

CHAPTER 47 - POWER OF EMINENT DOMAIN

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CHAPTER 47 -- POWER OF EMINENT DOMAIN

47.1 SECTION 1: AUTHORITY AND PURPOSE

The Red Cliff Band of Lake Superior Chippewa Indians, acting by order of the Red Cliff Tribal Council, pursuant to Article VI sections H, L, and P of the Red Cliff Constitution, may condemn land within the boundaries of the Red Cliff Reservation for public use. The owners of any land condemned under this chapter shall receive just compensation for the land condemned.

47.2 SECTION 2: PROCEDURES FOR CONDEMNATION

- a) All condemnations must be authorized by resolution of the Red Cliff Tribal Council.

- b) The Red Cliff Tribal Council shall post notice of a condemnation proceeding thirty (30) days before the proposed action is to be taken in accordance with applicable posting requirements as stated in Chapter 27 of the Red Cliff Code of Laws and Resolution number 8/7/95A. The Secretary of the Red Cliff Tribal Council shall send notice of condemnation proceedings to all parties with an interest in the subject property at least thirty (30) calendar days prior to Council action.

- c) All resolutions condemning property shall contain the following information:
 - 1. A statement of the purpose for which the property is being taken, and
 - 2. A certified legal description of the property being taken, and
 - 3. The proposed compensation to be paid for the property being taken.

- d) A certificate of title and an abstract shall be attached to a resolution of condemnation.

47.3 SECTION 3: JURISDICTION OF THE RED CLIFF TRIBAL COURT

The Red Cliff Tribal Court is hereby authorized to hear challenges to any condemnation action in accordance with this chapter of the Red Cliff Code of Laws. The Red Cliff Tribal Court shall have the authority to only determine the following:

- a) Whether the property being condemned is to be used for public purpose, and
- b) Whether the legal description is accurate, and
- c) Whether the compensation for the condemned property is fair and just, and
- d) Whether the division of the compensation, if any, is fair and just.

47.4 SECTION 4: PETITION TO THE RED CLIFF TRIBAL COURT

a) After the Red Cliff Tribal Court has passed a resolution of condemnation, any party with an interest in the land condemned may petition the Red Cliff Tribal Court to determine the following:

- 1) Whether the property being condemned is to be used to public purpose, and
- 2) Whether the legal description is accurate, and
- 3) Whether the compensation for the condemned property is fair and just, and
- 4) Whether the division of the compensation, if any, is fair and just.

b) Any petition regarding a condemnation proceeding must be filed within thirty (30) days of the date the Red Cliff Tribal Council passed a resolution of condemnation.

47.5 SECTION 5: CONTENTS OF PETITION

- a) Any party filing a claim under this chapter shall be the petitioner. The Red Cliff Band of Lake Superior Chippewa or such other party the petition(s) have a claim against shall be the respondent.
- b) The petition shall include a statement of facts and citation to which portion of section 47.3 of this chapter is being violated, and the relief being sought.
- c) The petition shall list the names and addresses of all the parties with an interest in the condemned property.
- d) A copy of the resolution of condemnation shall be attached to the petition.

47.6 SECTION 6: FILING FEE

All parties bringing an action under this Chapter, other than the Red Cliff Band of Lake Superior Chippewa Indians, shall pay a filing fee in accordance with Chapter 4 of this Red Cliff Code of Laws.

47.7 SECTION 7: NOTICE AND SUMMONS

- a) A notice and summons and a copy of the petition shall be sent by regular mail, with notation in the mail log of the mailing, to all parties in this action by the Red Cliff Clerk of Court. The date for the Initial Hearing under this Chapter shall be no later than thirty (30) days after the petition has been filed.
- b) Notice and summons to the Red Cliff Band of Lake Superior Chippewa Indians shall be served upon the Red Cliff Tribal Chairperson and the Red Cliff Tribal Attorney.
- c) Notice and summons to the United States shall be served upon the Superintendent of the Great Lakes Agency of the Bureau of Indian Affairs and the

United States Attorney in the Western District of Wisconsin.

47.8 SECTION 8: UNITED STATES AS A PARTY

The United States is not an indispensable party in any proceeding under this Chapter. The United States, upon timely application, shall have a right to intervene in any proceeding under this Chapter.

47.9 SECTION 9: PROCEDURE

a) There shall be an initial where the Court shall be informed of the issue(s) in dispute. If the issue(s) in dispute cannot be resolved at the initial hearing the Court shall set a date for a trial. Upon hearing all the evidence at the trial the Court shall issue a written decision within fourteen (14) calendar days of the trial.

b) In addition to making a determination as directed in 47.3 of this Chapter, the Court may award reasonable attorney's fees.

47.10 SECTION 10: APPEALS

Any party to this action may appeal the decision in accordance with Chapter 31 of this Red Cliff Code of Laws. Notice of Appeal shall be filed within fifteen (15) working days of the mailing of the verdict.

47.11 SECTION 11: SEVERABILITY

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

CHAPTER 47A -- DECLARATION OF TAKING

47A.1 SECTION 1: FILING AND CONTENT.

In any proceeding in Tribal Court brought by and in the name of the Red Cliff Band of Lake Superior Chippewa Indians and under the authority of the Tribe to acquire land, or an easement or right of way in land, for the public use, the petitioner may file, with the petition or at any time before judgment, a declaration of taking signed by the authority

empowered by law to acquire the land described in the petition, declaring that the land is taken for the use of the Red Cliff Tribe.

The declaration of taking shall contain or have annexed to it:

- (a) a statement of the authority under which, and the public use for which, the land is taken;
- (b) a description of the land taken that is sufficient to identify the land;
- (c) a statement of the estate or interest in the land taken for public use;
- (d) a plan showing the land taken; and
- (e) a statement of the amount of money estimated by the acquiring authority to be just compensation for the land taken.

47A.2 SECTION 2: VESTING OF TITLE.

On filing the declaration of taking and depositing in the court, to the use of the persons entitled to the compensation, the amount of the estimated compensation stated in the declaration:

- (a) title to the estate or interest specified in the declaration vests in the Tribe;
- (b) the land is condemned and taken for the use of the Tribe; and
- (c) the right to just compensation for the land vests in the persons entitled to the compensation.

47A.3 SECTION 3: COMPENSATION.

(a) *Determination and award.* Compensation shall be determined and awarded in the proceeding and established by judgment. The judgment shall include interest, in accordance with 42 U.S.C. sec. 3116, on the amount finally awarded as the value of the property as of the date of taking and shall be awarded from that date to the date of payment. Interest shall not be allowed on as much of the compensation as has been paid into the court. Amounts paid into the court shall not be charged with commissions or poundage.

(b) *Order to pay.* On application of the parties in interest, the court may order that any part of the money deposited in the court be paid immediately for or on account of the compensation to be awarded in the proceeding.

(c) *Deficiency judgment.* If the compensation finally awarded is more than the amount of money received by any person entitled to compensation, the court shall enter judgment against the Tribe for the amount of the deficiency.

47A.4 SECTION 4: AUTHORITY OF COURT.

On the filing of a declaration of taking, the court:

- (a) may fix the time within which, and the terms on which, the parties in possession shall be required to surrender possession to the petitioner; and
- (b) may make just and equitable orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges.

47A.5 SECTION 5: VESTING NOT PREVENTED OR DELAYED.

An appeal or a bond or undertaking given in a proceeding does not prevent or delay the vesting of title to land in the Tribe.

47A.6 SECTION 6: REQUIREMENTS OF CHAPTER 47 NOT APPLICABLE.

In proceedings initiated under this Chapter 47A, the requirements of RCCL Chapter 47 shall not apply.