditions in the vicinity of the property affected;

- (c) A description of all significant short-term and long-term effects, including specific identification of any significant effect that cannot be avoided and any significant effect that would be irreversible if the application were approved;
- (d) Recommendations, where appropriate, of conditions that should be placed on the applicant's activity to mitigate detrimental effects and statements of whether the conditions are needed to avoid significant detrimental effects;
- (e) The officer's determination whether the proposed activity will create significant detrimental effects after the inclusion of the recommended Mitigation measures; and
- (f) In the event of a finding of no significant detrimental effects, the Administrator's reasons for such finding.

25.14.2

In determining whether an effect is significant, the Administrator shall consider both local and broader impacts of the proposed activity and the intensity of the activity, taking into account:

- (a) The potential impact on public health or safety;
- (b) The potential impact on sites that are sacred or of cultural significance to the Tribe;
- (c) The potential impact on sites used by Tribal Members for hunting, fishing, gathering, religious activities or recreation;
- (d) The 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;
- (e) Whether the proposed activity is related to other actions with individually insignificant but cumulatively significant impacts;
- (f) The potential impact on sites, 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, archeological, cultural, or historical resources;
- (g) The potential impact on endangered or threatened species or their habitat that has been determined to be critical under Tribe law or under the federal Endangered Species Act;

- (h) Whether the action may violate federal or Tribal Environmental Laws;
- (i) The potential impact on air quality;
- (j) The potential impact on water resources, including surface and ground water, water quality, water quantity, water uses and rights, floodplains and/or wetlands;
- (k) The potential impact on biological resources, including wildlife, vegetation, ecosystems and biological communities;
- (l) The potential impact on visual resources, scenic views, and wilderness values;
- (m) Potential generation of excessive noise, vibrations, light, or glare; and
- (n) Potential impact on transportation networks.

25.14.3

The Administrator may adopt as a Tribal environmental review statement an environmental review prepared in accordance with the National Environmental Policy Act by another agency, entity, or person, provided that;

- (a) The Administrator supplements such environment review with an evaluation of effects under Tribal Environmental Laws; and
- (b) The public comment and response requirements of this Section are substantially complied with.

25.14.4

Categorical Exclusions. Except as provided in section 25.14.6, the approval of the following categories are excluded from the environmental review requirement:

- (a) There is an earlier environmental review statement and finding of no significant impact prepared not more than twenty-four months earlier for a substantially identical lease-related activity on the same site.
- (b) Single family home sites, including up to four dwelling units in a single or separate buildings, and associated Improvements, including, but not limited to, construction of homes, outbuildings, access roads, and utility lines, provided (i) the activity encompasses five acres or less of contiguous lands and (ii) 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.

- (c) Rooftop solar energy facilities;
- (d) Up to two acres for ground-mounted solar facilities that do not involve removal of a substantial number of healthy trees that are mature or scenic;
- (e) Operation, repair, maintenance or minor alteration of existing structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of entering into the propose agreement, e.g., (i) alterations of interior partitions, plumbing, electrical conveyances, or gutters; (ii) restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment; (iii) demolition and removal of small structures; and (iv) minor repairs;
- (f) Replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same size, purpose and capacity as the structure replaced;
- (g) Construction of a limited number of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the construction or placement of minor accessory (appurtenant) structures such as small above-ground utility facilities shelters, on-premises signs, small parking lots, and fences;
- (h) Minor alterations in the condition of land and/or vegetation which do not involve removal of a substantial number of healthy trees that are mature or scenic, such as (i) grading on land with a slope of less than 10%, (ii) landscaping installation and maintenance, (iii) filling of earth into previously excavated land with material compatible with the natural features of the site, and (iv) minor trenching and backfilling where the surface is restored;
- (i) Minor additions to existing buildings or other structures where the addition does not increase the original size by more than 25%;
- (j) Cleanup actions taken under the supervision of the Tribe to prevent, minimize, stabilize, mitigate, or eliminate the release or

threat of release of an existing hazardous waste or substance;
and

- (k) Activity that does not involve changes in the use of land;
- (l) 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 NEPA analysis covering the same or similar impacts in the right-of-way area;
- (m) Service line agreements to individual residences, buildings or wells 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; and
- (n) Renewals, assignments and conversions of existing rights-of-way or service lines where there would be essentially no change in use and continuation would not lead to environmental degradation.

25.14.5 The Land Specialist and the Administrator must concur, in writing, that a proposed Right-of-Way or Service Line Agreement qualifies for a categorical exclusion.

25.14.6 Exceptions to Exclusions.

- (a) Notwithstanding the categorical exclusions listed in section 25.14.4, the Administrator shall prepare an environmental review statement if he or she has reason to believe that approval of the proposed Right-of-Way or service Line would adversely impact the interests addressed under Section 25.14.2.
- (b) Notwithstanding the categorical exclusions listed in section 25.14.4, the Tribal Council may, at its discretion, direct that an environmental review statement be prepared.

25.14.7 Public Notice and Comment.

- (a) A notice of availability of the draft environmental review statement shall be published in a manner calculated to reach the Public, including:

- (1) Posting it on the Tribe's website for 15 days; and
 - (2) Posting a hard copy at the Tribe's government offices and at other locations where public notices are posted for 15 days.
- (b) The notice of availability shall state that:
- (1) A Right-of-Way Agreement or Service Line Agreement is under consideration for approval pursuant to this Ordinance;
 - (2) A copy of the draft environmental review statement is available for review by any member of the Public at a named place during specified hours; and
 - (3) Any Member of the Public may, within 15 days after publication of the notice, make comments, by email or letter, to the Administrator regarding significant effects a proposed leasing transaction may have on the environment.

25.14.8 Final environmental review statement. After the expiration of the comment period, the Administrator shall:

- (a) Prepare a written response to all relevant and substantive public comments, which response may address similar comments jointly;
- (b) Make such revisions to the draft environmental review statement as may be warranted based on public comments;
- (c) Prepare a final environmental review statement, which shall include the response to comments;
- (d) Post the final environmental review statement on the Tribe's public website; and
- (e) Forward copies of the final environmental review statement to the Land Specialist and the Tribal Attorney.

25.14.9 The Administrator may make a recommendation whether the potential significant detrimental effects of the activity under the proposed Right-of-Way Agreement or Service Line Agreement justify denial of the application.

25.14.10 In cases in which no environmental review statement is required, the Administrator shall provide a report stating the reasons and, in addition, providing the Administrator's comments and recommendations, if any, on the application under consideration.

25.15 **SECTION 15: ENFORCEMENT**

25.15.1 Jurisdiction. The Red Cliff Tribal Court shall have exclusive jurisdiction over actions to enforce this ordinance and actions involving interests created pursuant to this ordinance, provided that this ordinance shall not be deemed a waiver of the Tribe's immunity from suit and the Tribe may not be named as a defendant in any action brought under this ordinance.

25.15.2 Trespass. A person occupying Tribal Land without authorization is subject to immediate removal and the penalties provided in the Tribe's Trespass to Land Ordinance. The Tribe shall have no liability for loss or damage to personal property.

25.15.3 Termination of Occupancy Right. Upon violation of the terms of any Right-of-Way Agreement or Service Line Agreement, and the expiration of any cure period, the Tribe may initiate proceedings to terminate the Occupancy Right of the person in violation by filing a verified complaint, which shall include:

- (a) The name of the person allegedly in violation and each person or entity claiming an interest through such person, as a defendant;
- (b) A concise statement of the facts concerning the alleged default(s) and such other facts as may be necessary to constitute a cause of action;
- (c) True and correct copies of the document by which the Occupancy Rights were conferred, and any related note, mortgage, or other recorded real property security instrument, and any assignment of any of these documents; and
- (d) Any applicable allegations concerning compliance with any relevant requirements and conditions prescribed in (i) federal statutes and regulations, (ii) Tribal codes, ordinance and regulations, and/or (iii) provisions of the document by which the Occupancy Right was conferred.

25.15.4 A copy of the summons and complaint shall be served on all defendants in accordance with Tribal law.

- 25.15.5** An action to terminate an Occupancy Right shall be heard and decided in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the complaint on the defendants. If the plaintiff establishes grounds to terminate the Occupancy Right, the Court shall enter judgment, which shall include, as appropriate:
- (a) Declaration of the plaintiff's right to recover the premises;
 - (b) Termination of the defendant's right of occupancy;
 - (c) A writ of restitution directing one or more Enforcement Officers to immediately remove the defendant(s) and all other occupants, and their personal property, from Tribal Land they have occupied unlawfully or pursuant to the terminated Right-of-Way Agreement or Service Line Agreement; and/or
 - (d) Monetary damages, which may include damages to the Tribal Land, the revenues derived from the unlawful occupancy and liquidated damages of \$1,000 per day.

25.15.6 Emergency Expedited Hearing. In the event that activities or conditions on Tribal Land pose a threat to the health, safety or welfare of the community, the Tribe or other party with a legal interest in the property may initiate termination proceedings without regard to otherwise applicable procedural requirements. In such event, the Court shall expedite termination proceedings and the Court shall order such interim or permanent relief as may be necessary, including, if warranted, removal of the defendant from the premises or immediate cessation of activities or alleviation of conditions.

25.15.7 BIA Enforcement. In addition to the Tribal remedies described in this Section, the BIA may, at its discretion and upon reasonable notice from the Tribe, enforce or cancel any Right-of-Way Agreement or Service Line Agreement.

25.16 **SECTION 16: TRESPASS**

25.16.1 Findings. The Tribal Council finds that:

- (a) The Band possesses the inherent sovereign power to exclude unauthorized persons and entities from its lands.
- (b) The adoption of a trespass to land ordinance will strengthen Band sovereignty.

- 25.16.2** Purposes. The purposes of this ordinance are to strengthen Band sovereignty and protect its right to exclude unauthorized persons from the tribal lands.
- 25.16.3** Authority. The Tribal Council enacts this Ordinance pursuant to its inherent sovereign authority and its authority under Art. VI, Sections 1(i), and (p) of the Tribe’s Constitution.
- 25.17** **SECTION 17: DEFINITIONS**
As used in this Chapter unless otherwise defined:
- 25.17.1** “Band” means the Red Cliff Band of Lake Superior Chippewa Indians.
- 25.17.2** “Motor Vehicle” means any self-propelled vehicle where propulsion is provided by an engine or motor including but not limited to Cars, Trucks, ATV’s, Snowmobiles, Boats and Motorcycles.
- 25.17.3** “Parcel” means a tract of Tribal land as described in a deed or other instrument recorded with the Bureau of Indian Affairs or Bayfield County, Wisconsin.
- 25.17.4** “Person” includes a natural individual, partnership, corporation, association, other legal or fiduciary entity, and a public entity.
- 25.17.5** “Posted” means exhibiting signs which read “PROPERTY RESTRICTED”; “NO TRESPASSING” “KEEP OUT”; or similar signs.
- 25.17.6** “Special Event” means an event that is open to the public for a specified duration of time.
- 25.17.7** “Trespass” means unlawful entry onto another's property.
- 25.17.8** “Tribal Court” means the Red Cliff Band of Lake Superior Chippewa court.
- 25.17.9** “Tribal Land” means land in which the Tribe has legal interest, including, but not limited to, land held in trust by the United States for the benefit of the Tribe or jointly for the benefit of the Tribe and others and fee simple land owned, wholly or in part, by the Tribe.
- 25.18** **SECTION 18: CIVIL TRESPASS**
- 25.18.1** A person commits civil trespass who intentionally and without the Tribe’s consent:

- (a) Enters Tribal Land or causes an object or a third person to do so, or
- (b) Remains on Tribal Land, or
- (c) Fails to remove from Tribal Land an object which he or she is under a duty to remove.

25.18.2 In any action to enforce this ordinance, the defendant shall bear the burden of proof on the issue of consent.

25.18.3 Failure to Remove Object Placed on Tribal Land. A trespass is committed by the continued presence on Tribal Land of a structure, chattel, or other object which the actor or his predecessor in legal interest has placed on the land pursuant to a license or other privilege

- (a) With the consent of the Tribe if the actor fails to remove it after the consent has been effectively terminated, or
- (b) Pursuant to a privilege conferred on the actor irrespective of the Tribe's consent, if the actor fails to remove it after the privilege has been terminated by the accomplishment of its purpose or otherwise.

25.18.4 Separate Acts of Trespass. A separate violation of this ordinance is committed with respect to each parcel of land on which a trespass is committed under sections 25.18.1 and 25.18.3 and each day on which a trespass occurs. (8-20-19C)

25.18.5 Remedies. The following remedies are cumulative and apply separately to each act of trespass:

- (a) Ejectment
 - (1) A trespasser shall be subject to immediate ejectment, at the trespasser's expense.
 - (2) In lieu of ejectment, the Tribe, at its discretion, may order the trespasser to apply for a lease or right-of-way, as applicable.
- (b) Accounting
 - (1) The Tribe shall be entitled to an accounting of rents, profits and any avoided costs derived from the trespassed property.

- (c) Damages and Penalties. For each act of trespass the Tribe shall be entitled to the greater of:
 - (1) An amount equal to:
 - (i) Rents, profits and any avoided costs derived from the trespassed property; and
 - (ii) Damages caused to the trespassed property; or
 - (2) The penalty determined by the Tribal Court, which shall be not less than \$100 and no more than \$5,000 for each day that a trespass occurs or occurred, based on the size, scope, and impact of the trespass, and whether the trespasser knew or should have known it or its property was or is on Tribal Land ; or
 - (3) Three times the property taxes due for the entire time period of the trespass based on the tax rates under present Tribal law for structures, chattel or other objects on Tribal Land.
- (d) Legal and other costs incurred by the Tribe in enforcing this ordinance. (8-20-19C)

25.19 SECTION 19: DISPOSITION OF PROPERTY ON TRIBAL LAND IN VIOLATION OF ORDINANCE

25.19.1 The Tribe shall have the right to seize, hold and exclude the owner from using property that the Tribe determines has been intentionally placed or left on Tribal Land in violation of this ordinance. At the conclusion of legal proceedings, the Tribe shall:

- (a) In the event of a judgment of no liability, return the property to the defendant as ordered by the court;
- (b) Continue to hold and exclude the defendant from using the property pending the defendant’s payment in full of any fines, damages or costs imposed by the court;
- (c) In the event the defendant fails, within 90 days, to pay in full any fines, damages or costs imposed;
 - (1) Sell the property and credit the proceeds against the judgment; or

- (2) Assume ownership of the property and credit its value, as determined by the court, against the judgment, provided that if the value of the property exceeds the judgment, the Tribe shall pay the excess to the defendant.

25.20 **SECTION 20: FROG BAY TRIBAL NATIONAL PARK AND COMMERCIAL FISHERMANS DOCK**

25.20.1 Any individual, whether a tribal member or member of the general public, who knowingly enters the Frog Bay Tribal National Park by means of a motor vehicle and who is not conducting official business or maintenance activities at the park shall be guilty of trespass.

25.20.2 The Commercial Fisherman’s Dock, pursuant to Chapter 7 section 7.20 of the Red Cliff Code of Laws, shall be for the exclusive use of licensed Red Cliff fishing boats. Any boat that is unauthorized to dock at the Commercial Fisherman’s Dock shall be issued a citation for trespassing.

25.21 **SECTION 21: ENFORCEMENT**

25.21.1 The Tribal Attorney shall enforce this ordinance by initiating a civil complaint in the Tribal Court.

25.21.2 The Red Cliff Tribal Wardens or any Law Enforcement Officer at the time the trespass occurs shall be authorized to issue a citation for trespass and seize any motorized vehicles, equipment and material goods, used in connection with the trespass.

25.21.2 Jurisdiction. The Red Cliff Tribal Court shall have exclusive jurisdiction to enforce this ordinance.