

**ZONING AND LAND USE AGREEMENT
BETWEEN
THE COUNTY OF ISABELLA
AND
THE SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN**

Introduction

This agreement (the “Agreement”) is entered into by County of Isabella (the “County”) and the Saginaw Chippewa Indian Tribe of Michigan (the “Tribe”) (collectively, the “Parties”).

The County is authorized to enter this Agreement pursuant to the provisions of the Urban Cooperation Act, MCL 124.501 *et seq.*, and other authority.

The Tribe is a federally recognized Indian tribe possessing inherent powers of self-government, and is authorized to enter into this Agreement pursuant to Articles VI(1)(a), (i), (j), (n), and (o) of its Amended Constitution and By-laws (approved Nov. 4, 1986).

Recitals

The Parties recognize that each of them has historically employed different approaches to land-use planning and zoning.

The Parties recognize that, without further agreement, individual parcels of land within the Isabella Reservation in Isabella County may fall under different zoning regulations based upon whether the Tribe, Tribal Members, or non-Tribal Members own the land at a given time.

The Parties have varying views of their jurisdiction over land use and zoning within the Reservation but agree that the Tribe has jurisdiction over Tribal Lands and acknowledge that the County and/or the affected townships generally have jurisdiction over zoning and land use on any land owned in fee simple by non-Tribal Members within the Reservation.

The Parties acknowledge a need to eliminate uncertainty regarding the scope of each Party’s zoning authority within the County of Isabella.

The Parties wish to limit disputes regarding which zoning regulations apply to particular parcels of land, avoid disputes regarding proposed land uses and procedures, and ensure that each Party is employing consistent policies.

The Parties agree that there must be a free exchange of information between the Parties’ zoning and planning agencies.

Accordingly, the Parties agree as follows:

Terms

1. Definitions

As used in this Agreement:

- A. “County Limits” means the jurisdictional boundaries of the County as of the effective date of this Agreement.
- B. “Isabella Indian Reservation” or “Reservation” has the meaning specified in the Order for Judgment entered by the United States District Court for the Eastern District of Michigan in *Saginaw Chippewa Indian Tribe of Michigan v. Granholm, et al.*, Case No. 05-10296-BC (the “Court Order”).
- C. “Tribal Lands” means land either owned in fee by the Tribe or held by the United States in trust for the benefit of the Tribe or a Tribal Member.
- D. “Tribal Member” means an enrolled member of the Tribe.
- E. “Tribal-Member-Fee Lands” means any parcel of land within the Reservation that is owned in fee simple by any Tribal Member.

2. Zoning and Land-Use Requirements for Tribal-Member-Fee Lands Within the County Limits

Within six months after the effective date of this Agreement, the Tribe must finalize and approve a Tribal zoning and land-use ordinance for application to all Tribal Member Fee Lands within the Reservation (the “Tribal Ordinance”). The Tribal Ordinance must include the following provisions, amongst others:

- A. A provision that requires the existing land use for any parcel of Tribal-Member-Fee Land (as reflected in County, township, or other local zoning and land-use records as of the date of this Agreement), to be recorded as the Tribally approved land use for that parcel;
- B. A mechanism for reviewing proposed future non-conforming uses, variances, or special uses on all Tribal Member Fee Lands; and
- C. A provision that requires that notice of any proposed change in land use of Tribal-Member-Fee Lands must be provided to adjacent-property owners and the local unit of government with non-Tribal zoning authority. Both adjacent-property owners and the local unit of government with non-Tribal zoning authority may present comments in writing or in person at a meeting that must be conducted by the Tribe to evaluate any requested land-use change.

3. Data Collection and Sharing Information

- A. The County and Tribe must make all reasonable efforts to implement this Agreement in a manner that ensures that, as much as practicable, land-use regulation among the various

governmental authorities promotes the general welfare of all people within the Isabella Reservation and the County of Isabella.

- B. The Tribe must make reasonable, good-faith efforts to inform the County or the local unit of government with non-Tribal zoning authority if the County does not have that authority, of its proposed commercial developments within the Reservation as early in the development process as possible, giving due recognition to: (1) any confidentiality obligations the Tribe has to third parties; (2) the fiduciary obligations of the Tribal Council; and (3) the mutual interests of the Tribe and the County in promoting communication and collaboration regarding land-use planning, and as set forth herein. The County must provide like notice to the Tribe, in accordance with applicable law.
- C. The Parties must meet on a regular basis to discuss current and future land-use plans and needs, except as otherwise limited elsewhere in this Agreement. Unless otherwise provided by applicable law, the comments of a Party are not binding on the other Party. This provision does not alter any procedural requirements under applicable law with respect to notices, public hearings, comment periods, etc.

4. Duration, Revocation, and Disputes

- A. This Agreement remains in effect in perpetuity unless the Parties terminate the Agreement by mutual written consent of both Parties. The Parties do not require Court approval or other filing to terminate the Agreement under this provision.
- B. If the County Limits change to either exclude or incorporate any Tribal Lands or Tribal-Member-Fee Lands that would not otherwise have been included within the County, the Parties may by mutual consent negotiate in good faith regarding any needed changes to this Agreement.
- C. On or before the five-year anniversary of the effective date of this Agreement, and at five-year intervals after the first meeting, the Parties must meet to discuss in good faith any issues or concerns regarding any aspect of this Agreement.
- D. The United States District Court for the Eastern District of Michigan (the "Court") has continuing jurisdiction to resolve disputes under this Agreement under the terms set forth in this Agreement.
- E. Notwithstanding the foregoing, neither Party may initiate an action in the Court until and unless the Parties have mediated their disputes as provided herein. The Parties intend to resolve any disputes informally and promptly through good-faith negotiations between the Parties. If a dispute arises under or concerning this Agreement, the Parties must proceed as follows:
 - i. The initiating Party must send written notice to the recipient Party setting forth the particulars of the dispute and a suggested resolution of the issue. The recipient Party

must respond in writing within 30 days and must respond with specificity to the initiating Party's dispute and suggested resolution.

- ii. If this does not resolve the dispute, the Parties must meet and confer in person within 30 days after the recipient Party's response to attempt to resolve the matter.
- iii. If this does not resolve the dispute, the Parties must submit to mediation with a mutually acceptable private mediator. Either Party may initiate this mediation at any time after the meeting contemplated above. The Parties agree to select a mediator with background and experience in: the subject matter that gave rise to the dispute; tribal governments; local governments; and relevant laws, practices, procedures, and operations. In order to decide upon an acceptable mediator, the Parties agree to timely exchange lists of proposed mediators, including the mediators' résumés, confirmation of each proposed mediator's willingness to act as mediator in the dispute, any potential conflicts (if known), any other qualifications, and the proposed mediators' hourly rates. Each Party may strike unacceptable names from the list and number the remaining names in order of preference. The Parties retain the right to reject any proposed mediator, but must make good-faith efforts to select an acceptable mediator under this Agreement. The Parties agree to abide by the mediator's own rules regarding the conduct of the mediation or such other rules upon which the Parties may agree. The Parties must evenly split the costs of mediation.
- iv. If mediation is unsuccessful, either Party may then petition the Court, and either Party may lodge appeals with the 6th Circuit Court of Appeals and/or the Supreme Court of the United States, but no other court has jurisdiction to hear the dispute. The Court may not award either party any monetary damages, but it may declare the rights of the Parties and order compliance under this Agreement. The losing Party must bear the prevailing Party's Court costs and attorney's fees. Each Party expressly and irrevocably waives any right to trial by jury.

5. Retention of Legal Rights, Jurisdiction, and Sovereign Immunity

- A. This Agreement may not be construed to cede any jurisdiction of either of the Parties, to modify the legal rights of any person, to accomplish any act that violates state or federal law, or to subject the Parties to any liability to which they would not be subject by law.
- B. Notwithstanding the foregoing, for ten years after the date of the Court Order, this Agreement will not be affected by any decision of the U.S. District Court for the Eastern District of Michigan, the Sixth Circuit Court of Appeals, or the U.S. Supreme Court that changes federal zoning or land-use law as it relates to land within an Indian reservation. At any time after ten years has passed, if there has been or if there later is a change in decisional law from the listed courts, the Tribe and County may reopen and renegotiate this Agreement in accordance with the law. Neither the Tribe nor the County may seek a ruling that changes federal zoning or land-use law as it relates to land within an Indian reservation from any of these courts.

- C. The Parties acknowledge that the Tribe is entitled to set its own priorities and make decisions regarding planning, zoning, and land use on Tribal Lands anywhere within the Reservation. The Parties also acknowledge that under applicable state law, the County (along with townships and other local units of government) has certain rights to set its own priorities and make decisions regarding planning, zoning, and use of its lands.
- D. This Agreement does not affect any other agreements that either Party may enter in to with any third party now or in the future.
- E. This Agreement may not be construed as a waiver of either Party's sovereign immunity except and only to the extent that both Parties waive their sovereign immunity to the limited extent necessary to effectuate Paragraph 4(D) of this Agreement. This limited waiver of sovereign immunity does not waive the immunity of any official, employee, or agent of either Party.

6. Amendments

This Agreement can only be amended by a written instrument signed by the duly authorized representative of each Party. The Parties do not require Court approval or other filing to amend the Agreement under this provision.

7. Severability

The provisions of this Agreement are severable. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement remains in effect, unless terminated as provided for in this Agreement. However, if any provision of this Agreement is severed from the Agreement, then the Parties must promptly meet and negotiate in good faith to achieve the intended purpose of the severed provision in a manner that is valid and enforceable under applicable law.

8. Relationship to Other Agreements

- A. This Agreement constitutes the entire Agreement between the Parties.
- B. Upon the execution of this Agreement, the Parties mutually rescind all previously entered written Agreements between them regarding the topics in this Agreement.
- C. If this Agreement conflicts with the Court Order, the terms of this Agreement govern.

9. Notices

Written notices required or permitted to be given under this Agreement are sufficient if they are sent by registered or certified mail, or by other means mutually acceptable to the Parties.

In the case of the County, notices must be sent to:

Timothy Nieporte
Director of Community Development
Isabella County Building
200 N. Main St.
Mt. Pleasant, MI 48858
With a copy to:

Timothy Dolehanty
Controller/Administrator
Isabella County Building
200 N. Main St.
Mt. Pleasant, MI 48858

In the case of the Tribe, notices must be sent to:

Director
Planning Department
Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, MI 48858

With a copy to:

General Counsel
Legal Department
Saginaw Chippewa Indian Tribe
Legal Department
7070 East Broadway
Mt. Pleasant, MI 48858

10. Counterparts

This Agreement may be executed in several counterparts, each of which is an original, but all of which together constitute a single instrument.

11. Authority

The undersigned represent that they are authorized to execute this Agreement on behalf of the Tribe and County, respectively.

12. Preparation of Agreement

The Parties drafted this Agreement and entered into it after careful review and upon the advice of competent counsel. It must be construed as if it were mutually drafted, and may not be construed more strongly for or against either Party.

13. Effective Date

This Agreement is effective on the date that the Court Order is signed by the Court, provided that the Court enters the Court Order as it was approved by the County and Tribe. Changes to the form of the Court Order (e.g., pagination, fonts, margins, etc.) do not affect the effective date of this Agreement, but this Agreement is not effective and does not bind the parties if the language of the Court Order is not identical to the language approved by the County and Tribe.

**SAGINAW CHIPPEWA INDIAN TRIBE
OF MICHIGAN**

COUNTY OF ISABELLA

s/ Dennis V. Kequom

Dennis Kequom, Sr., Tribal Chief

s/ David A. Ling

David Ling, Chairperson of Isabella County
Commission

11 – 9 – 10

Date signed

11 / 9 / 10

Date signed

The United States District Court for the Eastern District of Michigan entered the Order for Judgment in Case No. 05-10296 on _____, 2010.