

## **CHAPTER 37 – ZONING CODE**

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**37.1            SECTION 1- TITLE.**

This Chapter shall be known as the Zoning Code of the Red Cliff Band of Lake Superior Chippewa Indians.

**37.2            SECTION 2- PURPOSE.**

This Code is for the purpose of regulating land use within the Red Cliff Reservation boundaries for the protection of the health, safety and welfare of all who live within the Reservation. Its aim is to encourage the most appropriate use of the land, the protection of the Reservation's economic, environmental and social stability, the promotion of sustainable development, and the preservation of the Ojibwe culture.

**37.3            SECTION 3- DEFINITIONS.**

37.3.1           For the purposes of this code, the following definitions shall be used. Words used in the present tense include the future, the singular number includes the plural number, and the plural number includes the singular number.

37.3.2           “Accessory structure” means any detached permanent structure separate from the principal structure, including but not limited to; garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, or retaining wall. If attached to the principal structure, it shall be considered a part of the principal structure. No accessory structure shall be permitted on a parcel without a principal structure in all zoning districts.

37.3.3           “Accessory use” means a subordinate use which is incidental to and customary in connection with the principal use and is located on the same parcel. No accessory use shall be permitted on a lot without a principal use in all zoning districts.

37.3.4           “Agriculture” means the practice of farming, including cultivation of the soil for the growing of crops and the rearing of animals to provide food, wool, and other products.

37.3.5           “Applicant” means the owner, or duly authorized representative, of a parcel of land that is the subject of an application made under this Chapter.

37.3.6           “Bulk Regulations” are the combination of controls (maximum height and setbacks) that determine the placement of a structure on a lot.

37.3.7           “Certified Survey Map” means a survey map created by a licensed surveyor used for minor land divisions, reconfiguration of lot lines, or the combination of

existing lots, which depicts and describes the boundaries of parcels, lot lines and other features. The map must consist of four or less parcels of land designated as lots or outlots and include a certificate of the Professional Land Surveyor who surveyed, divided and mapped the land and which has the same force and effect as an affidavit.

- 37.3.8 “Conditional Use” means a zoning exception which allows the property owner and other authorized persons to use land in a way not otherwise permitted within the zoning district. Conditional uses typically require additional factors to be taken into consideration prior to approval.
- 37.3.9 “Cultural Activity” means an activity recognized by the Tribal Council or the the Tribal Historic Preservation Office, as an Ojibwe cultural practice rooted in the traditional beliefs or history of the Tribe and important to maintaining the continuing cultural identity of the Tribe.
- 37.3.10 “Dwelling, Single Family” means a residential structure intended to be inhabited by a single family. Examples of a single-family dwelling include but are not limited to a house, modular home, trailer, cabin, etc.
- 37.3.11 “Dwelling, Multiple Family” means a residential structure intended to be inhabited by multiple families. Examples of a multi-family dwelling include but are not limited to apartments, townhouse, condos, group living facilities, etc.
- 37.3.12 “Garden” means an intentional planting of plant species meant to provide food, medicine, fibers, or aesthetics for the residence on site. This does not encompass agriculture for commercial purposes.
- 37.3.13 “Home-Based Business” means a business conducted out of a residential dwelling unit. A Home-Based Business shall require a conditional use permit and shall occupy not more than twenty-five percent (25%) of the residential floor space or seventy-five percent (75%) of the floor space of an accessory structure.
- 37.3.14 “Land Holder” means an owner, authorized lease holder or tribal entity who holds the right or title to the parcel of land that is the subject of an application made under this Chapter.
- 37.3.15 “New Construction” means any structure for which the start of construction commenced on or after the effective date of this chapter adopted by Tribal Council and includes any subsequent improvements to such structures.

- 37.3.16 “Nonconforming Structure” means a structure that was legal prior to the adoption or amendment of a zoning ordinance, but which now violates the size, location or dimensional limits of its zoning district.
- 37.3.17 “Nonconforming Use” means a use which existed lawfully prior to the adoption or amendment of a zoning ordinance, which does not comply with present zoning provisions.
- 37.3.18 “Maximum Height” means the vertical distance, by which the top-most portion of the roof of a structure extends above the existing grade, as measured from the lowest portion of the structure.
- 37.3.19 “Overlay Zoning District” means zoning that creates a special zoning district, placed over existing base zone(s), which identifies special provisions in addition to those in the underlying base zone. The overlay district can share common boundaries with the base zone or cut across base zone boundaries.
- 37.3.10 “Parcel” means an area defined by an approved parcel map, subdivision map or otherwise lawfully created parcel containing the minimum square footage and frontage as required at the time the parcel was created.
- 37.3.11 “Permit” means an official document issued by the Zoning Administrator giving the land holder permission to complete the activities listed in the approved permit application.
- 37.3.12 “Permitted Use” means an activity or development of a site that is in accordance with zoning regulations and future planning efforts.
- 37.3.13 “Pre-Development Meeting” means a consultation that shall serve as the preliminary meeting to discuss the proposed site requirements for a project in relation to tribal codes.
- 37.3.14 “Rezoning” is a procedure to make amendments to the Official Zoning District Map to reflect changes in tribal law, changed conditions, or to advance the welfare of the Tribe.
- 37.3.15 “Setback” means the horizontal separation required between lot lines (or other features as determined by this code) and the nearest point of a building or

structure. In situations where the property line lies within a right-of-way, the setback shall be taken from the edge of such right-of-way.

- 37.3.16 “Small Animal Husbandry” means animals that are raised for meat, fiber, milk, eggs, or other products.
- 37.3.17 “Stream Bankfull Mark” is measured as the ordinary high-water mark (OHWM) on each of bank of a stream. This mark is subject to change based on varying environmental conditions and can only be determined through field inspection.
- 37.3.18 “Structure, Permanent” means any manmade object with form, shape and utility, permanently attached to, placed upon, in the ground or an attachment to something on premises including but not limited to, dwellings, accessory structures, additions, signs, decks, platforms, and porches.
- 37.3.19 “Structure, Temporary” means a structure which is permitted within a zoning district without any foundation or footing and which is removed when the designated time period, activity, or use for which the temporary structure was erected has ceased including but not limited to, event tents, floating docks, and construction trails.
- 37.3.20 “Tribal Council” means the duly elected body of Tribal Council members.

#### **37.4 SECTION 4- ORGANIZATION.**

37.4.1 Zoning Administrator. The Tribe hereby establishes the position of Zoning Administrator who shall be appointed by Tribal Administration.

(a) Duties. The Zoning Administrator shall hold the following powers and duties:

1. Have custody of the Tribal Zoning District Map;
2. Shall investigate violations in accordance with Chapter 37, give notice thereof, and recommend further action to the Red Cliff Law Enforcement in cases where violations remain unresolved.
3. After application review, the Zoning Administrator shall process applications and issue permits as regulated by this Chapter.

4. The Zoning Administrator may make recommendations to the Tribal Council concerning permits; and
5. Serve in an advisory capacity to the Tribal Council in permit appeals.

37.4.2 The Tribal Council reserves its authority to exercise the following powers, in addition to the powers contained in Article VI of the Red Cliff Constitution:

- (a) Hear and decide upon permit applications and issuances pursuant to the provisions in this Chapter;
- (b) To adopt any amendments to this Chapter and the official Red Cliff Zoning District Map.
- (c) To hear and decide upon appeals under this Chapter, where the appeal is brought forward in accordance with the provisions in this Chapter by any person aggrieved by any requirement, decision or determination made by the Zoning Administrator.

## **37.5 SECTION 5- RED CLIFF ZONING DISTRICT MAP.**

37.5.1 Effect. For the purpose of this Chapter, the reservation is divided into the following zoning districts: R - Residential, C – Mixed Use Commercial, F – Forestry and P – Preserved Overlay. The zoning regulations relating to each parcel of land within reservation boundaries are determined by reference to the official Red Cliff Reservation Zoning District Map.

37.5.2 Public Examination. The Red Cliff Zoning District Map, in custody of the Zoning Administrator shall be available for examination by any member of the public at all reasonable times by contacting the office of the Zoning Administrator.

37.5.3 Interpretation of Zoning District Boundaries.

- (a) Street and Alley Lines. Where the designation on the official Red Cliff Zoning District Map indicates that the various districts are approximately bounded by a street or alley line, such street or alley line shall be construed to be the district boundary line.
- (b) Overlay District Boundary Lines. Where the designation on the official Red Cliff Zoning District Map indicates that the overlay district boundaries follow cultural or natural resource boundaries, the district boundary lines shall be

construed through setbacks from resources as provided through the site inspection process.

37.5.4 Amendment (Rezoning). The Red Cliff Zoning District Map may be amended by the Tribal Council pursuant to this section whenever the public necessity, historic findings, general welfare or changing conditions. All zoning districts are subject to the provisions of this section. The purpose is neither to relieve particular hardships nor to confer special privileges or rights on any person. Rezoning should not be used when a conditional use permit or variance could be used to achieve the same result.

(a) Map Amendment to the Preserved Overlay District. Tribal Council may change or supplement the preserved overlay boundaries and the provisions of the district in accordance with this ordinance and all applicable tribal and federal laws. Actions that may require an amendment include, but are not limited to, the following:

1. Any change to the FEMA Flood Insurance Rate Maps as adopted by Chapter 55 of this Code, including the floodway line or boundary of any floodplain area;
2. Where the proposed rezoning may result in significant adverse impact upon wetland functions;
3. Any finding of historic property as defined by Section 106 of the National Historic Preservation Act (NHPA).

(b) Map Amendment to Residential, Commercial, or Forestry District. Tribal Council may change zoning district boundaries and provisions of the district in accordance with this Chapter and all applicable tribal and federal laws.

(c) Review Process.

1. Pre-application meeting. If a proposed development would require a amendment (rezoning) to the official Red Cliff Zoning District Map the property owner or their designated agent is encouraged to request a pre-development meeting with the Zoning Administrator.

2. Initiation. A proposed amendment to the Red Cliff Zoning District Map may be initiated by the submission of a rezoning application by any of the following:
- (i) The owner of the subject real property or their authorized agent;
  - (ii) The PAC Review Board;
  - (iii) The Tribal Council; or
  - (iv) The Zoning Administrator or designee.
- (d) Application Submittal. A complete rezoning application shall be submitted by the Applicant to the Zoning Administrator or designee.
- (e) Staff Review. The Zoning Administrator or designee shall determine if the application is complete, review the application, and prepare a report to the Tribal Council with a recommendation for final action.
- (f) Tribal Council Final Action. Within ninety (90) days of Tribal Council's receipt of the Zoning Administrator's recommendation and approval criteria, the Tribal Council shall consider the requested rezoning amendment to the Zoning District Map, and either approve or deny it. Approval shall require a majority vote of all Tribal Council members. If the rezoning application is not approved by the Tribal Council by 90th day of receipt, the application shall be deemed a final action of denial for purposes of this section.

## **37.6      SECTION 6- ZONING DISTRICTS.**

37.6.1      Effect. Zoning districts provide an opportunity for tribal leaders and community members to make sustainable land use decisions that protect the long-term viability of natural resources, ensure residential land is preserved for future generations, and promote the Ojibwe culture through protection of tribal historic and cultural resources. Any use not expressly allowed within this Chapter shall be prohibited unless otherwise stated.

37.6.2      Land Uses Permitted by Right. Land uses permitted by right under this Chapter are allowed in indicated zoning districts (upon issuance of a land use permit) provided the uses comply with all provisions of this Chapter, Red Cliff Code of Laws and any other federal regulations. Cultural activities, not including structures, that have been approved by the Tribal Historic Preservation Office shall be permitted by right in all zoning districts.



37.6.3 Land Uses Permitted by Conditional Use. Land uses permitted by conditional use under this Chapter are allowed only after review by the Zoning Administrator and final approval by the Tribal Council.

37.6.4 Residential (R).

(a) Effect. This district is intended to provide areas which will allow for residential development on parcels that are within those areas of the Reservation better suited for such development. Because of its residential nature, this district is not intended for more intensive uses.

(b) Uses.

1. Permitted by Right. Primary Use: Single and multi-family dwellings, government services, utilities, playgrounds, parks. Accessory Use: Gardens, fences, outdoor storage, small animal husbandry.

2. Permitted as Conditional Use. Low-impact agriculture as a primary use, home-based businesses, public services, cemeteries, libraries, schools, recreation centers, community living arrangements, wireless communication facilities.

(c) Residential Bulk Regulations.

Structure	Maximum Height (feet)	Minimum Front Yard Setback (feet)	Minimum Rear Yard Setback (feet)	Minimum Side Yard Setback (feet)
Primary Building	35	30	40	20
Secondary Building/Structure	20	40	20	15
Fence	Front Yard: 4 Side/Rear Yard: 6	15	10*	10*
<b>*If the property has a certified survey map on record with the Land Office, fences may be placed directly on the lot line.</b>				

37.6.5 Mixed Use Commercial (C).

(a) Effect. This district is intended to provide areas which will allow for commercial development. In order to ensure a minimum amount of

disruption to residential development, direct access to commercial development shall be from the Highway 13 Corridor unless permitted by a Conditional Use Permit. Although existing residential lease sites shall be maintained, the creation of new residential lease sites shall be prohibited in this district. All commercial uses herein described shall require review, approval and issuance of a Business Permit and a Commercial or Conditional Use Permit.

(b) Uses.

1. Permitted by Right. Government and public service facilities, offices, personal or professional services, indoor sales and services, hotels, motels, marinas, restaurants, and tourism establishments.
2. Permitted as Conditional Use. Residential dwellings, outdoor sales and services, wireless communication towers, auto-mechanic services, underground fuel storage, commercial facility that exceeds 10,000 square feet, commercial animal boarding.

(c) Commercial Bulk Regulations.

Structure	Maximum Height (feet)	Front Yard Setback (feet)	Rear Yard Setback (feet)	Side Yard Setback (feet)
Primary Building	35	25	15	10
Accessory Building/Structure	25	25	10	10
Fence	Front Yard: 3 Rear/Side: 6	5	10	10
<b>*If the property has a certified survey map on record with the Land Office, fences may be placed directly on the lot line.</b>				

37.6.6 Forestry District (F).

- (a) Intent and Effect. The intent of the forestry district is to provide landowners the opportunity to manage their land for productivity and sustained use of forest resources. In addition, the district encourages the management of land for wildlife, aesthetics, and other non-commodity values. It also provides for traditional hunting, gathering and cultural activities by tribal members as regulated by tribal law. Nonconforming active lease sites may be maintained as nonconforming uses in accordance with this Chapter, but the creation of new lease sites shall be limited and regulated in accordance with this Chapter.

(b) Uses.

1. Permitted by Right. Hunting, gathering, fishing, passive recreational use, residential dwellings, and public infrastructure improvement
2. Permitted as Conditional Use. Active recreational use, timber sales, timber harvest, low-impact agriculture, parks, trailheads, auto-salvage operations, solar power generation facilities, and wireless communication towers.

(c) Forestry Bulk Regulations.

Regulations for active timber management including timber sales and timber harvest shall be subject to conditions imposed by the Forester in accordance with tribal law.

Structure	Maximum Height (feet)	Front Yard Setback (feet)	Rear Yard Setback (feet)	Side Yard Setback (feet)
Primary Building	35	25	15	10
Accessory Building/Structure	25	25	10	10
Fence	Front Yard: 4 Rear/Side: 6	15	10	10
<b>*If the property has a certified survey map on record with the Land Office, fences may be placed directly on the lot line.</b>				

37.6.7 Preserved Overlay District (P).

- (a) Intent. The creation of an overlay district is to ensure adequate protection of environmentally and culturally sensitive areas, such as water bodies, wetlands and culturally significant areas. Whereas base zoning districts (R, C, F) are created in relation to parcel or infrastructure boundaries, the Preserved Overlay District is created in relation to environmentally and culturally sensitive areas and may not follow parcel boundaries.
- (b) Effect. The Preserved Overlay District shall be established in order to:
1. Maintain, conserve and enhance natural resource assets;

2. Protect and preserve the Tribe's cultural and historical assets in accordance with Section 106 of the National Historic Preservation Act and Chapter 20 of the Code.

(c) District Area Defined. The Preserved Overlay District shall encompass the following areas of land:

1. Within the shoreline setback area as defined in Section 37.9.
2. Within the 100-year floodplain as regulated by Chapter 55.
3. Within any wetland as delineated by certified staff and/or the US Army Corps of Engineers.
4. Areas of cultural significance, as defined by the Red Cliff Tribal Historic Preservation Office; and
5. Lands protected for the purpose of natural resource and cultural preservation.

(d) Uses.

1. Permitted by Right. Cultural activities as may be defined under this Chapter or under Chapter 20 of the Code, including hunting, gathering, fishing, open space preservation, passive recreational use and conservation projects as undertaken by tribal departments.
2. Permitted as Conditional Use. Docks, and active recreational use as managed by tribal entities.

(e) Preserved Bulk Regulations. Uses permitted in this overlay district are subject to the bulk regulations of the base zoning district in which the parcel is located.

## **37.7**

### **SECTION 7- SIGNS.**

#### **Content.**

- (a) No non-commercial outdoor signs visible to the public shall be erected, placed, installed, replaced, moved, or maintained except as provided in this section and Section 8.

- (b) No commercial outdoor identification and advertising signs shall be erected, placed, installed, replaced, moved, or maintained except as provided in this section and Section 8, and a Sign Permit issued pursuant to Section 10.

37.7.2 District Requirements. For the purposes of this section, two back-to-back faces on one sign structure shall constitute one (1) sign.

<b>Zoning District</b>	<b>Maximum Number Allowed</b>	<b>Maximum Square Footage (per sign)</b>	<b>Front Yard Setback (feet)</b>	<b>Side Yard Setback (feet)</b>	<b>Maximum Height (feet)</b>
Residential	2	20	25	10	10
Mixed-Use Commercial (C)	4	Combined total of 120, with no one sign over 60.	10	10	15
Forestry (F)	None	-	-	-	-
Preserved (P)	None	-	-	-	-

b37.7.3 On-Premise Signs. On-premise (or on-property) signs advertise for a business that is conducted on the property. On-premise signs may be attached to the structure of a building but shall not extend above the roofline of the building to which it is attached. Free standing signs located on-premise shall be allowed subject to the requirements of this section.

37.7.4 Off-Premise Signs. Off-premise (or off-property) signs advertise for a business that is conducted off the premise. The land holder of the property where the off-premise sign is to be located shall be responsible for compliance with requirements of this section.

37.7.5 General Signage Requirements.

- (a) Flashing, intermittent, or moving lights and/or parts shall not be used with any sign unless for safety purposes.
- (b) Signs shall not resemble, imitate or approximate the shape, size, form or color of traffic signs, signals or devices.
- (c) All signs, sign faces and supports shall be maintained in a good state of appearance and repair, as determined by the Zoning Administrator.

37.7.6 Exempt Signage. The following signs are exempt from obtaining a permit but shall conform with all applicable zoning and dimensional requirements stated in this section.

- (a) Signs advertising garage sales, elections, auctions, carnivals, or other temporary events if all the following requirements are met:
  - 1. The sign does not hinder traffic safety or visibility;
  - 2. The sign is less than eight (8) square feet;
  - 3. The sign is erected no sooner than thirty (30) days prior to the advertised event; and
  - 4. The sign is removed no later than ten (10) days after the advertised event.
- (b) Temporary "For Sale"-type signs if they do not hinder traffic safety or visibility, and if less than ten (10) square feet.
- (c) Temporary highway/roadway maintenance signs provided they are managed by a government entity.
- (d) Permanent informational, directional, and wayfinding signage managed by a government entity.

37.7.7 Sign Permits. No signage requiring a permit shall be erected, relocated, or structurally altered unless a sign permit has first been issued in accordance with Section 10.

37.7.8 Noncompliance. The Zoning Administrator may revoke any permit or order a landholder to remove, relocate, alter, or repair of any non-compliant sign that violates this section. A landholder's failure to comply with this section shall subject the landholder to forfeitures, penalties and fees pursuant to Section 14 and 15 of this Chapter.

37.7.9 Removal.

- (a) Notice. A notice of noncompliance shall be provided via certified mail to the property owner/lease holder of where the noncompliant sign is located. The notice shall state the section(s) violated and order of removal of not less than thirty (30) calendar days from the date received. The immediate removal of a sign may be ordered where the sign poses a threat to traffic safety or visibility.

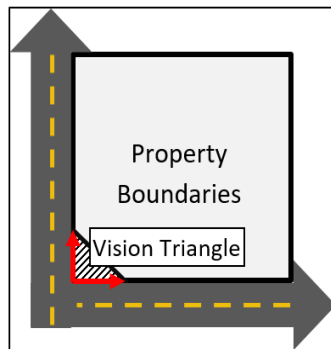
In such instances, a notice of immediate removal of a dangerous sign may be provided via phone call to the property owner. Failure to remove a sign as required herein shall be subject to enforcement action and forfeitures, penalties and other fees pursuant to Sections 37.14 and 37.15.

- (b) **Non-Operational Signs.** An off-premise sign advertising a business, product, service, commodity, entertainment or real or personal property sale which has been terminated shall be removed within six (6) months after such termination.

### 37.8 **SECTION 8- VISION TRIANGLE.**

37.8.1

No structure, planting, sign or other permanent visual obstruction shall exceed three (3) feet in height above the street centerline grade of adjacent street(s). The vision triangle shall be created by measuring thirty (30) feet from each direction



of the adjacent street intersection and connecting the points to form a side parallel to the street intersection. This section is meant to ensure safe vehicular travel throughout the reservation, and roadways are clear from obstructions that would otherwise prohibit safe passage. Refer to *Figure 1* of this section for an example of how vision triangles are created in relation to property boundaries and roadways.

*Figure 1*

### 37.9 **SECTION 9- SHORELINE SETBACKS.**

37.9.1

Effect. Shoreline setbacks shall be required to aid in the protection of land, life and property. Structures and improvements including decks, buildings and platforms are expressly prohibited in the shoreline setback area. Docks proposed in the shoreline setback area require submittal of a Variance Application and approval by the Tribal Council. Field inspection by staff shall be required to locate and measure setbacks.

37.9.2

Required. In all zoning districts, the following shoreline setbacks shall apply.

- (a) Lake Superior. There shall be a setback of one hundred and fifty (150) feet of horizontal distance from the Lake Superior High-Water Elevation Mark.
- (b) Streams. On all streams there shall be a minimum setback of one hundred (100) feet of horizontal distance from the stream bankfull mark.
- (c) Greater Setback. In cases of adverse conditions such as steep slopes, eroding banks, or flooding history, the Zoning Administrator or PAC Review Board

may require greater shoreline setbacks which shall be measured as a horizontal distance.

37.10 **SECTION 10- PERMITS REQUIRED.**

37.10.1 Effect. Applicable permits shall be required for all structures hereinafter erected, constructed, altered, or moved, and for all changes to the character and use of land and structures, within any district established by this Chapter.

37.10.2 Required. No new structure, new development, or new land use activity as defined by this code shall be issued a permit until an applicable Land Use Application is completed, reviewed, and approved, certifying that such development would comply with the provisions of this Chapter, based upon the information provided in the application.

37.10.3 Residential Land Use Permits.

- (a) Effect. Residential Land Use Permits authorize the proposed use of a site that is in accordance with this Chapter and is harmonious with the surrounding residential land uses of an area.
- (b) Required. No new residential development, or new residential land use activity as defined in this Chapter as “Permitted by Right” shall be issued a permit until a Land Use Application is completed and approved by the Zoning Administrator or designee finding that such development would comply with the provisions of this Chapter, based upon the information provided by the applicant.
- (c) Procedure. Applications shall be completed by the Applicant and submitted to the Zoning Administrator, or designee, who shall either approve or deny an application for a Land Use Permit based on the information provided in the application. A submitted application must include enough detail to allow staff to determine whether all proposed activities are in accordance with the provisions of this Chapter and the laws of the Tribe.

37.10.4 Commercial Land Use Permits.

- (a) Effect. Commercial Land Use Permits authorize the specific proposed commercial use of a site that is in accordance with this Chapter and is harmonious with the land uses of the surrounding area. The Mixed-Use



Commercial District aims to provide an area for economic development of the Tribe while ensuring existing residential areas have minimized disruptions.

(b) Permits Required. All commercial land uses shall require a permit issued by the Tribal Council in accordance with the provisions in this Chapter. No new commercial development or new Commercial Land Use Activity as defined in this Chapter as “Permitted by Right” in any zoning district, shall be issued a permit until a complete Land Use Application has been submitted by the Applicant, reviewed by the PAC Review Board, recommended for approval, and approved by the Tribal Council in accordance with this section.

(c) Procedure.

1. Pre-Development Meeting. Applicants interested in commercial development within the commercial district shall first schedule a pre-development meeting with the PAC Review Board. The pre-development meeting shall serve as the preliminary meeting to discuss the proposed site requirements for the commercial project in relation to tribal codes. Applicants shall provide a completed Land Use Application to the Zoning Administrator at least seven (7) calendar days prior to the pre-development meeting and shall be prepared to discuss the site design and business plan at the meeting. Existing permitted home-based businesses located in the commercial district shall be exempt from the pre-development meeting but shall still be required to obtain a Business Permit in accordance with Chapter 16 of the Code.
2. Applications. After the pre-development meeting has been completed, applicants shall abide by any PAC Review Board’s requirements and shall submit a final Land Use Application along with associated supporting documents to the Zoning Administrator.
3. Review of Submitted Applications. The Zoning Administrator, within fifteen (15) days of receipt of the Applicant’s final and complete application, shall distribute the application to the PAC Review Board with a recommendation. The PAC Review Board shall review the application and vote whether to recommend approval by the Tribal Council of a Commercial Use Permit. The PAC Review Board may vote to recommend approval, approval with conditions, or denial of the application based on information reviewed. A PAC Review Board recommendation to the

Tribal Council shall require majority vote of all disinterested board members at a regularly scheduled meeting.

4. Approvals. The Tribal Council shall review the application for a Commercial Land Use Permit and recommendations, and either approve, approve with conditions, or deny the permit within ninety (90) days of receipt. Permit applications that are not approved, with or without conditions, by the Tribal Council shall be deemed denied.

#### 37.10.5 Conditional Use Permits.

- (a) Effect. There are certain uses, which, due to the nature of their impacts on surrounding land uses, water, air and public facilities, require a case-by-case review and analysis. The intent of this section is to provide procedures under which a conditional use may be permitted. Applicants who wish to conduct any Conditional Use activity on land within any zoning district shall submit a Land Use Application for a Conditional Use Permit for review by the Zoning Administrator and PAC Review Board prior to being brought before the Tribal Council for a final determination on whether the requested Conditional Land Use Activity shall be permitted.
- (b) Required. No new development or new land use activity as defined in this Chapter as a “Conditional Use” is permitted until the applicant receives a Conditional Use Permit after submitting a complete Land Use Application, which is reviewed and recommended by both the Zoning Administrator and the PAC Review Board finding that such development or activity would comply or conform with the intent of the provisions of this Chapter, the Red Cliff Code of Laws, and the strategic planning efforts of the Tribe, and based upon the information provided in the application, receives approval by the Tribal Council.
- (c) Procedure.
  1. Application. Applicants shall submit the completed Conditional Land Use Application and all supporting materials to the Zoning Administrator or delegate. Depending on the scope of the project, the Zoning Administrator may schedule a pre-development meeting with the PAC Review Board and other staff as deemed necessary. Upon Zoning Administrator recommendation, the PAC Review Board shall review the application and recommend to the Tribal Council either approval, approval with

conditions, or denial of the application for a Conditional Use Permit based upon the use criteria in the following subsection.

2. Use Criteria.

- (i) The parcel size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations;
- (ii) Any adverse impacts of the proposed use on adjacent properties and on the public can be mitigated through application of this Chapter or other Code standards, or other reasonable conditions of approval; and
- (iii) All required public facilities have adequate capacity to serve the proposed use.

3. Conditions of Approval. The Zoning Administrator and the PAC Review Board may recommend the requirement of conditions for approval of permit to ensure that the use is compatible with other surrounding uses, and that any negative impact of the proposed use on the surrounding uses and public facilities is minimized. The Tribal Council may impose as many of these and other applicable conditions as the Tribal Council may find reasonable and necessary to further the purposes of this Chapter and the best interests of the Tribe, which the Applicant shall be required to meet within any applicable timeframes as a condition on the issuance of a Conditional Use Permit. Such conditions may include, but shall not be limited to, the following:

- (i) Requiring the protection and preservation of existing trees, soils, vegetation, groundwater, waterways, habitat areas, drainage areas, historic, and culturally sensitive areas;
- (ii) Limiting the hours, days, place or manner of operation;
- (iii) Requiring larger setback areas and/or lot area than those required by this Chapter;
- (iv) Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas,

- (v) Requiring the construction of pedestrian/bicycle pathways; and
- (vi) Designating the size, number, location and/or design of vehicle access points or parking areas.

37.10.6 Sign Permits.

- (a) Required. No person may erect, install, place, relocate, or structurally alter a sign used to advertise a commercial activity if the sign is visible from a public road unless the Applicant has received a Sign Permit issued in accordance with this Section.
- (b) Procedure. The Zoning Administrator, or designee, shall either approve or deny a Sign Permit application based on the information provided by an Applicant. The Applicant must submit a complete application and include all information required to reach a finding whether the proposed signage would conform with the provisions of Section 37.7.

37.10.7 Permit Periods. All issued permits shall be valid for one (1) calendar year from the date of issuance stated on the permit. Activities that have not commenced within a valid permit period shall not be permitted. Extensions of a permit period may be granted by the Zoning Administrator if significant progress on the subject activity has been made as demonstrated by the Applicant. Extensions may be granted for a period of up to one (1) year in the sole discretion of the Zoning Administrator. An Applicant seeking an extension of a permit required for commencement of a activity under this Chapter may request such extension in writing to the Zoning Administrator prior to permit expiration. An Applicant whose request for discretionary extension of a permit validity period is not granted may re-apply for a new permit application in accordance with this Chapter.

37.11 **SECTION 11- NONCONFORMITIES.**

37.11.1 Nonconforming Structure and Building Regulations.

- (a) Existing land uses that are made nonconforming by the adoption of this Chapter, and any amendments hereto and to the Zoning District Map, shall be allowed to continue without a permit otherwise required by this Chapter only in accordance with the provision of this Section.
- (b) Whenever a structure used for a lawful nonconforming land use activity has been damaged by natural disaster, the structure may be reconstructed, and the

prior nonconforming use may continue without a new permit otherwise required. In such cases, the continuing use after reconstruction shall be limited to only those prior lawful land use activities that are otherwise permitted under this Chapter.

- (c) Ordinary maintenance and repairs made to a nonconforming building or structure will be allowed without a permit required provided that the repair and maintenance conforms with the requirements of the district in which the structure is located and all other provisions of this chapter.
- (d) Construction of an addition made to expand or add to a nonconforming building or structure in the front, side and rear yards is allowed without a permit required subject to the following limitations:
  - 1. The addition shall not encroach into the required side yard setbacks of the district in which it is located;
  - 2. The addition shall not further encroach into the established nonconforming front or rear yard setbacks of the existing nonconforming structure; and
  - 3. The addition shall conform with all other requirements of the district in which it is located and all other provisions of this Chapter.

37.11.2      Non-Conforming Accessory Structures. Construction of an addition made to expand or add to a non-conforming accessory structure is allowed without a permit otherwise required provided that:

- (a) The addition to an existing accessory structure shall not encroach in the setbacks required in the zoning district in which the structure is located.
- (b) The additional structure shall not exceed fifty (50) percent of the original size of the accessory structure.

37.11.3      Non-Conforming Use Regulations.

- (a) Discontinued Use. If a lawful nonconforming use of a parcel of land or structure is discontinued for a period of twelve consecutive months, the nonconforming use is no longer allowed under this section. Any future use of the land or structure shall conform to the current land use regulations

applicable to the district in which the parcel or structure is located unless a variance is approved and issued under this Chapter.

- (b) Damage. If a nonconforming structure or parcel of land is damaged to the extent of more than fifty percent of its fair market value or declared uninhabitable by the Zoning Administrator or other tribal official authorized under the Code to condemn structures, the damaged structure or land shall not be restored except in conformity with the regulations of the district in which it is located or a variance is approved and issued by the Tribal Council pursuant to Section 12. The total set of structural repairs or alterations to a nonconforming structure shall not, over the life of the structure, exceed fifty (50) percent of the current fair market value of the structure unless the landowner's changes to the structure and use of the property conform to the requirements and conditions of the current zoning district in which the property is located.

## **37.12            SECTION 12- VARIANCES.**

37.12.1            General Provisions. A variance to the dimensional requirements applicable within a given zoning district may be issued to a landholder after submitting a complete Land Use Application for a variance, review and recommendation by the Zoning Administrator, review and recommendation by the PAC Review Board, and approval by the Tribal Council. An Applicant who wishes to build or change a structure or develop a property in a way that is inconsistent with the numerical restrictions or dimensional standards of the zoning district, such as setbacks and maximum heights, may apply for a variance in a Land Use Application in accordance with this section.

37.12.2            Proof of Need. To qualify for consideration for a variance, the subject property must meet all the following requirements:

- (a) Unnecessary Hardship. Without issuance of the requested variance, no reasonable beneficial use can be made of the property. Unavoidable and needless hardship must be caused by application of this Chapter to the subject property. If a parcel as a whole (but not necessarily each portion of the parcel) provides the landholder with some reasonable use according to the zoning district without an approved variance, then this hardship requirement condition is not met. An applicant may not claim hardship because of conditions which are self-imposed or created by a prior land holder. Decks and other accessory structures are not essential to the reasonable use of property and are not eligible for variances.

- (b) Hardship Due to Unique Physical Limitations of the Property. A qualified hardship must be due to the unique physical limitations of the property, i.e. compliance with the applicable requirements is prevented by substantial topographical, environmental, geographical, or other physical limitations (e.g., steep slopes, wetlands) that are not generally shared by most properties within the Reservation. Personal circumstances of an applicant (e.g., growing family, need for larger garage) are not qualifying factors for variances. Nearby Code violations, prior formal or informal variances, or the absence of objections from the public shall not constitute qualifying factors or serve as a basis for a variance.
- (c) No Harm to Tribal Interests. A variance may not be granted if the results would cause harm to a substantial tribal interest. These tribal interests are listed in the Purpose clause of this Chapter (Section 37.2) and may encompass general cultural and environmental protection interests.

37.12.3 Procedure. A Land Use Application for a variance submitted by a landholder must include adequate detail to allow the Zoning Administrator to perform a review sufficient to make required findings for a recommendation to the PAC Review Board. If the Zoning Administrator the application is complete and contains enough detail to allow for adequate review, the Zoning Administrator shall review and provide a recommendation to the PAC Review Board. The PAC Review Board shall review the application at a regular meeting and shall by majority vote make its findings supporting its recommendation to the Tribal Council whether to approve or deny the application for a variance. The PAC Review Board shall refer the application and recommendations to the Tribal Council for final determination. The Tribal Council's written decision to approve or deny the variance application shall be delivered to applicant stating the specific details of the variance as approved by the Tribal Council.

### **37.13 SECTION 13- APPEALS.**

37.13.1 General Procedures. A final decision on the issuance of a permit under this Chapter, other than final decisions of the Tribal Council, may be appealed to Tribal Court. The Tribal Court is granted jurisdiction to hear all such appeals subject to the following conditions. The procedures below shall apply in such appeals and the Court may adopt such additional procedures and rules to govern the hearing of such appeals as it deems reasonable in accordance with the provisions of Chapter 4 of the Code.

- (a) An appeal of a final decision on a permit under this Chapter, other than those made by the Tribal Council, must be filed with the Clerk of Court in writing within fifteen calendar (15) days after the written notice of the final decision is issued to the Applicant. The Applicant shall serve the appeal upon the Zoning Administrator.
- (b) The jurisdiction of the Tribal Court shall be limited to the determination of whether the final decision was without rational basis in law or fact.
- (c) The Tribal Court may review the appeal and issue a decision with or without oral argument.
- (d) The decisions of the Tribal Council and the Tribal Court are final and conclusive, and no further appeal may be taken.

## **37.14**

### **SECTION 14- ENFORCEMENT.**

#### **37.14.1**

#### **Zoning Enforcement Officers.**

- (a) The Tribal Council hereby authorizes the Zoning Administrator to serve as the primary Zoning Enforcement Officer to enforce the provisions of this Chapter in Tribal Court and to represent the Tribe in any appeal filed in the Tribal Court under this Chapter.
- (b) The Zoning Administrator shall have the authority to designate other members of the Red Cliff zoning staff as Zoning Enforcement Officers from time to time to enforce the provisions of this Chapter subject to the supervision of the Zoning Administrator.
- (c) Red Cliff Law Enforcement Officers and Red Cliff Wardens are authorized to act as Zoning Enforcement Officers to enforce the provisions of this Chapter pursuant to Chapter 4 of the Code.
- (d) The Tribe and its officials, employees, and agents, including the Zoning Administrator and all Zoning Enforcement Officers, shall be exempt from any and all liability for acts and omissions made within their official capacity, and for any property damaged by authority of law.
- (e) The Zoning Administrator and other Zoning Enforcement Officers are hereby authorized to conduct site inspections on the property of Applicants and recipients of permits issued under this Chapter to investigate compliance with the provisions of this Chapter and any permit conditions.



37.14.2 Violations. If a violation of this Chapter is reasonably suspected, a Zoning Enforcement Officer shall attempt to deliver a written notice of non-compliance to the landholder, indicating the nature of the violation and the action necessary to correct the violation. If a landholder fails to reasonably and timely correct the violation, a Zoning Enforcement Officer may issue a citation and refer the information to the Legal Department for legal action in Tribal Court.

**37.15 SECTION 15- FEES AND FORFEITURES.**

37.15.1 Land Use Fund. The Tribal Council hereby authorizes the establishment of the Red Cliff Land Use Fund, which shall be funded through court forfeitures and any other sources approved by the Tribal Council, which funds may be used to cover costs associated with the administration of this Chapter, including remediation of general damages resulting from violations of this Chapter. A minimum penalty assessment of fifteen (15) percent of the dollar amount of any forfeitures imposed by the Tribal Court for a violation of this Chapter shall be contributed to the Red Cliff Land Use Fund.

37.15.2 Fees. A schedule of fees for permit applications shall follow the guidelines of the Red Cliff Land Use Fee Schedule as approved by Red Cliff Tribal Council. Applicants shall be responsible for paying all applicable fees prior to issuance of a permit as described by this Chapter. Divisions, Departments, and Programs of the Red Cliff tribal government shall be eligible for exemption from the requirement to pay applicable land use permit fees otherwise required in this Chapter for land use projects under the management and control of the Tribe, except those fees for permits issued only after an enforcement action made necessary by the failure of the Tribal project manager to comply with the permitting provisions of this Chapter. Permit fees shall be doubled if ground disturbance, construction work, or unauthorized use or activity is commenced prior to a required permit being issued.

37.15.3 Forfeitures. Any person found guilty by the Tribal Court of violating any provision of this Chapter shall forfeit not more than five-thousand dollars (\$5,000.00) per violation. In addition to a civil forfeiture, the court may assess other penalties and remedies it deems just and proper including but not limited to restitution for all damages to the environment and property of the Tribe or others, community service, and remediation or reclamation costs and expenses incurred by any person or entity damaged as result of the violation.

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Legislative History: Chapter 37 enacted by Res. x/y/z replacing Chapter 37 Land Use Ordinance.