

ORDINANCE NO. 37
OFF-RESERVATION NATIONAL FOREST GATHERING ORDINANCE

BE IT ENACTED, by the Tribal Council of the Saginaw Chippewa Indian Tribe of Michigan as follows:

CHAPTER 1 – INTRODUCTION

SECTION 1.01 Ordinance Title.

This Ordinance shall be known as the Saginaw Chippewa Indian Tribe of Michigan Off-Reservation National Forest Gathering Ordinance.

SECTION 1.02 Authority.

This Ordinance is enacted pursuant to Article VI, Sections 1(a), 1(j), and 1(n) of the Constitution of the Saginaw Chippewa Indian Tribe of Michigan of November 4, 1986.

SECTION 1.03 Statement of Purpose.

The purpose of this Ordinance is to:

- a. Provide an orderly and effective system for tribal control and regulation of treaty-reserved gathering activities applicable to National Forest located in the Ceded Territory; and
- b. Implement the provisions of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaty of 1819*, as may be amended from time to time, which has been ratified by the Tribe, and which is incorporated by reference herein as if set forth in its entirety.

SECTION 1.04 Effective Date.

This Ordinance shall be effective on the date certified by Certified Resolution of the Tribal Council.

SECTION 1.05 Interpretation.

The provisions of this Ordinance:

- a. Shall be interpreted and applied as minimum requirements governing the exercise of treaty-reserved gathering rights applicable to National Forest located in the Ceded Territory;
- b. Shall be liberally construed in favor of the Tribe;

- c. Shall be construed consistent with the purposes and provisions of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaty of 1819*, as may be amended from time to time, which has been ratified by the Tribe, and which is incorporated by reference herein as if set forth in its entirety; and
- d. Shall not be deemed a limitation or repeal of any other power or authority of the Tribe.

SECTION 1.06 Severability and Non-Liability.

If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby. The Tribe further asserts immunity on its part and that of its agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this Ordinance.

SECTION 1.07 Religious or Ceremonial Use of Natural Resources.

- a. Nothing in this Ordinance shall prohibit the harvest or use of natural resources in a manner otherwise prohibited by this Ordinance which is harvested, taken, or otherwise obtained in a National Forest within the Ceded Territory for religious or ceremonial purposes in accordance with the traditions and customs of the Tribe and with the consent of the Tribal Council, or its designee.
- b. In reviewing and taking action on any request for religious or ceremonial harvest, the Tribal Council, or its designee, shall take into account the biological impact of the harvest, shall ensure that the harvest takes place in a manner that does not cause biological harm, and shall consult with the local National Forest District Office if the requested gathering is to take place in a National Forest Research Natural Area.
- c. No Member shall fail to comply with the terms and conditions of the any permit issued pursuant to this section or to otherwise comply with the requirements imposed by the Tribe regarding religious or ceremonial harvest of wild plants in National Forest in the Ceded Territory.

CHAPTER 2 – DEFINITIONS

SECTION 2.01 Definitions.

The following terms, wherever used in this Ordinance, shall be construed as follows:

- a. “Ceded Territory” means those off-reservation lands ceded by the Tribe to the United States of America in the Treaty of 1819, 7 Stat. 203.

- b. “Bark” means the tough outer covering of the woody stems and roots of trees, shrubs, and other woody plants. It includes all tissues outside the vascular cambium.
- c. “Bough” means any branch of a tree less than two (2) inches in diameter.
- d. “Designated Area” means a specific site identified and established by the Tribe, in consultation with the Forest Service, for which a species harvestable surplus has been determined.
- e. “Designated Tribal Sugarbush Site” means a specific site identified and established by the Tribe, in consultation with the Forest Service, for which a site management plan has been developed and for which a sugarbush site permit has been issued.
- f. “Developed National Forest Campground” means a location that is clearly marked and identified as a campground by the Forest Service and on which improvements clearly have been made to develop and maintain the site as a campground.
- g. “Domestic Purpose” means the use of timber or salvage timber, harvested for the construction of any structure, building, or appenditia to be used for community or residential domestic purposes.
- h. “Firewood” means any dead tree or part thereof, either standing or downed, which is harvested for and is to be used as fuel.
- i. “Forest Service Administrative Site” means a specific site where an office, storage or other building or structure is located and maintained by the Forest Service as part of its operation and management of a National Forest.
- j. “Forest Service” means the United States Department of Agriculture, Forest Service.
- k. “Forest Service Salvage Timber Stand” means any stand of trees where the Forest Service has notified the Tribe of the decision to solicit bids for a Forest Service salvage timber sale contract.
- l. “Gather or Gathering” means to take or acquire or attempt to take or acquire possession of any wild plant, or part thereof.
- m. “Gathering Products” means all products of miscellaneous forest products other than non-timber forest products such as: branchlets, roots, berries, fruits, nuts, and seeds.
- n. “Lodgepole or Lodgepoles” means any tree that is less than five (5) inches in diameter at breast height.
- o. “Memorandum of Understanding” means the *Memorandum of Understanding*

Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaty of 1819, entered into on August 14, 2018 between the Tribe and the Forest Service.

- p. “Member” means a duly enrolled member of the Saginaw Chippewa Indian Tribe of Michigan.
- q. “Miscellaneous Forest Products” means any wild plant including: non-timber forest products, wild plants that are not trees such as herbaceous plants and shrubs, gathering products, endangered or threatened plant species, and species of special concern, but for the purposes of this Ordinance excludes timber.
- r. “National Forest” means those lands located within the Ceded Territory owned by the United States of America and part of the Huron-Manistee National Forest.
- s. “Non-Commercial Traditional and Cultural Purpose” means the use of timber harvested with respect to a definable use, area, or practice, identified by an Indian tribe as traditional or cultural because of the long established significance or ceremonial nature of the use, area, or practice to the Indian tribe; and is not for commercial purposes.
- t. “Non-Timber Forest Products” means any of the following miscellaneous forest products: bark, boughs, firewood, lodgepoles, and sap as further defined in Section 2.01 of this Ordinance.
- u. “Open Forest Service Timber Sale Contract Area” means a defined location of a National Forest which has been delineated by the Forest Service for the purposes of a timber sale offering and for which a valid Forest Service timber sale contract has been executed.
- v. “Ordinance” means Ordinance No. 37, the Saginaw Chippewa Indian Tribe of Michigan Off-Reservation National Forest Gathering Ordinance.
- w. “Salvage Timber” means any tree in a Forest Service Salvage Timber Stand, whether alive, dead, down, or standing, having a diameter of four (4) inches or greater.
- x. “Sap” means the watery fluid that circulates through a tree or plant, carrying food and other substances to the various tissues.
- y. “Shrub” means a woody perennial plant usually branched several times at or near the base giving it a bushy appearance, and is usually less than five (5) meters tall.
- z. “Species of Special Concern” means any wild plant which is contained on the tribal species of special concern list.

- aa. “Timber” means any tree that is not a lodgepole as defined in Subsection 2.01.n. of this Ordinance, or is not firewood as defined in Subsection 2.01.h. of this Ordinance.
- bb. “Tree” means a woody, perennial plant with a single trunk that is typically unbranched at or near the base, and is usually greater than five (5) meters tall.
- cc. “Tribal Council” means the duly elected governing body of the Tribe.
- dd. “Tribal Planning Department” means the Department of the Saginaw Chippewa Indian Tribe of Michigan and its officials with the authority to carry out the requirements on behalf of the Tribe provided herein.
- ee. “Tribe” means the Saginaw Chippewa Indian Tribe of Michigan which is a signatory to the Treaty of 1819, 7 Stat. 203, or the Tribe’s successor in interest.
- ff. “Wild Plant” means any undomesticated species, or part thereof, of the plant and fungi kingdoms occurring in both forested and non-forested natural ecosystem, but for the purposes of this Ordinance excludes wild rice.

CHAPTER 3 – GENERAL REGULATIONS

SECTION 3.01 Regulatory Authority.

- a. The Tribe asserts legal authority to regulate the exercise of the Tribe’s treaty-reserved Ceded Territory gathering rights applicable to wild plants found in the National Forest.
- b. Any person authorized to enforce this Ordinance may seize forthwith wherever found:
 - 1. Any wild plant taken or reduced to possession in violation of this Ordinance; or
 - 2. Any wild plant lawfully taken or reduced to possession under this Ordinance, upon violation of any provision of this Ordinance relating to the possession, use, giving, sale, barter, or transportation of such wild plant.

SECTION 3.02 Permits and Identification – General.

- a. Members shall not gather any wild plant off-reservation in a National Forest without possessing a valid off-reservation harvesting permit approved and issued by the Tribe. Such permit will need to be applied for annually and will be validated for the particular type of activity to be engaged in for the particular season in question, as follows:

1. Except as provided in Subsection 3.02.a.2, Non-Timber Forest Products and Ginseng Gathering Permits, Members shall not gather any miscellaneous forest products without possessing a valid general gathering permit issued by the Tribe through its Tribal Planning Department while harvesting off-reservation in a National Forest.
2. Non-Timber Forest Product and Ginseng Gathering Permits.
 - A. Members shall not harvest or gather non-timber forest products or ginseng pursuant to this Ordinance without possessing a valid gathering permit issued by the Tribe through its Tribal Planning Department as follows:
 - i. Small Scale Harvest Activity. For small scale activity, a Member may harvest the following non-timber forest products while possessing a valid gathering permit for each type of non-timber forest products, up to the following limits:
 - (a) Bark – Twenty (20) trees;
 - (b) Boughs – Two (2) tons;
 - (c) Firewood – Ten (10) cords; and
 - (d) Lodgepoles – Seventy-Five (75) lodgepoles.
 - ii. Large Scale Harvest Activity. For large scale activity, a Member may harvest non-timber forest products while possessing a valid large scale harvest activity gathering permit for each type of non-timber forest products, above the limits established for small scale harvest activity as follows:
 - (a) Members shall not gather non-timber forest products on a large scale without a valid large scale harvest activity gathering permit valid for a Designated Area established by the Tribe in consultation with the Forest Service.
 - (b) The Tribe may issue a large scale harvest activity permit to one or more Members based upon the determined species harvestable surplus and may impose such terms and conditions as the Tribe deems necessary or appropriate.
 - (c) Member shall not fail to comply with the terms and

conditions of a large scale harvest activity permit.

3. No gathering permit is required of helpers of a permittee who participate only in the collection of the resource once it has been reduced to possession of a permittee.
 4. The Tribe may impose such other terms and conditions as it deems necessary or appropriate, including biological monitoring requirements in addition to those contained in Section 3.04 of this Ordinance.
- b. Members shall not gather any wild plant off-reservation in a National Forest except while carrying a valid picture identification card issued by the Tribe, or other form of identification approved by the Tribe, and a gathering permit applicable to such gathering activities.
 - c. Members shall not refuse to present his or her identification documents while in a National Forest or while entering or exiting a National Forest when requested by any tribal, federal, state, or local law enforcement officer.
 - d. Members shall not fail to comply with the terms, conditions, and location restrictions of a permit issued pursuant to this Ordinance.
 - e. The Tribe, through its Tribal Planning Department, is authorized to issue and suspend permits to Members required by this Ordinance and to impose such terms, conditions, and location restrictions in those permits as it deems necessary or appropriate. Except as otherwise required by this Ordinance, the form of such permits shall be left to the discretion of the Tribal Planning Department, provided such form shall require, at a minimum, the Member's name, address, and tribal identification number.

SECTION 3.03 Sale of Miscellaneous Forest Products Authorized.

Nothing contained in this Ordinance shall be construed to prohibit Members from selling any forest products, or any part thereof, lawfully harvested pursuant to Chapter 3 of this Ordinance.

SECTION 3.04 Harvest Monitoring.

- a. No Member to whom any permit has been issued under this Ordinance shall fail or refuse to provide harvest information as required or when requested by the Tribal Planning Department, a Forest Service official, or any person authorized to enforce this Ordinance.
- b. Records of Ginseng Transactions.
 1. Unless otherwise required under the provisions of the Tribe's approved Convention on International Trade in Endangered Species of Wild Fauna

and Flora (CITES) export program, no Member shall sell any ginseng harvested pursuant to this Ordinance to any person unless the member maintains a written record of all transactions on forms prescribed by the Tribal Planning Department indicating the amount of ginseng involved, the parties to the transaction, the date of the transaction, and the National Forest in which harvest occurred.

2. Records maintained pursuant to Subsection 3.04.b. of this Ordinance shall be forwarded annually to the Tribe through its Tribal Planning Department.
3. Members shall comply with the reporting requirements of Subsection 3.04.b. of this Ordinance.
4. With respect to ginseng gathered in a National Forest, Subsection 3.04.b. of this Ordinance supersedes any requirement for maintaining records of commercial transactions contained in any of the Tribe's Ordinances or Codes.

SECTION 3.05 Emergency Closures.

- a. Notwithstanding any other provision of this Ordinance, the Tribal Planning Department may order the closure of the harvest activity of any wild plant in a National Forest generally or with respect to a particular location, whenever the continuation of the harvest is likely to cause biological harm to the species involved.
- b. Every reasonable effort shall be made to consult with and obtain approval of the Tribal Council prior to ordering an emergency closure, but such closure may be ordered without consultation or approval if the Tribal Planning Department finds that continued harvesting is likely to cause imminent harm to the harvested species or to the ecosystem of the National Forest.
- c. An emergency closure shall become effective immediately upon issuance or at such time or date as the closure order may direct. Such emergency closure order shall be communicated to the Tribal Council in writing by the Tribal Planning Department as soon as practicable.
- d. Members shall not violate the terms, conditions, or restriction of an emergency closure order issued pursuant to Subsection 3.05 of this Ordinance.

SECTION 3.06 Harvest and Other Location Restrictions.

- a. Tribal Wilderness, Research Natural Areas, and Special Use Areas Established. As determined by the Tribe's policy which shall, upon adoption, be incorporated in this Ordinance as if fully set forth herein, no Member shall fail to comply with the closures and other restrictions established by the Tribe's policy.

- b. Forest Service Administrative Sites. No Member shall gather wild plants under authority of this Ordinance on a Forest Service Administrative Site. Forest Service Administrative Sites vary in location and size. It is the Member's responsibility to fully understand and comply with a Forest Service Administrative Site. Any uncertainty must be resolved by contacting the Tribal Planning Department or the local National Forest District Office.
- c. National Forest Campground.
 - 1. Gathering in Developed National Forest Campground.
 - A. Except as provided in Subsection 3.06.c.1.B. below, no Member shall gather wild plants under authority of this Ordinance on any land located within a Developed National Forest Campground. It is the Member's responsibility to be certain about a Developed National Forest Campground. Any uncertainty should be resolved by contacting the Tribal Planning Department or the local National Forest District Office.
 - B. Members shall not gather firewood in a Developed National Forest Campground unless the firewood is provided at no cost by the campground or the firewood will be used while camping in the campground.
 - 2. Camping Fees and Length of Stay Restrictions. The Memorandum of Understanding exempts Members from certain camping fees and length of stay restrictions that the Forest Service requires of the general public in the National Forest. Members must comply with the requirements and restrictions contained in the Memorandum of Understanding and the Campground Fee and Length of Stay Exemption Agreement and Implementation Plan. Information about the Memorandum of Understanding and the Campground Fee and Length of Stay Exemption Agreement and Implementation Plan can be obtained by contacting the Tribal Planning Department or local National Forest District Office.
- d. Non-National Forest Lands. Members shall not gather wild plants under authority of this Ordinance on any land located within the boundaries of a National Forest that is not owned by the United States of America and part of a National Forest.

SECTION 3.07 Harvest of Trees Subject to a Timber Sale Contract or Located Within a Forest Service Timber Sale Contract Area.

- a. Members shall not gather any tree that is subject to the harvest rights of another in a valid Forest Service timber sale contract without a permit issued pursuant to Subsection 3.07.d of this Ordinance. It is the Member's responsibility to be certain

about trees that are subject to a valid Forest Service timber sale contract. Any uncertainty should be resolved by contacting the Tribal Planning Department or the local National Forest District Office.

- b. Members shall not do any of the following within an Open Forest Service Timber Contract Area without a valid permit issued pursuant to Subsection 3.07.d of this Ordinance:
 - 1. Cut down any live tree;
 - 2. Remove the bark of any live tree;
 - 3. Trim or remove the branches from the top half of any live tree; or
 - 4. Trim or remove the branches or other parts, except cones, of any tree that has been cut down by another person.
- c. It is the Member's responsibility to understand and comply with Open Timber Sale Contract Areas. Any uncertainty must be resolved by contacting the Tribal Planning Department or the local National Forest District Office.
- d. The Tribal Planning Department, after consultation with the Forest Service, is authorized to issue permits under Section 3.07 of this Ordinance on such terms and conditions as the Tribal Planning Department deems necessary and appropriate.
- e. Members must comply with the terms and conditions of a permit issued to them pursuant to Section 3.07 of this Ordinance.

SECTION 3.08 Harvest of Certain "Marked" Trees.

Members shall not cut down any tree designated with any of the following markings, and shall not remove, alter or deface any of the following markings:

- a. Orange Paint. Orange paint designates the boundaries of a payment unit within a Forest Service Timber Contract Sale Area;
- b. Red Paint. Red paint indicates boundaries between National Forest land and other ownerships, or may designate a witness tree at a legal corner;
- c. White Paint Stripes or Other White Bands. White stripes or bands indicate a tree being used to collect cones or seeds for nursery stock; or
- d. Metal or Wood Forest Service Signs. These signs designate property or National Forest boundaries, indicate legal corners or other survey data, indicate nursery stock, or provide other similar information.

SECTION 3.09 Permissible Conduct; Assistance by Non-Members.

- a. Conduct which is not expressly prohibited, restricted, or otherwise regulated by this Ordinance shall be deemed permissible.
- b. Except as provided in Subsection 3.09.c. of this Ordinance or as otherwise provided herein, nothing in this Ordinance shall be construed to prohibit a Member from gathering in a National Forest with any other person who is not a Member, provided that such other person possesses a license or permit from the proper regulatory authority, or is otherwise not prohibited from engaging in the activity involved and complies with applicable laws.
- c. Members shall not allow any person who is not a Member to assist, and no such person shall assist in the activities authorized by this Ordinance or otherwise authorized under Subsection 3.09.b. of this Ordinance, except that persons of the Member's immediate family, which for the limited purpose of this Subsection 3.09.c. shall include grandparents, parents, spouses, siblings, wenh'enh, doodem, and bami'aagin, may assist the Member, provided the Member is present when the assistance is rendered. Nothing in this section shall be construed to provide additional privileges or authorizations to non-Member immediate family. The definition of immediate family provided in this Subsection 3.09.c. shall not be relied upon for any reason other than provided in this Subsection 3.09.c.

CHAPTER 4 – ADMINISTRATION AND ENFORCEMENT

SECTION 4.01 Duties of the Director of the Tribal Planning Department.

The Director of the Tribal Planning Department shall have the authority to do the following:

- a. Implement this Ordinance and collect and be the repository of all fees or fines issued pursuant to this Ordinance.
- b. Enforce the provisions and to carry out the duties provided by this Ordinance.
- c. Develop or promulgate such rules and procedures as are necessary to implement this Ordinance. Promulgated rules and procedures will become valid and binding laws of the Tribe upon approval of the Tribal Council and shall be filed with the Tribal Clerk.
- d. Undertake any other activity that is reasonable and necessary to implement this Ordinance.

SECTION 4.02 Enforcement and Penalties for Violations.

- a. This Ordinance shall be enforced by the Director of the Tribal Planning Department or his or her designee.

- b. Enforcement of this Ordinance may be sought by the filing of a written complaint to the Tribal Planning Department by a Forest Service law enforcement officer or by an official of the Forest Service having jurisdiction and authority over the National Forest.
- c. The Director of the Tribal Planning Department or his designee shall execute and enforce the provisions of this Ordinance in response to a properly filed complaint as provided at Subsection 4.02.b. of this Ordinance or on his or her own independent authority.
- d. Upon receipt of a valid complaint, or on his or her own independent authority, the Director of the Tribal Planning Department may, in his or her discretion, suspend or revoke permits and issue citations to the Member or Members who are the subject of the complaint (“Respondent(s)”).
- e. Citations shall be made on a form approved by the Tribal Planning Department and shall provide, at a minimum, the nature of the violation and the action necessary by the Respondent to abate or correct the violation, and a statement that citations may be appealed in Tribal Court.
- f. Citations shall be served by personal service or by certified mail and shall be deemed served upon receipt. Personal service shall be effective upon receipt by the Respondent or by posting such citation in a conspicuous location at the residence of the Respondent.
- g. Citations shall include a civil assessment or fine against the Respondent, and such assessment or fine will vary dependent upon the violation. Any citation may include permit suspension or revocation at the sole discretion of the Director of the Tribal Planning Department.
- h. Respondents shall immediately comply with a citation issued, submit civil assessments or fines, and/or surrender their permit to the Tribal Planning Department absent a showing of good cause to the Tribal Planning Department.
- i. In addition to the citation provided in Subsection 4.02.g. of this Ordinance, the Tribal Planning Department shall revoke a permit issued pursuant to this Ordinance if: the Tribal Planning Department finds that the violation has or will likely result in significant harm to the National Forest; the Member’s actions in the National Forest are malicious or grossly negligent; or the Member intentionally disobeys any lawful command or order issued by a National Forest official, the Tribal Planning Department Director, or any law enforcement officer for activities at the National Forest.

SECTION 4.03 Parties to a Violation.

- a. Whomever is concerned in the commission of a violation of this Ordinance shall be deemed a principal and may be cited with the violation although he or she did not directly commit the violation and although the person who directly committed the violation has not been found responsible by the Saginaw Chippewa Tribal Court for the violation.
- b. A person is concerned in the commission of the violation of this Ordinance if the person:
 1. Directly commits the violation;
 2. Aids or abets the commission of the violation; or
 3. Is a party to a conspiracy with another to commit the violation, or advises, hires, or counsels or otherwise procures another to commit the violation.

SECTION 4.04 Reconsideration by the Director of the Tribal Planning Department.

- a. The Respondent may seek reconsideration by the Director of the Tribal Planning Department's citation and/or permit action within fourteen (14) days after the citation is served upon the Respondent.
- b. The Respondent shall file a Request for Reconsideration with the Director of the Tribal Planning Department. The Request for Reconsideration shall set forth the facts and arguments supporting the request and show good cause why the citation should not be enforced. The request shall include the Respondent's current mailing address.
- c. Upon receipt of a Request for Reconsideration, the Director the Tribal Planning Department shall provide the Respondent a reasonable opportunity to present argument to the Director of the Tribal Planning Department, either in writing or orally. After hearing argument and considering relevant evidence, the Director of the Tribal Planning Department shall issue a final decision on the matter. The Director of the Tribal Planning Department may order such relief as he or she deems appropriate.
- d. The Director of Tribal Planning Department shall issue his or her final decision by US Postal Service addressed to the mailing address provided in the Request for Reconsideration.

SECTION 4.05 Harvesting After Revocation or Suspension.

Persons whose off-reservation National Forest wild plant gathering privileges have been revoked or suspended pursuant to Section 4.02 of this Ordinance, shall not gather any wild plant in a National Forest, the harvest of which is regulated by this Ordinance, during such revocation or suspension.

SECTION 4.06 Payment of Fines and Assessments.

If a person is determined to be responsible for a violation of this Ordinance and a fine is imposed, the Director of the Tribal Planning Department may grant permission for payment of the fine and assessments to be made within a specific period of time or in specified installments, but in the absence of a letter of permission issued by the Director of the Tribal Planning Department, the fine shall be payable immediately.

SECTION 4.07 Enforcement Actions.

The Director of the Tribal Planning Department shall have the authority to bring actions in the name of the Tribe in any court of competent jurisdiction for the collection of any unpaid fines or civil assessments, or for the enforcement of the provisions of this Ordinance. The Director of the Tribal Planning Department may seek any appropriate remedy in such actions.

SECTION 4.08 Appeal to Tribal Court.

- a. The Saginaw Chippewa Tribal Court shall adjudicate appeals arising from civil assessments and permit revocations or suspensions under this Ordinance pursuant to the provisions of Title III of the Saginaw Chippewa Tribal Code.
- b. The Saginaw Chippewa Tribal Court shall have exclusive jurisdiction over all causes of action arising under this Ordinance wherein the defendant is a Member of the Tribe.
- c. A Member aggrieved by a final decision of the Director of the Tribal Planning Department may, within twenty (20) days after the decision, file a written petition of the decision to be reviewed by the Saginaw Chippewa Tribal Court. If the decision of the Director of the Tribal Planning Department is not appealed within twenty (20) calendar days after the US Postal Service postmarked date of the decision, the decision may not be appealed to the Saginaw Chippewa Tribal Court. In the event another law of the Tribe specifies a time limit other than twenty (20) days, the time limit stated in this Subsection 4.08.c. of this Ordinance shall be controlling.
- d. Upon receiving a timely petition to appeal, the Saginaw Chippewa Tribal Court shall have the authority to:
 1. Uphold the decision of the Director of the Tribal Planning Department;
 2. Modify a sanction imposed by the Director of the Tribal Planning Department; and/or
 3. Reverse the decision and remand the matter back to the Director of the Tribal Planning Department for proceedings consistent with the Saginaw

Chippewa Tribal Court's findings if the Saginaw Chippewa Tribal Court determined that the Director of the Tribal Planning Department incorrectly interpreted or applied this Ordinance, the Tribe's Constitution, or that the decision of the Director of the Tribal Planning Department was clearly erroneous or not supported by the record.

- e. An appeal filed pursuant to this section shall comply with procedures of Title III of the Saginaw Chippewa Tribal Code.
- f. The decision of the Saginaw Chippewa Tribal Court on an appeal under Section 4.08 of this Ordinance shall be final and shall not be subject to appeal to the Saginaw Chippewa Tribe Appellate Court or any other court.
- g. There shall be no private cause of action or third party action to enforce the provisions of this Ordinance or its implementing regulations.

SECTION 4.09 Civil Damages.

Section reserved.

SECTION 4.10 Search and Seizure; When Authorized.

Properly identified Forest Service law enforcement officers or law enforcement officer of the Tribe acting within his or her lawful jurisdiction are empowered to:

- a. Conduct a search of an object, place, or person whose conduct is regulated by the provisions of this Ordinance, and may seize items when the search is made:
 - 1. With consent;
 - 2. Pursuant to a valid search warrant;
 - 3. With the authority and within the scope of a right of lawful inspection as provided in Section 4.10 of this Ordinance;
 - 4. Incident to the issuance of a lawfully issued citation under this Ordinance;
or
 - 5. As otherwise authorized by law or by the provisions of this Ordinance.
- b. Conduct routine inspections, in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities, of vessels, boats, wagons, trailers, automobiles, snowmobiles, off-highway vehicles, containers, packages, and other receptacles contained therein, utilized by a person in a harvest activity authorized by this Ordinance and of records of commercial transactions required under this Ordinance which have not yet been

forwarded to the Tribal Planning Department.

- c. Execute and serve warrants and other process issued by the Saginaw Chippewa Tribal Court in accordance with applicable law.
- d. Stop any automobile or other vehicle as part of a lawful inspection authorized by Section 4.10 of this Ordinance or if the Forest Service officer or law enforcement officer of the Tribe acting within his or her lawful jurisdiction reasonably suspects there is a violation or breach of this Ordinance.
- e. With or without a warrant, open, enter, and examine vessels, boats, wagons, trailers, automobile, vehicles, snowmobiles, off-highway vehicles, and packages and other receptacles contained therein, in which the Forest Service officer or law enforcement officer of the Tribe acting within his or her lawful jurisdiction has probable cause to believe that contraband wild plants may be contained or pursuant to a lawful inspection authorized by Section 4.10 of this Ordinance.
- f. Seize and hold subject to the order of the Saginaw Chippewa Tribal Court any alleged contraband or property which the Forest Service officer or law enforcement officer of the Tribe acting within his or her lawful jurisdiction reasonably believes may be needed as evidence in connection with the institution of proceedings in Saginaw Chippewa Tribal Court or any property otherwise authorized to be seized by the provisions of this Ordinance.

SECTION 4.11 Seized Items.

Any wild plant which is seized in connection with cases referred to Director of the Tribal Planning Department shall be turned over to the Tribe. No seized wild plant shall be returned by the Director of the Tribal Planning Department or enforcement officers to any person found to be in violation of this Ordinance, his or her immediate family, or other member of the gathering party.

CHAPTER 5 – SPECIFIC HARVEST REGULATIONS ON NATIONAL FOREST

SECTION 5.01 Conifer Boughs.

Members shall not:

- a. Cut down trees for the purpose of gathering conifer boughs;
- b. Remove boughs from the upper half of a tree; or
- c. Gather for subsequent sale northern white cedar or hemlock boughs.

SECTION 5.02 Princess Pine.

Members shall not gather any *Lycopodium* species except by cutting the vertical above ground

stem.

SECTION 5.03 Sheet Moss.

Members shall not harvest sheet moss except by harvesting no more than fifty percent (50%) of a species in any particular harvest area, including leaving the edges of the patch.

SECTION 5.04 Lodgepoles.

Members shall not harvest lodgepoles except by harvesting no more than fifty percent (50%) of a species in any particular harvest area, unless the location is a Designated Area as defined in Subsection 2.01.d. of this Ordinance and for which the appropriate number of large scale harvest activity permits are available for the Designated Area.

SECTION 5.05 Firewood.

- a. Members shall not cut any live tree or gather any salvage timber for firewood unless the tree is included within a National Forest “firewood sale,” other area designated for firewood either generally or on a case-by-case basis, or as permitted pursuant to a valid sugarbush site permit issued pursuant to Section 5.07 of this Ordinance.
- b. Members shall not cut any standing dead tree more than one hundred (100) feet from the cleared edge of any road where it is legal for highway vehicles to travel.
- c. Members shall not cut any standing dead tree within two hundred (200) feet of any pond, lake, stream, or river.
- d. Members shall not use a farm tractor, rubber tired skidder, or similar vehicle for gathering firewood without written permission from the Tribe.

SECTION 5.06 Ginseng.

Members shall not gather ginseng from November 1 through August 31.

SECTION 5.07 Maple Sap; Sugarbush.

- a. Members shall not gather maple sap without a sugarbush site permit valid for a Designated Tribal Sugarbush Site or for such other location approved by the Tribe in consultation with the Forest Service.
- b. The Director of the Tribal Planning Department or his designee may issue a sugarbush site permit to one or more Members and may impose such terms and conditions as the Director deems necessary or appropriate.
- c. Members shall comply with the terms and conditions of a sugarbush site permit.

SECTION 5.08 Unsustainable Harvest Activity.

Member compliance with tribal harvest guidelines shall be considered sustainable harvest activity. Otherwise, no Member shall harvest any miscellaneous forest product in such a manner so as to impair the future viability and continued success of the miscellaneous forest product on the landscape or ecosystem from which the Member is harvesting, as conditioned by the type of miscellaneous forest product, and the Member must take reasonable precautions to prevent unsustainable harvest activity.

SECTION 5.09 Harvest of Timber and Salvage Timber.

a. Harvest for Sale as Lumber or Similar Wood Products.

1. Members shall not cut down any timber or gather any salvage timber for the purposes of selling all or part of it, or any product derived from its wood, as bolts, pulpwood, or lumber.
2. Members shall not sell under authority of this Ordinance all or part of any timber, or any product derived from its wood, as bolts, pulpwood, or lumber.

b. Harvest for Domestic and Non-Commercial Traditional and Cultural Purposes.

1. Members shall not cut down any timber or gather any salvage timber under authority of this Ordinance for a Domestic Purposes, such as constructing a Structure or Dwelling, or for a Non-Commercial Traditional and Cultural Purpose, as those terms are defined in Subsection 5.09.b.2. of this Ordinance, without a valid harvest permit issued pursuant to Subsection 5.09.c. of this Ordinance.
2. For the limited purpose of Section 5.09 of this Ordinance, the following definitions shall apply:
 - A. “Structure or Dwelling” means a building or other larger structure to be used for residential, commercial, or storage purposes, and include, for example, a home, cabin, garage, storage shed, store, office building, and manufacturing facility. The terms Structure or Dwelling do not include smaller structures, such as hunting blinds, fish houses, or sugarbush shacks that are used in the exercise of treaty-reserved hunting, fishing, or gathering rights. It is the Member’s responsibility to verify that the intended construction use is not prohibited by this Ordinance. Any uncertainty should be resolved by contacting the Tribal Planning Department.
 - B. “Non-Commercial Traditional and Cultural Purpose” shall be defined by the Tribe. The Director of the Tribal Planning Department, as issuer of the harvest permit, shall be prepared to help

the Forest Service understand the request, if necessary, by explaining how the intended use is identifiable by the Tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use to the Tribe. It is the Member's responsibility to verify that the intended use is not prohibited by this Ordinance. Any uncertainty should be resolved by contacting the Tribal Planning Department.

c. Authorization to Issue Harvest Permits.

1. The Director of the Tribal Planning Department or his designee is authorized to issue harvest permits for a Domestic Purpose and a Non-Commercial Traditional and Cultural Purpose on such terms and conditions as set forth in the Tribal Timber Harvest Framework Agreement.
2. Prior to issuing a harvest permit for a Domestic Purpose or a Non-Commercial Traditional and Cultural Purpose, the Director of the Tribal Planning Department must consult with and obtain the concurrence of the Forest Service.

LEGISLATIVE HISTORY

Enacted by Resolution No. 22-002 approved on October 6, 2021; amended and codified as Ordinance No. 37 by Resolution No. 23-116 approved on June 7, 2023.