

Lessard-Sams Outdoor Heritage Council

Agenda Item Memo

DATE November 13, 2012

SUBJECT: FA-04, Preventing Forest Fragmentation and Protecting and Restoring Lake and Stream Habitat in the St. Louis Watershed

Background

- In a letter dated Sept. 28, 2012, Fond du Lac chair Karen Diver discusses the evaluation framework for proposals before the Council, how the Fond du Lac proposal met the stated criteria, and raises a question about whether the council followed its evaluation criteria. The letter also requests that the Council reconsider funding the project if the November projections exceed the anticipated \$92 million in receipts.
- Chair Hartwell meets with Chair Diver on Oct. 12, 2012 to discuss Fond du Lac's proposal and concerns regarding the Council's process and decision making.
- On October 16, 2012 Chair Hartwell receives a letter from Fond du Lac Chair Diver, reaffirming the Band's right of self-regulation over harvest activities. A copy is in the meeting packet.
- In summation Chair Diver asks the Council to adopt the notion that Indian self-government not be a criteria for evaluation of future requests and that the Council consider recommending funding FA-04 at the December 11, 2012 meeting if the November forecast increases available funds.

Discussion

The purpose of this discussion is to hear from Chair Hartwell about his meeting with Chair Diver and discuss any possible next steps.

Suggested motion

Motion to include a criteria stating that Indian self-governing harvest regulations shall not be considered when assessing programs requesting outdoor heritage funds in the FY 15 Call for Funding Requests to be approved at the January 8, 2013 meeting.

Suggested Procedure

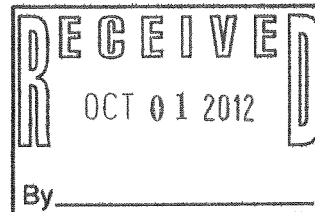
Place a motion before the Council. Members question staff as needed. Members offer and vote on any amendments. Council votes on motion as amended.

Fond du Lac Band of Lake Superior Chippewa

Reservation Business Committee

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

September 28, 2012



Lessard-Sams Outdoor Heritage Council
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 95
St. Paul, MN 55155

Re: Exclusion of tribal participation in the Outdoor Heritage Fund

Members of the Council:

I appreciated the opportunity to answer your questions at the September 21, 2012 meeting of the Lessard-Sams Outdoor Heritage Council ("LSOHC").

We of the Fond du Lac Band are disappointed that the LSOHC voted not to fund our project, *Preventing Forest Fragmentation and Protecting and Restoring Lake and Stream Habitat in the St. Louis River Watershed*. We believe that our project would do an outstanding job of achieving the goals of the LSOHC and that the vote was a missed opportunity to advance conservation in Minnesota.

The purpose of this letter is three-fold. First, this letter reviews the stated criteria for evaluating LSOHC projects and examines the factors that the LSOHC actually used to evaluate our project. Second, we propose a constructive path forward where the Fond du Lac Band and other Indian tribes can be full and valued participants in the LSOHC process. Finally, we request that the LSOHC vote to fund our project should additional moneys become available following the November 2012 revenue projections for the Outdoor Heritage Fund. The discussion below begins with a review of what we understood to be the criteria for evaluating projects proposed for LSOHC funding.

I. The Fond du Lac Band Supports Objective Criteria for Evaluating Projects Proposed for LSOHC Funding.

The Fond du Lac Band supports objective criteria for evaluating projects proposed for funding through the Outdoor Heritage Fund. It is our understanding that LSOHC members are to evaluate projects based on the following criteria:



Chairwoman
Karen R. Diver

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. I Representative
Wally Dupuis

Dist. II Representative
Sandra M. Shabiash

Dist. III Representative
Kevin R. Dupuis Sr.

Executive Director,
Tribal Programs
Chuck Walt

Executive Director,
Enterprises
Michael Himango

1. The strategies are clear, effective, and directly address the problems outlined;
2. There is an urgent problem needing immediate attention;
3. If funded, the request will effectively address pertinent Minnesota conservation plans;
4. The request is fully grounded in conservation science;
5. The request effectively addresses LSOHC priorities;
6. The request maximizes leverage with other funding sources;
7. The budget supplements the organization's traditional funding sources and does not substitute;
8. The level of funding is reasonable for each component of the budget;
9. The request has a well-designed plan for sustainability and maintenance; and
10. The stated outcomes provide meaningful evaluation data.

We support these criteria and designed our project with an eye toward effectively addressing each of these factors.

II. The LSOHC Did Not Evaluate the Fond du Lac Band's Project Using the Criteria That It Purports to Follow for Scoring Projects.

At the September 21st meeting of the LSOHC and in the days leading up to that meeting, there were two major issues raised by the LSOHC regarding our project – and neither of these issues had anything to do with the factors identified above for evaluating projects. The first issue was whether the Fond du Lac Band would adhere to the deed restrictions and annual reporting requirements that are conditions of receiving LSOHC funding. In my letter of September 19th, I responded emphatically and unambiguously that the Band would adhere to these requirements, which we support as effective components of a well-run grants program for land acquisitions. The second issue related to the system of combined hunting and fishing regulations for tribal and non-tribal members that would apply to the project area. I address this issue below.

It is clear that the LSOHC at the September 21st meeting did not evaluate our project based on the ten factors listed above. Our project would protect 720 acres of woods, water, and wildlife and expand hunting and fishing opportunities for tribal and non-tribal members. We identified as our priority the acquisition of a 440-acre property containing an 80-acre shallow lake that is currently being marketed by a real-estate broker. In contrast to many other proposals, our project did not request any funds to pay our staff. Instead, we proposed contributing \$557,000 in staff resources to the project.

The Fond du Lac Band has 62 full-time employees in its natural resources program, including a forester, fisheries biologist, wildlife biologist, wetland specialist, and conservation officers. We have worked with USFWS, NRCS, Minnesota DNR, and other

LSOHC

September 28, 2012

Page 3

conservation partners to restore sturgeon in the St. Louis River, restore wild rice lakes, conduct walleye studies, and undertake moose research. In short, we have a track record of success and the capacity to ensure the sustainability of our project. When judged on stated criteria for evaluating proposed LSOHC projects, we are confident that our project competes well against other projects and is worthy of funding.

III. By Voting Against Funding the Fond du Lac Band's Project Because the Project Would Be Subject to a Combined System of State and Tribal Hunting and Fishing Regulations, the LSOHC Broke with Its Precedent and Acted Arbitrarily, Capriciously, and Outside the Scope of Its Authority.

The elephant in the room at the September 21st meeting was that, in our project area, a combined system of hunting and fishing regulations would apply where tribal members would be subject to tribal requirements and non-tribal members would be subject to state requirements. This combined system of regulation is has long existed on the Fond du Lac Reservation and in the region of Minnesota ceded by the Ojibwe to the United States under the Treaty of LaPointe (Sept. 30, 1854, 10 Stat. 1109), which extends from Moose Lake to Crane Lake and encompasses the Arrowhead Region. See also Fond du Lac Band of Chippewa Indians v. Carlson, No. 5-92-159, slip op. at 29 (1996), aff'd sub nom. Mille Lacs Band of Chippewa Indians v. State of Minnesota, 124 F.3d 904 (8th Cir. 1997), aff'd, Minnesota v. Mille Lacs Band of Chippewa, 526 U.S. 172 (1999)(reaffirming tribal right of self-regulation over ceded territory harvest activities of Band members reserved under the Treaty of LaPointe). Indeed, the Minnesota Supreme Court recognized in 1979 that state hunting and fishing laws cannot be applied to tribal members on their own reservation. See, e.g., State v. Clark, 282 N.W.2d 902 (Minn. 1979). Thus, the dual regulatory system over hunting and fishing in this area is the necessary result of federal law. Further, it is the public policy of the State of Minnesota that "an agency may not require an Indian tribe or band to deny its sovereignty as a requirement or condition of a grant with an agency." Minn. Stat. § 16B.98, subd. 10. Yet, LSOHC members told members of our project team that they would support funding for our project if the Fond du Lac Band would eliminate the system of combined hunting and fishing regulations. This is a legally impossible condition.

We are accordingly dismayed that the LSOHC would disqualify the Fond du Lac Band from participating in the Outdoor Heritage Fund because the Band has reserved treaty rights under federal law, and believe that your treatment of our application in this regard is punitive and discriminatory. The LSOHC has funded many projects within the Treaty area and all of these projects are subject to a combination of state and tribal hunting and fishing regulations. By voting against the Band's project because the project would be subject to the combined system of state and tribal regulations, the LSOHC broke with the precedent it established in previous projects. Voting on this basis was arbitrary, capricious, and outside the scope of the LSOHC's authority.

IV. A Constructive Path Forward: Establish a Policy That All Projects for Which the Combined System of State and Tribal Hunting and Fishing Regulations Apply Are Eligible for LSOHC Funding.

At the September 21st meeting of the LSOHC, there was much discussion about the value of partnerships and the need for grant applicants to be "lean and mean" so that limited public resources could go farther. The Fond du Lac Band wholeheartedly agrees with these sentiments, which are entirely consistent with our own cultural responsibilities as stewards of the earth. The Band and other Indian tribes are valuable conservation partners throughout Minnesota. To categorically exclude the Band and other Indian tribes from LSOHC funding, hurts conservation in Minnesota. We request that the LSOHC at its next meeting on November 13, 2012 adopt a policy that provides as follows:

"All projects for which the combined system of state and tribal hunting and fishing regulations apply are eligible for funding from the Outdoor Heritage Fund. Furthermore, in evaluating projects proposed for funding, LSOHC members may not reduce the score of or vote against a proposed project on the basis of the applicability of the combined system of state and tribal hunting and fishing regulations to the project site."

Adopting such a policy is a constructive path forward for the LSOHC, the Fond du Lac Band and other Indian tribes, and all Minnesotans who care deeply about our natural resources.

V. The Fond du Lac Band Requests That the LSOHC Vote to Fund Our Project Should Additional Moneys Become Available to the Outdoor Heritage Fund Following the November 2012 Revenue Projections.

At the September 21st meeting, the LSOHC voted to allocate a total of \$92 million to projects from the Outdoor Heritage Fund. At that meeting, there was discussion that additional moneys could become available to the Outdoor Heritage Fund following the November 2012 revenue projections. We request that the LSOHC at its next meeting on November 13, 2012 adopt the following resolution:

Should additional monies beyond the \$92 million allocated to projects become available to the Outdoor Heritage Fund following the next revenue projections, the LSOHC recommends that these funds up to a total of \$2,476,000 be allocated to the project proposed by the Fond du Lac Band entitled *Preventing Forest Fragmentation and Protecting and Restoring Lake and Stream Habitat in the St. Louis River Watershed*.

LSOHC

September 28, 2012

Page 5

Adopting this resolution would be a constructive step forward and help all parties focus on the important task of advancing conservation throughout Minnesota.

VI. Conclusion.

Again, thank you for opportunity to answer your question at the September 21th meeting of the LSOHC. I welcome your comments and responses to this letter. Please contact me if you would to discuss any of the issues raised in this letter.

Sincerely,



Karen R. Diver
Chairwoman

KRD/lao:12L092812

From: David Hartwell [[:Hartwell@bellcomb.](mailto:Hartwell@bellcomb)]

Sent: Wednesday, October 03, 2012 12:58 PM

To: Jim Cox ([@mwthermo.](mailto:@mwthermo)); Wayne Enger ([@hotmail.](mailto:@hotmail)); Jane Kingston ([@mchsi.](mailto:@mchsi)); Ryan Bronson ([.bronson@atk.](mailto:bronson@atk)); Denny McNamara ([.Denny.McNamara@house.](mailto:Denny.McNamara@house)); Bill Ingebrihtsen ([@senate.](mailto:@senate)); Leon Lillie ([.leon.lillie@house.](mailto:leon.lillie@house)); Tom Saxhaug ([@senate.](mailto:@senate)); Les Bensch ([@prtel.](mailto:@prtel)); Ron Schara ([@comcast.](mailto:@comcast)); Scott Rall ([@knology.](mailto:@knology))

Cc: Bill Becker; Heather Koop

Subject: RE: Fond du Lac follow up letter - please substitute this for the email I just sent.

Council Members:

I am distributing the attached letter addressed to the council from Karen Diver, Chair of the Fond du Lac Band of Chippewa Indians. The letter discusses the evaluation framework for proposals before the council, how the Fond du Lac proposal met the stated criteria, and raises a question about whether the council followed its evaluation criteria. The letter also requests that the council reconsider funding the project if the November projections exceed the anticipated \$92 million. Their position poses a serious problem which needs to be addressed. Some of you may have strong feelings on this subject; nevertheless, I ask that you comment neither publically nor privately on this matter. Remember, we are under the Open Meeting Law and this is official business before the Council.

I am attempting to meet with Tribal Chair Diver to discuss their position and represent the Council on this matter until we meet as a group. I clearly am unable to explain anyone's motive for voting to fund or not fund their request, except my own. I will report on my discussions at the appropriate time in the appropriate manner.

Questions in the interim may be addressed to LSOHC staff. Thank you.

David Hartwell
Bellcomb, Inc.
5001 Boone Avenue North
Minneapolis, MN 55428
763-201-6556
@bellcomb.com

To learn more about Bellcomb's products please visit [.bellcomb.](http://bellcomb)



From: [Bill Becker](#)
Subject: Sent on Behalf of David Hartwell re: Meeting With Fond du Lac Band - Report
Date: Friday, October 12, 2012 4:12:47 PM
Attachments: [image002.png](#)

Members:

On Friday October 12, 2012 I met with the Fond du Lac Band to discuss their request for funding FA 04, Preventing Forest Fragmentation and Protecting and Restoring Lake and Stream Habitat in the St. Louis River Watershed and their concerns related to that request. In attendance were Chair Karen Diver and three of her staff: Dennis Peterson, tribal attorney; Reginald DeFoe, Director of Natural Resources Management; and Thomas Howes, Natural Resources Manager.

The conversation was cordial. I agreed that the Council will allocate some time on the November 13, 2012 agenda to discuss their September 28, 2012 letter to Council members and funding requests by the Fond du Lac Band as well as federally recognized Bands in general.

As this is communication to all Council members on business that may come before the Council, it is subject to Minnesota's Open Meeting Law and will be posted on the LSOHC website shortly after it is sent to you.

David

David Hartwell
Bellcomb, Inc.
5001 Boone Avenue North
Minneapolis, MN 55428
763-201-6556
[@bellcomb.com](mailto:bellcomb.com)

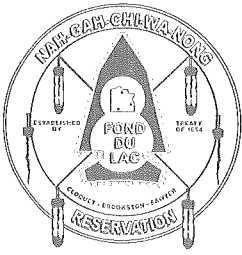


Bill Becker
Executive Director
Lessard-Sams Outdoor Heritage Council
Room G95
State Office Building
100 Dr. Rev. Martin Luther King Jr. Blvd.
Saint Paul, Minnesota 55155

Office phone: 651.296.6397
Cell phone: 612.590.5273

Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee

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



Chairwoman
Karen R. Diver

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. I Representative
Wally Dupuis

Dist. II Representative
Sandra M. Shabiash

Dist. III Representative
Kevin R. Dupuis Sr.

Executive Director,
Tribal Programs
Chuck Walt

Executive Director,
Enterprises
Michael Himango

October 16, 2012

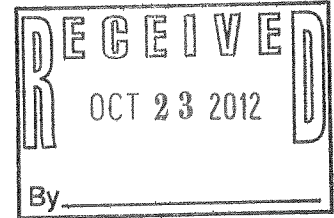
Mr. David Hartwell
Chair
Lessard-Sams Outdoor Heritage Council
State Office Building, Room G95
100 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Grant Application of the Fond du Lac Band of Lake Superior Chippewa

Dear Mr. Hartwell:

Thank you for meeting with me on October 13, 2012 to discuss the grant application of the Fond du Lac Band of Lake Superior Chippewa to the Lessard-Sams Outdoor Heritage Council ("LSOHC"). I also appreciated your meeting with Reginald DeFoe and Tom Howes of our Resource Management Division to discuss the broader conservation work of the Fond du Lac Band and to visit the project site that we would protect with LSOHC funds.

As we discussed, the combined system of state and tribal hunting and fishing regulations has long existed on the Fond du Lac Reservation and in the region of Minnesota ceded by the Ojibwe to the United States under the Treaty of LaPointe (September 30, 1854, 10 Stat. 1109), which extends from Moose Lake to Crane lake and encompasses the Arrowhead Region. Landmark decisions by the United States Supreme Court and Minnesota Supreme Court support this dual system of hunting and fishing regulations. See Minnesota v. Mille Lacs Band of Chippewa, 526 U.S. 172 (1999) (affirming the right of tribal self-regulation over harvest activities of Band members under the Treaty of LaPointe); State v. Clark, 282 N.W.2d 902 (Minn. 1979) (recognizing that state hunting and fishing laws cannot be applied to tribal members on their own reservation). Further, it is the public policy of the State of Minnesota that "an agency may not require an Indian tribe or band to deny its sovereignty as a requirement or condition of a grant with an agency." Minn. State. § 16B.98, subd. 10. However, in direct contradiction of this legal requirement, LSOHC members told our project team that they would support funding for our project if



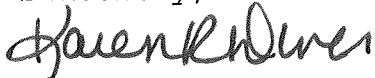
Mr. David Hartwell
Lessard-Sams Outdoor Heritage Council
October 16, 2012
Page 2

the Fond du Lac Band would eliminate the system of combined hunting and fishing regulations.

We share the passion that you and other members of the LSOHC have for protecting and conserving our natural resources. We would like to move forward with the LSOHC along a constructive path beginning at the next meeting of the LSOHC on November 13, 2012.

Again, thank you for coming to Fond du Lac, for your service on the LSOHC and for your interest in our project proposal. Please contact me at any time should you need any additional information.

Sincerely,



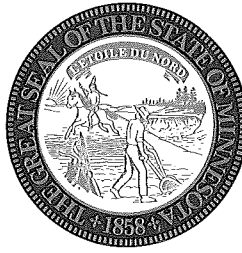
Karen R. Diver
Chairwoman
Fond du Lac Band of Lake Superior Chippewa

KRD/lao:12L101612

Research Department

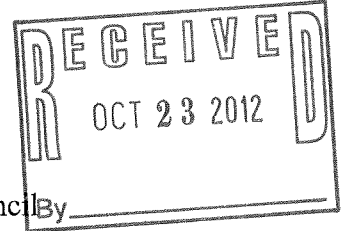
Patrick J. McCormack, Director

600 State Office Building
St. Paul, Minnesota 55155-1298
651-296-6753 [FAX 651-296-9887]
www.house.mn/hrd/hrd.htm




Minnesota House of Representatives

October 23, 2012



TO: Bill Becker, Executive Director, Lessard-Sams Outdoor Heritage Council

FROM:  Joel Michael, Legislative Analyst

RE: State Sales Taxation of Tribal Governments and Tribal Members

This memorandum responds to your request to Janelle Taylor and Greg Knopff for an explanation of the application of Minnesota sales tax to the Fond du Lac Band Government and individual members of the Band. It summarizes in one-page (as you requested) the state sales taxation of the tribal government and members of the tribe.

Under constitutional principles established by the United States Supreme Court and as provided by federal statutory law, states do not have legal authority to impose their sales (or excise) taxes on sales made to tribal governments or on sales made by tribal businesses to tribal members within "Indian country" (i.e., as that term is defined by federal law – essentially on the reservation).¹ Sales by tribal businesses to non-members (e.g., non-Indians and Indians who are not enrolled members of the tribe) are subject to tax. However, states have limited legal authority to enforce those obligations in Indian country, making collection difficult as a practical matter.

Under Minnesota Statute, section 270C.19, the commissioner of revenue has entered into a tax agreement with the Fond du Lac Band (copy attached, including addendum). Under this agreement, the Band and the commissioner have agreed that sales taxes will apply to sales made on the reservation, including those to members of the Band. (Sales to the Band itself are exempt, since it is a sovereign government.) The Department of Revenue (DOR) collects the tax in the same manner it does elsewhere in the state. The tax agreement provides for DOR to make a tax sharing payment to the Band, based on a formula that provides both a per capita payment and a tax sharing payment. This formula essentially refunds an estimate of the sales tax paid by tribal members and shares the remaining revenue between the Band and the state. Similar agreements are in force with nine of the other ten tribal governments in Minnesota. (There is no agreement with Prairie Island.)

JM/mk

xc: Janelle Taylor
Greg Knopff

¹ See, e.g., *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980) (sales and cigarette excise taxes); 18 U.S.C. § 1151 (definition of Indian country)



**TAX AGREEMENT BETWEEN THE MINNESOTA DEPARTMENT OF REVENUE
AND THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA**

This Agreement is between the State of Minnesota ("State") and the Fond du Lac Reservation Business Committee ("RBC") which is the governing body of the Fond du Lac Band of Lake Superior Chippewa ("Band"), a federally-recognized Indian tribe with jurisdiction over lands within the exterior borders of the Fond du Lac Reservation as well as lands outside the exterior borders of the Fond du Lac Reservation owned in trust for the Band by the United States (hereinafter collectively referred to as "the Reservation"). The Commissioner of Revenue, exercising authority granted pursuant to Minnesota Statutes 270.60, and the RBC, pursuant to resolution which is attached to this Agreement, hereby agree to the following:

Section 1. Statement of Intent

A. The intent of this Agreement is to:

1. Provide for the mutual recognition and respect of the State and the Band of the sovereignty of one another.
2. Give recognition to the fact that there are many unsettled questions concerning taxation on Indian reservations and voluntarily resolve many of these uncertainties in a mutually satisfactory way that does not compromise either party's right to assert a position upon termination of the Agreement.
3. Share tax jurisdiction for taxes covered by this Agreement when the State and the Band have dual taxing authority thereby assuring that similar taxes are imposed and collected on and off the Reservation.
4. Establish a mechanism for refunding to the Band tax payments made to the State by Indians subject to the

jurisdiction of the Band (hereafter, "Band members") that are not subject to the State's taxing authority.

5. Establish a mechanism for collecting and sharing state taxes covered by this Agreement that are owed or paid by non-tribal members resulting from reservation activities.

Section 2. Taxes Included in the Agreement

A. Revenue Sharing.

The following taxes are subject to the revenue sharing provisions of this Agreement:

1. Sales and use tax of the type described in Minnesota Statutes, chapter 297 and equivalent tribal taxes adopted by the RBC.
2. Cigarette and tobacco products taxes of the type described in Minnesota Statutes, chapter 297 and equivalent tribal taxes adopted by the RBC.
3. Liquor taxes of the type described in Minnesota Statutes, chapter 297C and equivalent tribal taxes adopted by the RBC.
4. Motor fuel taxes of the type described in Minnesota Statutes, chapter 296 and equivalent tribal taxes adopted by the RBC.

B. Per Capita Refunds.

The following taxes are subject to the per capita refund provisions of this Agreement:

1. Sales and use tax of the type described in Minnesota Statutes, chapter 297A and equivalent tribal taxes adopted by the RBC.
2. Cigarette and tobacco products taxes of the type described in Minnesota Statutes, chapter 297 and equivalent tribal taxes adopted by the RBC.
3. Liquor taxes of the type described in Minnesota Statutes, chapter 297C and equivalent tribal taxes adopted by the RBC.
4. Motor fuel taxes of the type described in Minnesota Statutes, chapter 296 and equivalent tribal taxes adopted by the RBC.

C. Tax on Gaming Proceeds.

1. Nothing in this Agreement is intended to authorize the State to impose any tax on gaming proceeds from Band operated gaming on the Reservation.

D. Other Taxes.

1. Nothing in this Agreement is meant to preclude the Band from imposing other taxes within Band jurisdiction.
2. Nothing in this Agreement is meant to preclude the State from imposing other taxes within State jurisdiction.
3. The Band and persons or entities licensed by the Band to sell petroleum products shall pay the fees imposed upon

distributors pursuant to Minnesota Statutes section 115C.08 subd. 3 and section 239.78 to the same extent and in the same manner as off reservation purchasers of petroleum products.

Section 3 Sharing Agreements

A. Determining the Tax Base That Will Be Shared.

1. The sales and use tax base that will be shared ("sales tax base") is computed by:
 - a. adding the amount of sales and use tax collected from vendors on the Reservation.
 - b. subtracting the amount of the per capita sales tax refund computed pursuant to this Agreement, and
 - c. adding the tribal use tax imposed on sales occurring off the Reservation to Band members who live on or adjacent to the Reservation. The use tax included in the sales tax base is \$136.60 (one hundred thirty six dollars and sixty cents) per Band member living on or adjacent to the reservation.
2. The motor fuel tax base that will be shared ("motor fuel tax base") is computed by:
 - a. adding the motor fuel taxes paid on fuel sold at retail by service stations on the Reservation, and

- b. subtracting the total amount of the motor fuel tax per capita refund computed pursuant to this Agreement, and
 - c. subtracting the motor fuel tax refund paid on purchases made by the RBC pursuant to this Agreement.
 3. The cigarette and tobacco products tax base and the liquor tax base that will be shared are computed by:
 - a. adding the tax paid on cigarettes and tobacco products and liquor sold at retail on the Reservation, and
 - b. subtracting the total amount of the cigarette and tobacco product and the liquor per capita refunds computed pursuant to this Agreement.
- B. Percent of Tax Base That Will Be Shared.
 1. The State will pay to the Band 50% of the sales and use tax base.
 2. The State will pay to the Band 50% of the cigarette and tobacco products tax base.
 3. The State will pay to the Band 50% of the liquor tax base.
 4. The State will pay to the Band 50% of the motor fuel tax base.
 5. The State share of each tax base is that portion of the tax base that is not paid to the Band.

Section 4. Per Capita Refunds

- A. The State shall annually pay, in four quarterly payments, an estimate of taxes paid on the reservation by Band members who live on or adjacent to the Reservation.
1. The annual refund for sales and use taxes shall be \$45.50 (forty five dollars and fifty cents) per Band member.
 2. The annual refund for motor fuel taxes shall be \$51.45 (fifty one dollars and forty five cents) per Band member.
 3. The annual refund for cigarette and tobacco products taxes shall be \$36.53 (thirty-six dollars and fifty three cents) per Band member.
 4. The annual refund for liquor taxes shall be \$10.03 (ten dollars and three cents) per Band member.
- B. The refunds specified in paragraphs 1 through 4 and the use tax component of the sales tax base will be recalculated by the State each September, and will be adjusted to reflect changes in the Consumer Price Index for the Minneapolis/St. Paul area for the previous state fiscal year. The changes in the Consumer Price Index will be measured using figures from the United States Bureau of Labor Statistics. The recalculated amounts will form the basis for refunds payable in October. If there has been a material change in a state tax base or tax rate, the State will adjust the per capita payment to reflect those changes.
- C. The quarterly refunds provided by this section shall be determined by:

1. multiplying the following two numbers:
 - (a) the amount per Band Member as identified in paragraph A.1 - A.4, and
 - (b) the latest certified population of the Band members who live on or adjacent to the Reservation, and
 2. dividing the result by four.
- D. The Band shall certify to the State on or before July 1 of each year its population of Band members who live on or adjacent to the Reservation by providing a copy of its latest Report on Service Population and Labor Force, as reported to the United States Department of the Interior, Bureau of Indian Affairs. The revised population number certified by each July 1 shall be used to calculate refunds beginning with the payments payable in October.
- E. The State will not pay any refunds or payments required by this Agreement if the Band has not submitted the population report; provided that if the Band submits the report within one year of the date it is due, the State shall pay all refunds and payments withheld by it up until the date of submission.
- F. The State will pay the quarterly refund amounts by the last day of October, January, April, and July, unless otherwise specified in this Agreement. The State will pay refunds by warrant payable to the RBC.

Section 5. Exemptions from Tax

- A. No sales or use tax shall be assessed on purchases made on or off the Reservation by the Band or a Band owned-entity for goods or services used by the Band or such entity solely for its own use and not intended for resale. To exercise this exemption, the Band or Band-owned entity shall present a State exemption certificate to the vendor at the time of purchase.
- B. No sales or use tax shall be assessed on purchases of supplies on or off the Reservation by Indian or non-Indian purchasers for use in construction projects on the Reservation when the Band or Band-owned entity is a party to the contract, and the contract is being undertaken for the purpose of the Band's welfare. To exercise this exemption, the purchaser shall present a state exemption certificate to the vendor at the time of purchase.
- C. No motor vehicle excise taxes shall be assessed on vehicles purchased by the Band or Band-owned entity for its own use and not intended for resale. To exercise this exemption, the purchaser shall present a copy of an exemption certificate from the State.
- D. Motor fuel taxes paid on purchases made by the Band or Band-owned entity for fuel used by the Band or such entity in vehicles owned by them will be refunded to the Band on a quarterly basis. The Band will file a quarterly claim for refund by the 15th day of the month following the end of the calendar quarter on forms supplied by the State. The claim

shall include supplier invoices evidencing the number of gallons purchased by the Band or Band-owned entity. The claim shall also contain a declaration that the fuel was used by the Band or Band-owned entity in the performance of official tribal business. The State will pay the refund by the 30th day of the first month after the end of the calendar quarter by a warrant made payable to the RBC. No claim will be paid by the State under this section if it is filed more than one year late.

Section 6. Administration of the Agreement

A. Band Implementation.

1. The Band agrees, subject to the provisions of this Agreement, that the taxes provided for under this agreement and imposed by Minnesota Statutes chapters 296, 297, 297A, and 297C, and all subsequent amendments thereto, or Band taxes identical to them, shall be imposed and collected in connection with all transactions occurring on the Reservation. Such taxes shall be collected and remitted in the same manner as required under Minnesota statutes unless otherwise specified in this Agreement.
2. The Band will cause to be adopted and will enforce such Band laws as are necessary to implement the requirements of this Agreement. The Band shall designate the Commissioner of Revenue as agent to collect, and

otherwise administer, the tribal taxes covered by this agreement.

3. All taxes covered by this Agreement will be remitted to the State for distribution according to this Agreement.
4. Upon request of the State, the Band will assist the State in the assessment and collection of any tax owed pursuant to this agreement.
5. All sellers of cigarettes, tobacco products, motor fuel or liquor on the Reservation will purchase their stock from distributors licensed by the State of Minnesota, who will collect all applicable taxes as if the sale occurred off the Reservation to a non-Indian vendor. Any provision in any Minnesota tax law that allows reservation Indians to make purchases exempt from any state tax subject to this Agreement may not be exercised while this Agreement remains in force.
6. The Band or Band-owned entity or Band-licensed entity shall not sell cigarettes or tobacco products to any retailer or licensed subjobber. All cigarettes sold on the Reservation shall contain an Indian Reservation cigarette stamp as described in Minnesota Statutes section 297.03. Such cigarettes may be sold only on the Reservation.
7. The Band shall provide a list to the State of all vendors who make taxable sales on the Reservation as well as a list of all vendors who sell cigarette and tobacco

products, liquor and/or motor fuel. The list should include the legal business name, the address, and the Minnesota Business Identification Number of each vendor, and the type of tax involved for each vendor. The Band agrees to update these lists and the information contained in them as changes occur.

B. Tax Sharing Payments to the Band

1. The State shall calculate the Band's share of the cigarette and tobacco products and liquor tax bases using tax collections reported to the State by the last day of the quarter. The State shall obtain the information from invoices and other records obtained from Reservation vendors and distributors who sell to Reservation vendors.
2. The State will calculate the motor fuel tax base using tax collections reported to the State during the calendar year. The State will obtain the information from invoices and other records of distributors, suppliers and service stations who do business on the Reservation. The State will pay to the Band its share of the motor fuel tax base quarterly. The first three quarterly payments in each calendar year will each be equal to 12.5% of the motor fuel tax base for the previous calendar year. The fourth quarterly payment will be equal to the difference between the first three quarterly payments and 50% of the motor fuel tax base

for the current year. The Band and the State understand that the 4th quarter payment may be significantly higher, or lower, than the three previous payments.

3. The State shall calculate the Band's share of the sales tax base using sales tax collections reported to the State by the last day of the calendar quarter. The Band does not need to file a claim or report for its share of the sales tax base.

4. If a reservation vendor makes a sale in any one day to a person of:

- (a) 10 or more cartons of cigarettes
- (b) 100 or more gallons of motor fuel
- (c) 4 or more cases of beer
- (d) 3 or more cases of wine, or
- (e) 3 or more cases of distilled spirits

then the vendor must prepare an invoice containing the following information:

- (a) name and address of purchaser
- (b) quantity sold
- (c) date of sale
- (d) total sale price

the invoices must be submitted to the State in accordance with the provisions of this Agreement.

5. The Band shall file a separate report each quarter, on a form prescribed by the State, for cigarette and

tobacco products, liquor and motor fuel. The invoices required by paragraph 4 above, must accompany the report. The report shall be filed by the 15th day of April, July, October and January for taxes paid in the preceding quarter. If the Band fails to file its report by the appropriate date, the State will not be obligated to make tax sharing payments for the affected quarter; provided that if the Band makes the filing within one year after its due date, the State shall make the payment within thirty days of the filing.

6. The State will make revenue sharing payments required by this Agreement quarterly. Payments will be made by the last day of April, July, October and January. Payment shall be made by warrant made payable to the RBC.

C. Records.

1. Upon reasonable request of the Band, and subject to the confidentiality provisions of this Agreement, the State shall make available to the Band all records relating to tax filings that relate to the composition of the tax base, including the list of vendors and the amount of sales tax collected from each vendor during a period. Prior to receiving confidential information from the State, the person or persons who review the records for the Band must sign a written statement

whereby the person agrees to be subject to the disclosure laws of the State.

2. The Band agrees to keep accurate records setting forth information in sufficient detail to allow for verification that the Band and Band owned entities are collecting and remitting the correct amount of tax due pursuant to this Agreement. Upon reasonable request of the State, and subject to the confidentiality provisions of this Agreement, the State may conduct a limited examination of the records of the Band and Band-owned entities for the sole purpose of verifying compliance with the requirements of this Agreement. Such examination shall be strictly limited to those enterprise activities of the Band or Band-owned entities which engage in sales subject to the taxes collected pursuant to this Agreement and may include examination of summary reports, exemption certificates, ledgers, cash register tapes and similar records. Nothing in this section authorizes any examination of the records of any part of the Band or Band-owned entity which does not engage in sales subject to the taxes collected pursuant to this Agreement, and nothing in this section authorizes any examination of any records that goes beyond what is needed to verify compliance with the requirements of this Agreement.

3. It is the intent of the State to perform no more than one examination under paragraph 2 during any calendar year. However, the State reserves the right to request additional examinations if the Commissioner of Revenue reasonably believes that the Band or Band-owned entity is materially underreporting taxes owed pursuant to this Agreement.

D. Remedies

1. If the Band refuses to allow the State to inspect the records of the Band or Band-owned entities within 60 days following reasonable request of the State, the State may terminate this Agreement in accordance with Section 8 for failure to abide by the terms of the Agreement.
2. The State may apply any payment due pursuant to this Agreement to any delinquent tax finally determined pursuant to this section to be owed by the Band or a Band-owned entity.
3. Upon completion of an examination of records by the State pursuant to this Agreement, the State shall issue a report to the Band containing the results. If the report indicates a change in liability of the Band or a Band-owned entity, the Band may challenge that report by:
 - (a) Requesting a redetermination from the State. The request must be made in writing within 60 days

following issuance of the report. The redetermination will be made consistent with the appeal provisions contained in Minnesota Statutes, section 289A.65, or

- (b) Requesting that the State enter into arbitration, pursuant to procedures established under the Uniform Arbitration Act. Such request must be made in writing within 60 days following issuance of the report. Only issues concerning the accuracy of the tax under applicable Minnesota law, as modified by this Agreement, may be decided by the arbitrator. Any issues concerning the jurisdiction of the State to impose a tax, are expressly excluded from the scope of arbitration.
- (c) If the Band does not challenge the findings of the State within 60 days after issuance of the report, then any additional tax assessed shall be deducted from future payments made by the State to the Band pursuant to this Agreement until the assessment is paid in full.
- (d) If an examination reveals an overpayment of tax, the amount of the overpayment shall be paid to the Band within 30 days following the issuance of the report.

E. Assignment of Refunds and Payments.

1. Refunds and payments made pursuant to this Agreement may be pledged, assigned, or otherwise used as collateral or security by the Band through action of the RBC for loans, promissory notes, or other financial transactions.
2. When refunds or payments are pledged, assigned, or otherwise used as security, a copy of the Resolution of the RBC authorizing such action shall be mailed or delivered to the Commissioner. Following receipt of the required documents, the Commissioner shall issue future refunds and payments as directed by the documents until notified in writing by the secured party that the assignment has been terminated, or until notified in writing by the Chairman and Secretary-Treasurer of the RBC, accompanied by a resolution of the RBC, that the assignment has been terminated, together with sufficient proof that such termination has occurred.

F. Confidentiality.

1. Tax information gathered by the State in the administration of this Agreement shall be protected and confidential to the same extent as the information is protected and confidential when gathered by the State in the administration of state tax laws pursuant to Minnesota Statutes chapter 270B and other Minnesota laws.

2. The Band agrees to protect the confidentiality of any information relating to this Agreement received from the State to the same extent as the information is protected from disclosure by the State pursuant to Minnesota Statutes chapter 270B and other Minnesota laws.
3. Breach of the confidentiality provisions of this Agreement constitutes grounds for termination under the provisions of this Agreement.

Section 7. Sovereign Immunity

- A. Nothing contained herein shall be construed in any fashion to be a waiver of the sovereign immunity of the Fond du Lac Band of Chippewa Indians, its RBC, its officials, or its entities.

Section 8. Termination of the Agreement

- A. Either party may terminate this Agreement at the end of any calendar year, upon 90 days written notice. A notice of intent to terminate on behalf of the Band must be executed by the Chairman and Secretary/Treasurer of the RBC. A notice of an intent to terminate on behalf of the State must be executed by the Commissioner of Revenue of the State of Minnesota.

- B. Upon the failure of either party to abide by the terms of this Agreement, the other party may terminate the Agreement at any time upon 30 days written notice. The notice must specify the reason or reasons that the Agreement is being terminated. A notice of termination on behalf of the Band must be executed by the Chairman and Secretary/Treasurer of the RBC. A notice of termination on behalf of the State must be executed by the Commissioner of Revenue of the State of Minnesota.
- C. In the event of termination prior to the end of a calendar year, the State shall be obligated to remit the full quarterly remittance provided for according to the terms of this Agreement with respect to the calendar quarter during which notice of termination is given, which obligation shall survive the termination of this Agreement. The Band agrees that until the end of the calendar quarter during which notice was given, all provisions relating to the collection and remittance of any tax under this Agreement remain in effect.

Section 9. Effective Date

This Agreement shall be effective from January 1, 1996, for taxes incurred after December 31, 1995. All obligations created by prior agreements between the State and the RBC remain in effect until the new agreements become effective.

N WITNESS WHEREOF, the State and the Band have caused this Agreement to be executed and delivered by their duly authorized officers.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

FOND DU LAC RESERVATION
BUSINESS COMMITTEE

By: _____
Commissioner of Revenue

By: _____
Robert B. Peacock, Chairman

Date Signed: _____

Date Signed: _____

By: _____
Peter J. Defoe, Sec./Treas.

Date Signed: _____

**ADDENDUM
TO THE TAX AGREEMENT BETWEEN THE
FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA AND THE
MINNESOTA DEPARTMENT OF REVENUE**

This is an Addendum (Addendum) to the Tax Agreement (Agreement), which was duly executed and delivered in 1996, between the State of Minnesota, Department of Revenue (State) and the Fond du Lac Band of Lake Superior Chippewa (Band).

Section 1. Purpose. This Addendum is entered into to provide a mechanism for the State to make refunds and payments to the Band of Health Impact Fees and Fees in Lieu of Settlement that are imposed on the sale of cigarettes and other tobacco products occurring on the Fond du Lac Reservation.

Section 2. Imposition of Fees. The Band agrees that the fees imposed by Minnesota Statutes §§ 256.9658 and 297F. 24, and all subsequent amendments thereto, or fees identical to them, shall be imposed and collected in connection with all transactions occurring on the Reservation.

Section 3. Per Capita Refunds.

(a) Sections 2 and 4 of the Agreement are amended to provide a per capita refund to the Band of the Health Impact Fee under Minn. Stat. § 256.9658 and the Fee in Lieu of Settlement under Minn. Stat. § 297F.24. The current annual per capita refund amount is \$41.08.

(b) The State will recalculate the annual per capita refund amount each September. The recalculated annual per capita refund amount is equal to the total fees collected by the State in the most recent state fiscal year divided by the most recent State population, or population estimate, as published at the time of the recalculation by the United States Census Bureau. The recalculated amount will be the annual per capita refund amount beginning with the payment due in October of each year.

(c) If there is a change in the rate of a fee covered under this Addendum, the State will adjust the annual per capita refund amount under paragraph (a) or the recalculated

amount in paragraph (b), by the amount of the rate change. The adjusted rate will apply to the quarterly payment due for the quarter in which the rate change is effective and continue until the next recalculation required under paragraph (b).

(d) Except as otherwise provided in this Addendum, the quarterly per capita payment to the Band must be calculated in the same manner and paid at the same time as the cigarette and tobacco products excise tax per capita payments under the Agreement. The first payment due under this paragraph is for fees paid by members of the Band in the first quarter of calendar year 2010.

Section 4. Sharing Payments. Sections 2 and 3 of the Agreement are amended to provide a quarterly sharing payment to the Band equal to fifty percent (50%) of the Health Impact Fee under Minn. Stat. § 256.9658 and the Fee in Lieu of Settlement under Minn. Stat. § 297F.24 paid on the Reservation by persons who are not members of the Band. The sharing payment is calculated by:

1. Determining the total Health Impact Fee and Fee in Lieu of Settlement imposed on all cigarettes and tobacco products sold on the Reservation during the quarter;
2. Subtracting the amount of the per capita Health Impact Fee and the Fee in Lieu of Settlement refunds paid for the quarter under Section 3 of this Addendum; and
3. Dividing the result by two.

The Sharing Payment under this paragraph must be made at the same time and in the same manner as the cigarette and tobacco products tax sharing payments under the Agreement. The first payment due under this paragraph is for fees paid by non-members of the Band in the first quarter of calendar year 2010.

Section 5. Cancellation of Agreement. The language in Section 8, paragraph A of the Agreement is stricken and replaced with the following:

Either party may terminate this Agreement at the end of any calendar quarter, upon 60 days written notice. A notice of intent to terminate on behalf of the Band must be executed by the Chairperson and Secretary/Treasurer of the Reservation Business Committee. A notice of intent to terminate on behalf of the State must be executed by the Commissioner of Revenue of the State of Minnesota.

Section 6. Changes in Law After the Effective Date of This Addendum.

(a) If any new sales, use or excise tax is imposed under Minnesota law on the sale of cigarettes and tobacco products, liquor or petroleum, or if a general retail sales tax is imposed on the sale of goods or services, the Commissioner of Revenue will automatically include such tax in the tax base for purposes of the sharing payments and per capita refund payments paid to the Band under the Agreement. The sharing payments and per capita refund payments for any new sales, use or excise tax shall be calculated in the same manner and paid at the same time as the payments and refunds payable to the Band under Sections 3 and 4 of this Addendum.

(b) If any new fee is imposed under Minnesota law on the sale of cigarettes and tobacco products, liquor or petroleum, or if a general retail fee is imposed on the sale of goods or services, the Commissioner of Revenue will automatically include such fee in this Addendum, unless inclusion of the fee would require the approval of another agency, board or governmental entity pursuant to Minn. Stat. § 270C.19, subd. 5(b). The sharing payments and per capita refund payments for any new fee shall be calculated in the same manner and paid at the same time as the payments and refunds payable to the Band under Sections 3 and 4 of this Addendum.

(c) Payments due for any new tax or fee included in paragraphs (a) or (b) of this Section 6 must begin with taxes or fees paid during the quarter in which the new tax or fee is effective.

(d) The Commissioner of Revenue shall notify the Band of the enactment of any new tax, fee or charge imposed under Minnesota law on the sale of cigarettes and tobacco products, liquor or petroleum, or on the sale of goods or services, that cannot be automatically included in the payments and refunds payable to the Band under the Agreement or this Addendum. The notice must be sent to the Band within 45 days after the enactment of any such law.

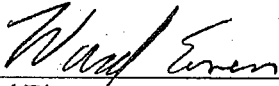
(e) Paragraphs (a) through (d) of this section only apply to state-wide taxes or fees administered by the Commissioner of Revenue.

Section 7. Uniformity. The rights and obligations that the parties have as they relate to the taxes covered under the Agreement apply to the taxes and fees covered under this Addendum. The provisions in the Agreement that relate to the administration of the cigarette and tobacco products tax apply to the fees described in Section 2 of this Addendum. The provisions in the Agreement, including but not limited to the imposition and collection obligations contained in Section 6A of the Agreement, that relate to a particular tax shall apply to any similar future enacted tax or fee covered under Section 6 of this Addendum.

Section 8. Intent to Renegotiate. The parties agree to enter into negotiations to amend the Agreement, including to open discussions related to an update of the per capita refund amounts; to make changes necessary to reflect developments in federal, tribal and state law that have occurred since the Agreement was originally entered into; and to open discussions related to potential sharing and per capita refund payments to the Band for Health Impact Fees and Fees in Lieu of Settlement paid on the sales of cigarettes and tobacco products on the Reservation between August 1, 2005 to January 1, 2010; address other issues that have arisen under the Agreement; and any other issues relevant to the administration of state and tribal taxation. The parties intend that these negotiations start no later than December 31, 2012.

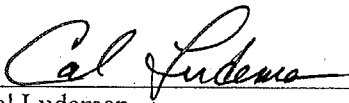
Section 9. Effective Date. This Addendum is effective upon the signature of the parties.

State of Minnesota



Ward Einess
Commissioner of Revenue


Date signed: 10-25-10



Cal Ludeman
Commissioner of Human Services

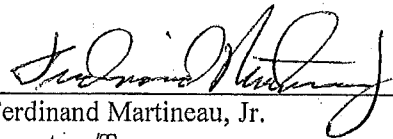
Date signed: 10-27-10

Fond du Lac Band of Lake Superior
Chippewa



Karen R. Diver
Tribal Chairwoman

Date signed: 10/14/10



Ferdinand Martineau, Jr.
Secretary/Treasurer

Date signed: 10/18/10

