



MEMORANDUM OF UNDERSTANDING
Between the
USDA FOREST SERVICE, CHEQUAMEGON-NICOLET NATIONAL FOREST
And the
FOREST COUNTY POTAWATOMI COMMUNITY

This **MEMORANDUM OF UNDERSTANDING** (MOU) is entered into by and between the USDA Forest Service, Chequamegon-Nicolet National Forest, hereinafter referred to as the “Forest Service”; and the Forest County Potawatomi Community, (appearing in the U.S. Federal Register Of January 14, 2015 at Vol. 80, No. 9, p. 1944 as the Forest County Potawatomi Community, Wisconsin), hereinafter referred to as the “Tribe” and collectively referred to as the Parties.

A. PURPOSE

The purpose of this MOU is to formalize the relationship between the Tribe and the Forest Service; to provide a framework for cooperation between the parties regarding issues of mutual concern including but not limited to consolidation and exchange possibilities; natural resource management, forest ecosystem management, wildlife management, invasive species management, water quality management and air quality management; access to each other’s lands, roads and trails; land ownership, historic preservation and cultural resource management; economic development; and training and education.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS

The Parties affirm in this MOU the principles of tribal sovereignty, self-determination, self-governance, and the unique government-to-government relationship that exists between the United States and federally recognized Tribes. The Parties acknowledge the unique territorial and jurisdictional relationship between the Tribe’s lands and the Chequamegon-Nicolet National Forest; that the Tribe and Forest Service are full partners in the conservation of this shared landscape and rightly share in the benefits derived there from.

The Parties acknowledge the United States’ trust responsibility and treaty obligations; that trust responsibility is a legally enforceable fiduciary obligation on the part of the United States to protect tribal lands, assets, resources, and rights, as well as a duty to carry out the mandates of federal law with respect to American Indian Tribes and tribal communities.

The Parties recognize the need to work collaboratively in the planning and implementation of policies and decisions affecting Forest Service lands near the Tribe’s lands. The Parties will strive to achieve mutual landscape restoration goals and to foster a shared stewardship approach to these lands.

C. AUTHORITIES

The Parties acknowledge and cite the following authorities in support of this MOU:

1. Federal Laws



The Act of 1913, 38 Stat. 77 (1913); the Organic Administration Act of 1897; the Weeks Act of 1911; the Indian Reorganization Act of 1934; the Multiple Use Sustained Yield Act of 1960; the National Environmental Policy Act of 1970; the Indian Self-Determination Act of 1974; the Forest and Rangeland Renewable Resources Planning Act of 1974; the National Forest Management Act of 1976; the National Historic Preservation Act of 1966; the Native American Graves Protection and Repatriation Act of 1990; the American Indian Religious Freedom Act of 1978; the Religious Freedom Restoration Act of 1993; the Federal Lands Recreation Enhancement Act of 2004; the Tribal Forest Protection Act of 2004; the Cultural & Heritage Cooperation Authority of 2008 (Farm Bill) any other applicable laws for the administration of the National Forest System and the protection of tribal sovereignty and trust resources.

2. Tribal Laws

The Forest County Potawatomi Community Constitution (7/14/1982); any and all applicable Tribal laws and policies.

3. Executive Policy

E.O. 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994); Presidential Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments; E.O. 13007-Indian Sacred Sites (1996); E.O. 13175-Consultation and Coordination with Indian Tribal Governments (2000); USDA Departmental Regulation 1340-007, Policies on American Indians and Alaska Natives (2008); USDA Departmental Regulation 1350-002, Tribal Consultation, Coordination, and Collaboration (2013); Forest Service Manual 1563-American Indian and Alaska Native Relations (2012); Forest Service Handbook 1509.13-American Indian and Alaska Native Relations Handbook (2012); Chequamegon-Nicolet National Forest Land and Resource Management Plan (2004).

D. SPECIFIC AGREEMENT TO IMPLEMENT THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

1. PRIORITY CONSULTATION-LAND EXCHANGE OPPORTUNITIES

The Parties have lands that are “checker-boarded” with each other, resulting in lands that are landlocked in general. Some lands are landlocked from public road access and such lands are accessible only if one Party crosses the other Party’s land. This results in multiple land management challenges and inefficiencies for the Parties.

The Parties agree to meet as often as needed, but no less than twice per year to address reducing landlocked lands via land exchanges. The meetings shall take place in June and December of each year. The Parties shall identify the process, legal restrictions, priorities, milestones, and appropriate staff to work on land exchanges. The Parties shall identify lands that might be available to be exchanged with the other Party, or third parties, to reduce and possibly eliminate checker-boarding of the Parties’ lands.

2. GENERAL CONSULTATION FRAMEWORK



The Parties agree that Forest Service decisions affecting Forest Service lands near the Tribe's lands are decisions affecting both Parties. The formulation of these decisions requires early notice, meaningful collaboration and consultation, and an accountable process for tracking the Tribe's interests and concerns.

Therefore, the Parties agree that they shall consult on a bilateral Government-to-Government basis on decisions:

- That may result in the opportunity to pursue land exchanges between the Parties;
- That may affect the abundance, well-being, distribution and access to the natural resources on Forest Service lands near the Tribe's lands, including forest management, wildlife management, invasive species management, air management, and water management;
- That may affect access to the Tribe's land over Forest Service land;
- That may affect the Tribe's cultural life-ways and cultural properties;
- That have potential to enhance opportunities for economic development, including education, training, and employment;
- That may have implications for the Tribe's right to self-governance, including the right to self-regulate;
- That has implications for the effective management of Forest Service lands near the Tribe's lands;
- Other issues of mutual concern or interest.

In addition, the Parties agree that the goal of such consultation shall be that any such decisions should expressly recognize the Tribe's rights to self-governance and its right to access its lands, its right to participate in lawful activities on Forest Service lands, and to enjoy economic prosperity. It is mutually understood that consultation between the Parties will contribute to the creation of more enlightened, better constructed, and more effective policies and decisions. To achieve this end, the Parties specifically agree that:

- a. As to decisions that result in particular land management actions, in policies or guidelines governing those actions and to issues subject to this MOU:
 - i. The Forest Service shall consult with and facilitate effective participation by the Tribe at all stages and levels of the planning and decision making process. This collaboration is recognized as a dynamic process that must include consultation on a consistent and timely basis at the appropriate levels of government and that must be flexible to deal with ever-changing circumstances and adaptive natural resource management responses.
 - ii. The Forest Service shall consider the effects of its decisions on the Tribe and the United States' trust responsibility to the Tribe, and access to the Tribe's lands. In decision and analysis documents, including those required by the National Forest Management Act and the National Environmental Policy Act, decision-makers will show how tribal information and involvement was taken into account in analyzing the effects of potential management actions and in making the decision.



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- iii. The Tribe and the Forest Service will strive to reach consensus. Where consensus cannot be reached on a Forest Service decision:
- They will attempt to resolve any dispute or disagreement first by good faith discussions between the Tribe and the Forest Service deciding official. The Tribe may raise any matter not resolved at this level to a higher Forest Service official, including the appropriate Forest Supervisor, Regional Forester, and Chief of the Forest Service. The Forest Service agrees to delay a final decision on the unresolved matter until this process has had the opportunity to take place within a reasonable amount of time or not less than 120 days.
 - The Forest Service may make and implement the decision.
 - In addition to the procedures provided by the MOU, the Tribe may utilize the predecisional administrative review (referred to as “objection,” 36 CFR 261 Part 218) process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans documented with a Record of Decision or Decision Notice.
- b. Nothing in this MOU implies that all disputes between the Tribe and Forest Service will be resolved. The Parties recognize that there may be times when they disagree on principle; but they concur that these disagreements shall not stand in the way of an effective, respectful working relationship nor preclude continuing consultation in good faith.
- c. During the course of their dealings, the Tribe and Forest Service shall ensure that they have identified their representatives with whom the other Parties should interact regarding particular decisions or particular types of decisions.
- d. Nothing in this MOU shall preclude the Tribe and Forest Service from discussing matters or advancing particular requests that are not part of this MOU.

E. ADMINISTRATION OF THE MOU

The Parties further agree that:

1. Each party shall designate a person to serve as a lead contact for the administration of this MOU, which will be updated as needed from time to time.
2. Utilizing existing authorities, the Parties agree to work to meet the objectives of this MOU.
3. Each party shall provide, within its existing capacity, technical assistance and expertise in the implementation of mutually agreeable projects.
4. The Tribe shall provide, within its existing capacity, technical assistance and expertise in the implementation of projects that address the Tribe’s cultural life ways, traditional cultural properties and practices, and traditional ecological knowledge (TEK).
5. The Forest Service shall keep secure and confidential any information shared by the Tribe that the Tribe deems to be proprietary or culturally sensitive.



6. Each project, proposal, or agreement developed by the Parties shall be agreed to in writing by the Parties and appended hereto as ancillary to the MOU or as an independent agreement utilizing authorities not cited herein.

7. The Forest Service will cooperate with the Tribe to identify funding opportunities, training opportunities and other means of assistance to implement the provisions outlined in this agreement.

F. PRINCIPAL AUTHORITIES

The following individuals serve as the "principals" for this MOU:

FOREST SERVICE	FOREST COUNTY POTAWATOMI COMMUNITY
Forest Supervisor 500 Hanson Lake Road Rhinelander, WI 54501 Phone: 715-362-1300 Fax: 715-369-8859 Email: <i>pstrong@fs.fed.us</i>	Chairman P.O. Box 340 Crandon, WI 54520 Phone: 715-478-4806 Fax: 715-478-5280 Email: <i>francine.vanzile@fcpotawatomi-nsn.gov</i>

The following individuals serve as the lead contact for the administration of this MOU:

FOREST SERVICE	FOREST COUNTY POTAWATOMI COMMUNITY
LENORE LAMB 500 Hanson Lake Road Rhinelander, WI 54501 Phone: 715-362-1343 Fax: 715-369-8859 Email: <i>lenorelamb@fs.fed.us</i>	Land & Natural Resources Division Director P.O. Box 340 Crandon, WI 54520 Phone: 715-478-7205 Fax: 715-478-7225 Email: <i>nate.guldan@fcpotawatomi-nsn.gov</i>

G. IT IS MUTUALLY AGREED BY THE PARTIES THAT

1. FREEDOM OF INFORMATION ACT (FOIA). Unless exempted, information furnished to the Forest Service under this MOU is subject to the Freedom of Information Act (5 U.S.C. 552). FOIA Exemption 3 allows for non-disclosure of certain categories of culturally sensitive information under the provisions of the Archaeological Resources Protection Act (16 U.S.C. 470hh), the National Historic Preservation Act (16 U.S.C. 470w-3); in addition to the prohibition of certain disclosures contained in section 8106 of the Cultural and Heritage Cooperation Authority of 2008 (25 U.S.C. 3056). Unless Forest Service is required to disclose specific information, culturally



sensitive or proprietary information shared with the Forest Service shall be kept confidential by the Forest Service.

2. **PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts the Forest Service or the Tribe from participating in similar activities with other public or private agencies, organizations, and individuals.

3. **COMMENCEMENT/EXPIRATION/TERMINATION.** This MOU takes effect upon the signatures of the Forest Service and the Tribe and shall remain in effect, unless terminated by either Party in writing. Either the Forest Service or the Tribe may terminate this MOU at any time with a 60-day written notice to the other Party.

4. **AMENDMENTS.** This MOU may be amended from time to time upon written agreement of the Parties. Such amendments may include changes to any attachments to this MOU, and/or may include additional agreements and/or MOU's between the Parties.

5. **RESPONSIBILITIES OF PARTIES.** The Forest Service and the Tribe and their respective agencies and offices will manage their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing the objectives of this MOU. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

6. **NON-FUND OBLIGATING DOCUMENT:** Nothing in this MOU shall obligate the Forest Service or the Tribe to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and the Tribe will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

7. **ESTABLISHMENT OF RESPONSIBILITY.** This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

8. **TRIBAL SOVEREIGNTY.** Nothing in this MOU is intended to waive the sovereign immunity of the Tribe from suit or otherwise impair the sovereignty of the Tribe.

9. **AUTHORIZED REPRESENTATIVES.** By signature below, each party certifies that the individuals listed in this document as representatives of the individual Parties are authorized to act in their respective areas for matters related to this agreement.



In witness whereof, the Parties hereto have executed this agreement, as of the last date written below.

Forest County Potawatomi Community

Harold Frank

HAROLD FRANK
Chairman, Forest County Potawatomi Community

12.14.16

Date

USDA Forest Service

Kathleen Atkinson

KATHLEEN ATKINSON
Regional Forester
Forest Service
Eastern Regional Office

12/14/16

Date