

CONSTITUTION
OF THE
LAC VIEUX DESERT BAND
OF LAKE SUPERIOR CHIPPEWA INDIANS
OF MICHIGAN

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PROPOSED AMENDMENT I

CONSTITUTION
OF THE
LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS
OF MICHIGAN

Proposed Amendment I

Section 1(a) and 1(b) of Article II - Membership shall be amended to read as follows:

Section 1. Membership. The membership of the Lac Vieux Desert Band shall consist of:

- (a) All persons whose names are listed on the approved Membership Roll of the Lac Vieux Desert Band dated August 15, 1990 or whose name appeared on the Tribal Membership Roll as maintained by the Band in 1986 and was on file with the Bureau of Indian Affairs as of that date.
- (b) Descendants of persons whose names are listed on the approved Base Membership Roll of the Band dated August 15, 1990 or whose name appeared on the Tribal Membership Roll as maintained by the Band in 1986 and was on file with the Bureau of Indian Affairs as of that date.

Numerical Designation

Having been duly adopted and approved, Proposed Amendment I, is hereby designated as Amendment No. 1, to the Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan.

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial Election authorized by delegated authority to the Acting Area Director, Minneapolis Area Office, Bureau of Indian Affairs, on February 6, 1997, the attached Proposed Amendment I, to the Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan, was submitted to the qualified voters of the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan, and on May 6, 1997 was duly adopted/~~rejected~~ by a vote of 68 (number) for, 1 (number) against, and 0 (number) cast ballots found spoiled or mutilated, in an election in which at least 75% of the 87 (number) entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 01, 1934, (48 Stat. 984), as amended, and under the rules and regulations as the Secretary of the Interior has prescribed.

Jean Ann Douglas
Chairman, Election Board Member

Alice May
Election Board Member

Hosmita Antone
Election Board Member

Paul E. Blb
Election Board Member Chairman

Date: 5-6-97

CERTIFICATE OF APPROVAL

I, Ron Eden, Director, Office of Tribal Services, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4, do hereby approve the Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan. This Constitution is effective as of this date; PROVIDED, That nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

A handwritten signature in cursive script that reads "Ron Eden".

Director, Office of Tribal Services

Washington D.C.

Date:

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an order issued on February 11, 1982, by Denise Homer, Acting Director, Office of Tribal Services, the Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan was submitted to the qualified voters of the lac Vieux Desert Band and on May 14, 1992, was duly adopted by a vote of 38 for, and 2 against, and 0 cast ballots found spoiled or mutilated, in an election in which at least thirty percent (30%) of the 62 members entitled to vote, cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

Chairman, Election Board *Anne E. Bolton*

Election Board Member *Verian Akley*

Election Board Member *Judy A. Mc Gush*

Election Board Member *Grace Jackson*

Election Board Member *Rena Curtiss*

Date: May 14, 1992

CONSTITUTION OF THE LAC VIEUX DESERT BAND OF LAKE SUPERIOR
CHIPPEWA INDIANS OF MICHIGAN

PREAMBLE

We, the members of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, in order to organize for the common good, to govern ourselves under our own laws and customs, to maintain and foster our tribal culture, to protect our homeland and to conserve and develop its natural resources, and to insure our rights guaranteed by treaty with the Federal Government, do establish and adopt this Constitution for the government, protection and common welfare of the Lac Vieux Desert Band pursuant to the Act of September 8, 1988 (102 Stat. 1577), and the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended. The Lac Vieux Desert Band of Lake Superior Chippewa Indians is also referred to in the Constitution as the "Lac Vieux Desert Band" and the "Band."

ARTICLE I — TERRITORY

Section 1. Territory. The territory of the Band shall encompass all lands which are now or hereafter owned by the Band or held in trust for the Band by the United States.

Section 2. Jurisdiction Not Restricted. The jurisdiction of the Band shall not be restricted to the territory described in Section 1 of the Article, but shall be exercised to the full extent of the Band's sovereign power.

Section 3. Treaty Rights Not Restricted. Nothing in this Article shall be construed as restricting any treaty rights, and any other rights, of the Band and its members.

ARTICLE II — MEMBERSHIP

Section 1. Membership. The membership of the Lac Vieux Desert Band shall consist of:

- (a) All persons whose names are listed on the approved membership roll of the Lac Vieux Desert Band dated August 15, 1990.
- (b) Descendants of persons whose names are listed on the approved base membership roll of the Band dated August 15, 1990.

Section 2. Dual Membership Prohibition. No person shall be eligible to be a member of the Lac Vieux Desert Band if that person is enrolled in another federally recognized Indian tribe, band or group. Any member of the Lac Vieux Desert Band who applies to be and is accepted as a member of another federally recognized Indian tribe, band or group shall be subject to disenrollment and the forfeiture of all rights and benefits to which Band members are entitled by virtue of their membership.

Section 3. Membership Procedure. The Tribal Council may pass ordinances governing enrollment and disenrollment, Provided, That the Tribal Council shall have no power to establish substantive requirements for membership in addition to those established in this Article or to adopt members who do not meet the requirements specified in Section 1 above. The only grounds for disenrollment shall be that the person is dually enrolled as a member with another federally recognized tribe, band or group or that the person does not meet the membership requirements specified in Section 1 above.

Section 4. Right of Appeal. Any person whose application for membership has been denied or who is subject to disenrollment by the Tribal Council shall have a right of appeal to the Tribal Judiciary.

Section 5. Membership Rights of Adopted Children. Any Indian child eligible for membership who is adopted by a non-Indian family shall be eligible for membership in the Band notwithstanding such adoption.

ARTICLE III — TRIBAL COUNCIL

Section 1. Composition and Term of Office.

- (a) The Tribal Council of the Lac Vieux Desert Band shall be composed of nine (9) members of the Band, consisting of the executive officers and five (5) council members.
- (b) The term of office for all members of the Tribal Council shall be two (2) years.
- (c) The executive officers of the Tribal Council shall consist of a Chairperson, Vice-Chairperson, Secretary and Treasurer.
- (d) The executive officers shall be the members of the Band who receive the highest number of votes in the tribal election of each executive office.
- (e) The Tribal Council members shall be the five (5) highest vote getters in the tribal election for council members.

Section 2. Duties of Tribal Council Executive Officers; Records.

- (a) The Chairperson of the Tribal Council shall:
 - 1. Preside at all meetings of the Tribal Council.
 - 2. Represent the Band in its relations with other governments and organizations, in a manner consistent with this Constitution; Provided, That the Tribal council shall not authorize the Chairperson to take any action which, under this Constitution, must be taken by the Tribal Council.

3. Appoint members of all committees of the Tribal Council, subject to the approval of the Council and in accordance with the rules and procedures of the Tribal Council.
4. Call special meetings of the Tribal Council and of any committee of the Council, when appropriate, in accordance with this Constitution and the rules and procedures of the Tribal Council.
5. Receive reports of all committees and deliver such reports or cause such reports to be delivered to the Tribal Council.
6. Be an ex-officio member of all committees of the Tribal Council.
7. Perform such other duties as may be specified by this Constitution, by ordinance, or as required by the Tribal Council.

(b) The Vice-Chairperson of the Tribal Council shall:

1. Serve and perform the duties of the Chairperson in the Chairperson's absence.
2. Assume responsibility for those functions delegated to him/her by the Chairperson.
3. Perform other functions as required by the rules and procedures of the Tribal Council.

(c) The Treasurer of the Tribal Council shall:

1. Administer and monitor all fiscal matters of the Band.
2. Submit monthly financial reports to the Tribal Council, and at such other times as may be requested by the Tribal Council.
3. Perform such other duties as required by the rules and procedures of the Tribal Council.
4. Acquire a surety bond, in an amount and with a surety company satisfactory to the Tribal Council, to administer the Band's fiscal affairs.

(d) The Secretary of the Tribal Council shall:

1. Submit a report of the minutes of all Tribal Council and tribal membership meetings to the Tribal Council, and post such reports for the general membership.
2. Maintain and protect the Tribal Seal.
3. Keep the membership informed as to the status of treaty and other rights.

4. Perform other functions as required by the rules and procedures of the Tribal Council.

Section 3. Records of the Band.

- (a) The Tribal Council shall provide access for review by any tribal member or his/her authorized representative of the records of the Band; Provided, That such review shall be conducted during normal office hours of the Tribal Council, in accordance with the rules and procedures established by the Tribal Council, and not inconsistent with any other provision of this Constitution, Federal law, or individual tribal members and tribal employees' rights to privacy.
- (b) All Band records are the exclusive property of the Lac Vieux Desert Band and shall be transferred by Tribal Council officers leaving office to their successors in office.

Section 4. Meetings of the Tribal Council and Membership.

- (a) Regular Meetings. The Tribal Council shall meet in official session at least twelve (12) times a year, at monthly intervals, at such time and place as shall be established by resolution.
- (b) Special Meetings. Special meetings of the Tribal Council:
 1. May be called by the Chairperson of the Tribal Council at his/her discretion,
 2. Shall be called by the Chairperson of the Tribal Council upon the written request of any three (3) Council Members, or
 3. Shall be called upon the petition of ten percent (10%) of the eligible tribal voters;

Provided, That at least seventy-two (72) hours' written notice of such meeting shall be given to each Council Member, by personal service or by certified mail, return receipt requested, sent to the Council Member's usual place of residence, or left at the Council Member's usual place of residence with some person of suitable age and discretion residing there; However, notice may be waived by attendance at the meeting. Notice of the special meeting shall also be posted in the Tribal Center. If the Chairperson refuses or fails to call the meeting, the three (3) Council Members who requested the meeting in writing may call the meeting; Provided, That the foregoing notice requirements are complied with. If the Chairperson refuses or fails to call the special meeting requested by petition, any Council Member may call the meeting; Provided, That the foregoing notice requirements are complied with. No action taken at a special

meeting shall be valid unless these notice requirements have been complied with.

(c) Emergency Meetings. An emergency meeting of the Tribal Council may be called upon less than seventy-two (72) hours' written notice, notwithstanding Section 4(b) of this Article, if such meeting is necessary for the preservation or protection of the health, welfare, peace, safety, or property of the Band. Efforts shall be made to give notice to each Tribal Council member. Such notice shall state the purpose, time and place of such meeting. No business other than that stated in the notice shall be transacted at such meeting.

(d) Tribal Membership Meetings. The Tribal Council shall hold an annual meeting of Band members for the purposes of informing the membership of the status of the affairs of the Band, holding elections when required by this Constitution, and transacting such other business as may be deemed desirable by the Tribal Council or the Band members. In addition, the Tribal Council may hold special tribal membership meetings when it deems appropriate. Special tribal membership meetings shall also be called by the Tribal Council upon the petition of ten percent (10%) of the eligible tribal voters: Provided, That not less than five (5) nor more than thirty (30) days' notice of such meeting is given to the tribal members.

(e) Open Meetings; Closed Sessions.

1. All meetings of the Tribal Council called pursuant to this Article shall be open to tribal members and tribal members shall have a reasonable opportunity to be heard under such rules and regulations as the Council may prescribe; Provided, However, That the Council may meet in closed session for the following purposes:

a. Personnel matters,

b. Claims against the Band, or

c. Business matters involving consideration of bids or contracts which are privileged or confidential.

2. The Tribal Council may, in its discretion, determine not to keep a record of all or any part of the discussion in closed session; Provided, That the reason for such determination shall be recorded, and a record shall be kept of any action taken in closed session. Such record may be withheld from inspection by tribal members pending final disposition of the matter concerned.

(f) Action by the Tribal Council.

1. No official action may be taken by the Tribal Council unless a quorum is

present.

2. The Tribal Council shall act only by ordinance, resolution or motion.
3. Tribal Council action shall be determined by a majority of the Tribal Council members who vote, unless a greater vote is required under this Constitution.

Section 5. Quorum at Tribal Council and Tribal Membership Meetings.

- (a) A quorum of the Tribal Council shall consist of five (5) members.
- (b) The Chairperson shall be counted in determining whether a quorum exists.
- (c) The Chairperson shall only vote to break a tie vote in the Tribal Council.
- (d) Tribal Membership Meetings. Tribal business, other than election, conducted at tribal membership meetings can take place; Provided, That at least thirty-three percent (33%) of the eligible voting members of the Band are present.

Section 6. Conflict of Interest.

- (a) When a council member has a personal interest in a matter to be voted upon by the Council, other than interests held in common by all Band members, which would require balancing his/her personal interest against the best interests of the Band, such member shall abstain from voting on that matter.
- (b) The fact that a member may not vote on a matter before the Council because of a conflict of interest shall not prevent that member from otherwise participating in that Council meeting.

ARTICLE IV — POWERS AND DUTIES OF THE TRIBAL COUNCIL

Section 1. Power of the Tribal Council. The Tribal Council of the Lac Vieux Desert Band shall be vested with all powers of its inherent sovereignty including, but not limited to, the following and shall exercise such powers to the fullest extent permitted by Federal law:

- (a) To promote and protect the health, safety, education, and general welfare of the Band and its members;
- (b) To promulgate ordinances, and adopt resolutions not inconsistent with this Constitution, and to enforce the same;

- (c) To negotiate with Federal, State and local governments, and other tribes;
- (d) To purchase, lease, take by gift, take by devise or bequest, eminent domain, or otherwise acquire land, interests in land, personal property or other assets which the Tribal Council may deem beneficial to the Lac Vieux Desert Band;
- (e) To approve or veto any sale, disposition, lease or encumbrance of Lac Vieux Desert Band land, interests in land, personal property or other assets of the Band, not inconsistent with Article XI on tribal land;
- (f) To manage the economic affairs, enterprises, property, both real and personal, and other interests of the Band;
- (g) To levy and collect taxes or assessments against members, non-members, and businesses;
- (h) To provide for the manner of making, holding and revoking assignments of the Lac Vieux Desert Band's land or interests therein;
- (i) To employ legal counsel; Provided, That this power shall be subject to the approval of the Secretary of the Interior so long as required by Federal law;
- (j) To charter subordinate organizations, including housing, financial and health boards, and to delegate to such organizations or to any subordinate boards or officials of the organizations, the power to manage the economic affairs and enterprises of the Lac Vieux Desert Band, reserving the right to review any action taken by virtue of such delegated power;
- (k) To exclude from the lands of the Band persons, or other entities, not legally entitled to be present thereon;
- (l) To provide by ordinance for the jurisdiction of the Band over Indian Child Welfare matters and all other domestic relations matters; and
- (m) To take action, not inconsistent with this Constitution, which shall be necessary and proper to carry out the sovereign powers of the Band.

Section 2. Ordinances as Law. In addition to this Constitution, ordinances of the Tribal Council adopted pursuant to this Constitution shall have the status of the law of the Lac Vieux Desert Band and shall govern all people subject to the Band's jurisdiction.

Section 3. Further Powers. The Tribal Council may exercise, in addition to its sovereign tribal powers, such additional powers as may in the future be delegated to it by law, by the Secretary of the Interior, or by any other duly authorized official or agency of the United States or of any state.

Section 4. Powers of the Band Not Diminished. Any rights and powers heretofore vest-

ed in the Band but not expressly referred to in this Constitution shall not be diminished by this Constitution.

ARTICLE V — TRIBAL JUDICIARY

Section 1. Judicial Power. The judicial power of the Lac Vieux Desert Band shall be vested in the Lac Vieux Desert Judiciary which shall consist of the Tribal Court, whose judges may by designation sit as a Court of Appeals, and such other inferior courts as the Tribal Council may from time to time establish. The Tribal Council shall, by ordinance, establish a Court of Appeals consistent with the provisions of this Article.

Section 2. Jurisdiction.

- (a) Tribal Court. The judicial power shall extend to all cases, matters or controversies arising under this Constitution and the laws, ordinances, regulations, customs, and judicial decisions of the Lac Vieux Desert Band and shall be exercised to the fullest extent consistent with self-determination.
- (b) Court of Appeals. The appellate power of the Lac Vieux Desert Judiciary shall be vested in the Court of Appeals which shall have jurisdiction to hear all appeals from the Lac Vieux Desert Tribal Court. Decisions of the Court of Appeals on all matters within its appellate jurisdiction shall be final.

Section 3. Composition of the Tribal Judiciary.

- (a) Tribal Court. The Tribal Court shall consist of a Chief Judge and at least two (2) associate judges appointed by the Tribal Council.
- (b) Court of Appeals. The composition of the Court of Appeals shall be determined by ordinance of the Tribal Council, Provided, That the members of the Tribal Council shall not serve as judges on the Court of Appeals; Provided, Further That no judge or judges serving on the Court of Appeals shall have presided at the trial of the case appealed.

Section 4. Appointments and Compensation.

- (a) Each judge shall be appointed by an affirmative vote of six (6) of the eight (8) voting members of the Tribal Council for a term of six (6) years.
- (b) The Tribal Council shall have the power to establish the level of compensation for each judge which shall not be diminished during their continuance in office.

Section 5. Eligibility. A person shall be eligible to serve as a Tribal Court Judge only if he or she:

- (a) Is a member of the Lac Vieux Desert Band who has attained the age of twenty-five (25) years or is an attorney licensed to practice before the courts of a state in the United States, and
- (b) Has not been convicted, within ten (10) years of such appointment, of a felony, unless such offense is demonstrated to the satisfaction of the Tribal Council to be related to an assertion of a treaty protected right.

Section 6. Independence of Judicial Branch. The judiciary shall be independent from the legislative and executive functions of the tribal government. No person exercising powers of the executive or legislative branches shall exercise powers properly belonging to the judicial branch.

Section 7. Practice and Procedure. The Tribal Court shall by general rules establish, modify, amend, or simplify the practice and procedure in all courts of the Lac Vieux Desert Band.

Section 8. Removal of a Tribal Judge. Tribal Court Judges shall be subject to removal for reasonable cause by the Tribal Council. The Tribal Council shall by ordinance set forth the procedures for such removal.

Section 9. Vacancies. Any vacancy in the tribal judiciary shall be filled by the Tribal Council in the same manner as the original appointment for the balance of the unexpired term.

ARTICLE VI — TRIBAL LAW

This Constitution, tribal ordinances, and the customs of the Band shall govern all people subject to the Band's jurisdiction.

ARTICLE VII — ELECTIONS

Section 1. First Election.

- (a) For purposes of the first election held pursuant to this Constitution, the Election Board referred to in (b) below shall issue such written rules and regulations as it deems necessary to properly administer the election ordinance adopted by the Tribal Council to conduct the first election ordinance adopted by the Tribal Council to conduct the first election of the Tribal Council, and the Chairperson of the Tribal Council. Such rules and regulations shall be issued within thirty (30) days after the adoption of this Constitution. The first election shall be held to coincide with the expiration of the terms of the Tribal Council Members who are serving at the time of adoption of the Constitution.
- (b) The Tribal Council that is serving at the time of adoption of the Constitution

shall appoint, within five (5) days after adoption of the Constitution, an Election Board as provided in Section 5 of this Article.

- (c) The Tribal Council that is serving at the time of adoption of the Constitution shall adopt an election ordinance governing the conduct of the first election.
- (d) Candidates for the Tribal Council shall be nominated from the floor.
- (e) Tribal Council Members shall continue in office until a successor is elected, their office is deemed vacant, or they are removed from the Tribal Council. The Tribal Council Members serving at the time of adoption of the Constitution shall remain in office until their terms are up and their successors have been elected.
- (f) The Tribal Council serving at the time of adoption of the Constitution shall swear in the newly elected Tribal Council at the first regularly scheduled Tribal Council meeting following the date on which the Election Board certifies the results of the first election.

Section 2. Election Methods.

- (a) Regular Election. After the first election, members of the Tribal Council shall be elected during such month and day as set by the Tribal Council. The Council shall set the date as near as possible to coincide with the expiration of its term. Election procedures shall be provided by the Election Board as provided in Section 5 of this Article.
- (b) Special Elections. Special elections shall be called where appropriate by the Election Board to remove, recall and fill vacancies of elected officials and to submit initiatives and referendums to the membership.
- (c) Swearing in of New Council Members. Newly elected members of the Tribal Council shall be sworn into office by the then serving Tribal Council at the next regularly scheduled Tribal Council meeting following the date on which the Election Board certifies the results of the regular or special election at which such members were elected.

Section 3. Voting.

- (a) Any enrolled member of the Lac Vieux Desert Band who is eighteen (18) years of age or older on the date of the election in question shall be eligible to vote in tribal elections.
- (b) Voting in tribal elections shall be by secret ballot cast at polls established by the Election Board.
- (c) Absentee voting shall be permitted in accordance with such rules and proce-

dures as shall be established by the Election Board.

Section 4. Qualifications for Candidates.

- (a) Age and Residency Requirement. To be eligible to be a candidate for the office of Chairperson or Vice-Chairperson, a person must be a member of the Band who has resided within a fifty (50) mile radius of the Lac Vieux Desert Reservation for at least six (6) months prior to the election, and be at least twenty-five (25) years of age as of the date of the election. To be eligible to be a candidate for other Tribal Council positions, a person must be a member of the Band who has resided within a fifty (50) mile radius of the Reservation for at least six (6) months prior to the election, and be at least eighteen (18) years of age as of the date of the election.
- (b) Disqualification from Candidacy and Rehabilitation. No person shall be eligible to be a candidate for election to the Tribal Council who has been convicted of any felony under Federal, state or tribal law, unless such person has not been convicted or imprisoned for such felony within the preceding ten (10) years or the Tribal Judiciary, in accordance with such rules as it shall establish, certifies that the person in question is rehabilitated.

Section 5. Election Board.

- (a) The Tribal Council shall appoint an Election Board, composed of three (3) eligible voters of the Lac Vieux Desert Band to hold elections, certify election results, and settle election disputes other than allegations of impropriety by the Election Board. The decisions of the Election Board shall be final and binding on the Lac Vieux Desert Band.
- (b) The Election Board shall make sure that each candidate meets the requirements set out in Section 4 above.
- (c) Members of the Election Board shall not be eligible to hold or run for any office in the tribal government. If a member of the Election Board wishes to run for a position on the Tribal Council, he/she shall resign from the Election Board, and the Tribal Council shall appoint a replacement.
- (d) Term of Office. The term of office for the Election Board shall be three (3) years.
- (e) Allegations of impropriety by the Election Board shall be settled by the Tribal Judiciary.
- (f) The Election Board may be authorized in accordance with election ordinances adopted by the Tribal Council to issue such rules and procedures as may be necessary to carry out the election of officers pursuant to this Constitution and the directives of the Tribal Council regarding tribal election business.

- (g) Any candidate for tribal office may choose a representative to be present when the election ballots are counted by the Election Board.
- (h) A Band member shall have five (5) business days from the date of the election to file an election challenge with the Election Board.
- (i) The Election Board shall render its conclusions regarding election disputes within ten (10) days of the date of any election challenge.

ARTICLE VIII — RECALL, REMOVAL AND VACANCY

Section 1. Recall: Dismissal from Office by Voters of the Tribe.

- (a) Ordinances shall be enacted by the Tribal Council to provide for the recall of any elected official of the Lac Vieux Desert Band at any time after holding office for six (6) months upon a petition signed by electors equal in number to fifty-one percent (51%) of the number of persons eligible to vote in the preceding tribal election; Provided, That every official shall be subject to only one (1) recall petition per term, and shall not be subject to recall during the final year of his/her term.
- (b) Recall petitions shall be submitted to the Election Board.
- (c) The Election Board shall determine whether the petition meets the requirements specified in (a) above within ten (10) business days of its receipt.
- (d) A recall election shall be scheduled by the Election Board within thirty (30) days of its determination that the petition meets the requirements specified in (a) above.
- (e) The elected official shall be removed by a majority vote of those casting ballots in the recall election; Provided, That at least fifty-one percent (51%) of the eligible voters vote in the recall election.

Section 2. Removal: Dismissal from Office Initiated by the Tribal Council. The Tribal Council may by an affirmative vote of seven (7) of the eight (8) voting members of the Council refer to the Tribal Judiciary of the Lac Vieux Desert Band for removal from office any member of the Tribal Council for any of the following reasons:

- (a) Failure to attend three (3) consecutive meetings without a valid excuse, including regular, emergency, and special meetings; Provided, That the member has received notice of the meetings.
- (b) Gross misconduct in office;
- (c) Incapacity from physical or mental disability, to the extent that he/she is inca-

pable of exercising judgement about or attending to the business of the Tribal Council.

(d) Conviction of a crime under Federal, state or tribal law while holding office.

Section 3. Vacancies.

(a) The office of any elected tribal official who dies, resigns, is recalled or is removed, shall be deemed to be vacant. Resignation of office shall be written and shall be deemed to be effective as of the date tendered unless otherwise stated in the resignation document.

(b) Any vacancy in the office of an elected tribal official shall be filled as follows:

1. Council Members. When a Tribal Council position, other than Chairperson, is vacant, the position shall be filled for the remainder of the term by the person who was the highest runner-up in the previous election for Tribal Council. If such person is not available, then the position shall be filled by the person who received the next highest number of votes in the previous election for Tribal Council. In the event there are no runners-up from the previous election available to fill a vacancy, a special election shall be called to fill the position.
2. Vice-Chairperson, Secretary or Treasurer. If the office of Vice-Chairperson, Secretary or Treasurer is vacant, the tribal Chairperson shall appoint a Council member to fill such position for the remainder of the term. The council position shall then be filled as provided for in subsection one (1) above.
3. Chairperson. If the office of Chairperson is vacant, the Tribal Election Board shall hold a special election within thirty (30) days to fill the vacant office; Provided, That any special election to fill an office vacated as a result of recall proceedings, in accordance with Section 1 of this Article, shall be held separate from the recall election.
4. Acting Tribal Chairperson Pending Special Election. If the office of Chairperson is vacant, the Vice-Chairperson shall act as Chairperson until the position has been filled by special election. If the offices of Chairperson and Vice-Chairperson are both vacant, the Secretary shall act as Chairperson until the position has been filled by special election. If the offices of Chairperson, Vice-Chairperson, and Secretary are all vacant, the Treasurer shall act as Chairperson until the position has been filled by special election.
5. Any tribal member taking office under the provision of this section shall be deemed to be subject to all provisions of this Constitution and to tribal ordinances and resolutions generally applicable to elected officials and to

their particular office.

- (c) Any special election required to be held under this Article shall be conducted in accordance with applicable provisions of this Constitution and with any applicable tribal ordinances. If a regular election is scheduled to be held within ninety (90) days all issues shall be submitted to a vote at the regular election.
- (d) If by reason of vacancies in office the remaining members of the Tribal Council number less than five (5) members, the Election Board shall cause all vacant offices to be filled by special election held in accordance with applicable provisions of this Constitution.

ARTICLE IX - INITIATIVE AND REFERENDUM

Section 1. Initiative.

- (a) The members of the Band shall have the power to propose by initiative any ordinance to the Tribal Council or to repeal or amend any ordinance in accordance with the provisions of this Article; Provided, That ordinances making appropriations for the tribal institutions or ordinances establishing the tribal budget shall be exempt from the initiative process.
- (b) The procedure for initiative shall be as follows:
 - 1. Initiative petitions must be signed by at least twenty-five percent (25%) of the eligible voters of the Band after the signatures have been verified by the Election Board, the initiative and the verified petition shall be presented to the Tribal Council.
 - 2. The election on the initiative shall be held not less than thirty (30) days and not later than sixty (60) days from the date the initiative and the verified petition are filed with Tribal Council.
 - 3. In the event the Tribal Council fails to call an election on the initiative, it shall be submitted to the voters by the Election Board for the voters' acceptance or rejection. The Tribal Council may propose a different law upon the same subject and in such event both proposals shall be submitted to the eligible voters at the same time.
 - 4. The vote of a majority of those actually voting shall be conclusive and binding upon the Tribal Council; Provided, That at least fifty-one percent (51%) of the eligible voters of the Band cast ballots in said special election.

Section 2. Referendum.

- (a) The Tribal Council shall upon the vote of six (6), or two-thirds (2/3) of the

current Council Members, submit any proposed or previously enacted ordinance to a vote at a referendum election.

(b) The procedure for a referendum election shall be as follows:

1. Referendum elections shall be held not less than thirty (30) days and not later than sixty (60) days from the date the proposed or existing ordinance is referred to the voters by the vote of the Tribal Council as provided for in this subsection.
2. The vote of a majority of those actually voting shall be conclusive and binding upon the Tribal Council, Provided, That at least fifty-one percent (51%) of the eligible voters of the Band cast ballots in a referendum election.

Section 3. Time for Taking Effect; Amendment or Repeal. Any initiative or referendum approved pursuant to the provisions of this Article shall take effect ten (10) days after certification of the election. No law adopted by the membership of the Band under the initiative provisions shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative proposal.

ARTICLE X — CONSTITUTIONAL RIGHTS

Section 1. Civil Rights of Members. The Lac Vieux Desert Band in exercising the powers of self-government shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and to petition for a redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of five thousand dollars (\$5,000.00), or both, or the maximum penalty allowed under Federal law;
- (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (i) Pass any bill of attainder or ex post facto law; or
- (j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

Section 2. Treaty Rights and the Development of Tribal Resources. Members of the Lac Vieux Desert Band shall have the right to fish, hunt, trap, and gather food from plants subject to reasonable restrictions established by the Tribal Council for protection of the resources; Provided, That this section does not include the right to commercially develop tribal resources, such right being reserved to the Band; Provided, Further That that Band may license members to commercially develop the resources of the Lac Vieux Desert Band, to the extent permitted by Federal law.

ARTICLE XI — TRIBAL LAND

Section 1. Transfer of Tribal Land. Except for conveyances of land to the United States in trust for the Band, the Tribal Council shall not transfer land out of tribal ownership unless, prior to such transfer taking effect, such proposed transfer is approved by a majority vote in an election in which at least two-thirds (2/3) of the eligible voters of the Band cast their ballots, including absentee ballots.

Section 2. Encumbrances of Tribal Land. The Tribal Council may authorize only the following transfers or encumbrances of tribal land without submitting the proposed encumbrances for approval or rejection to the eligible voters of the Band:

- (a) Tribal development of the land for residential, agricultural, commercial or industrial purposes;
- (b) Land use assignments for residential or agricultural purposes; and
- (c) Leases for residential, agricultural, commercial or industrial purposes as provided by Federal law.

Section 3. Land Use Plans. The Tribal Council shall by ordinance establish a comprehensive land use and natural resources conservation plan for lands and natural resources subject to tribal jurisdiction.

Section 4. Article Construction. This Article shall not be construed to deny the Tribal Council its power and authority to regulate activities on tribal land.

ARTICLE XII — CONFLICT OF INTEREST

In carrying out the duties of tribal office, no tribal official, elected or appointed, shall make or participate in making decisions which involve balancing a substantial personal financial interest, other than interests held in common by all tribal members, against the best interests of the Band.

ARTICLE XIII — SOVEREIGN IMMUNITY

Section 1. General Prohibition. The Tribal Council shall not waive or limit the right of the Lac Vieux Desert Band to be immune from suit, except as authorized by this Article or in furtherance of tribal business enterprises.

Section. 2. Suits Against the Lac Vieux Desert Band in Tribal Courts by Tribal Members.

- (a) The Lac Vieux Desert Band shall be subject to suit in the Tribal Court by tribal members for the purpose of enforcing rights and duties established by this Constitution and by the ordinances of the Tribe.
- (b) Tribal members shall not be entitled to an award of damages as a form of relief against the Lac Vieux Desert Band; Provided, That the Tribal Council may by ordinance or resolution waive the right of the Lac Vieux Desert Band to be immune from damages in such suits in specified instances when such waiver would promote the best interests of the Band or the interests of justice.
- (c) If the tribal member bringing the suit prevails on the merits in the Tribal Court, the costs of bringing the suit may be charged to the Band, if so ordered by the Tribal Court. The Band, however, does not waive or limit any rights which it may have to be immune from suit in the courts of the United States or of any state.

ARTICLE XIV — SEVERABILITY

If for any reason any provision of this Constitution shall be held to be invalid or unconstitutional, the validity and effect of all other provisions shall not be affected thereby.

ARTICLE XV — AMENDMENTS

This Constitution may be amended by a majority vote of the qualified voters of the Band at an election called for that purpose by the Secretary of the Interior in which at least seventy-five percent (75%) of the qualified voters participate in such election, but no amendment shall become effective until approved by the Secretary of the Interior. The Secretary shall approve the amendments if adopted by a majority of the tribal voters unless the Secretary finds that the proposed amendments, or any portion thereof, is contrary to Federal law.

Amendments to this Constitution may be proposed either by the Tribal Council or petition of the eligible voters of the Band. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a valid petition signed by at least one-third (1/3) of the eligible voters of the Band, or by resolution of the Tribal Council.

ARTICLE XVI — ADOPTION

This Constitution, when adopted by a majority vote of the qualified voters of the Lac Vieux Desert Band voting at an election called for that purpose by the Secretary of the Interior and conducted in accordance with Federal regulations in which at least thirty percent (30%) of the qualified voters shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be effective from the date of such approval as provided in the Indian Reorganization Act of 1934 (48 Stat. 984), as amended.