

**WHITE EARTH RESERVATION BUSINESS COMMITTEE  
WHITE EARTH BAND OF CHIPPEWA INDIANS**

Resolution No. 057-23-006 A

**Ordinance Imposing a Moratorium on Concentrated Animal Feeding Operation and Animal Feedlot Operation Environmental Hazard Construction Inconsistent With Existing Activities and Land Uses, And Expansion of Concentrated Animal Feeding Operation and Animal Feedlot Operation Environmental Hazard Activities and Land Uses Pending the Study of Possible Regulatory Action.**

**WHEREAS,** the White Earth Reservation Business Committee is the duly elected governing body of the White Earth Reservation pursuant to Article VI, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and

**WHEREAS,** the White Earth Reservation Business Committee is the duly authorized governing body of the White Earth Band, and

**WHEREAS,** the White Earth Reservation Business Committee adopted the White Earth Reservation, Environmental Code, including the Band's Zoning Code, for the protection, management, enforcement and enhancement of all natural resources within the Reservation boundaries (Resolution number 057-11-001). A copy of which is incorporated by reference, and

**WHEREAS,** the White Earth Reservation Business Committee established the White Earth Division of Natural Resources (WEDNR) to protect, restore and regulate the natural resources of the Band and its Band Members in order to ensure environmental and human health and spiritual, cultural and economic sustainability of the Band, and

**WHEREAS,** the White Earth Reservation Business Committee defines Concentrated Animal Feeding Operations ("CAFOs") as a facility at which (i) for not less than a total of 45 days in any 12-month period, animals are stabled or confined or fed or maintained; (ii) crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility and (iii) not less than 700 mature dairy cows, 1,000 veal calves, 1,000 cattle other than mature dairy cows or veal calves, 2,500 swine (each weighing not less than 55 pounds), 10,000 swine (each weighing not more than 55 pounds), 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens/broilers, 125,000 chickens, 82,000 laying hens, or 5,000 ducks are present, and

- WHEREAS,** the White Earth Reservation Business Committee defines Animal Feedlot Operations (“AFOs”) as a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. Open lots used for the feeding and rearing of poultry shall be considered to be animal feedlots, and
- WHEREAS,** the White Earth Reservation Business Committee identifies AFOs as environmental hazards if (i) not less than 525 mature dairy cows, 750 veal calves, 750 cattle, 1,875 swine (each weighing not less than 55 pounds), 7,500 swine (each weighing not more than 55 pounds), 375 horses, 7,500 sheep or lambs, 41,250 turkeys, 22,500 laying hens/broilers or 3,750 ducks are present and (ii) they present a potential or immediate risk of pollution to or depletion of ground or surface water as determined by a review or inspection undertaken by the WEDNR after taking into consideration: the size of an animal feedlot or manure storage area, the amount of water to be used, the amount of pollutants reaching or that may reach ground or surface waters, the location of the animal feedlot or manure storage area relative to ground and surface waters, the means of conveyance of animal manure or process wastewater into ground or surface waters, and the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal manure or process wastewater into ground or surface water, and
- WHEREAS,** the White Earth Reservation includes 530 lakes, 300 miles of rivers and streams, 167,878 acres of wetlands and substantial groundwater resources contained in shallow, unconfined and deeper, layered aquifers, all of which are integral to the economic security and the health and welfare of the Band, and
- WHEREAS,** the WEDNR, working with relevant scientific and community experts, has thoroughly analyzed and identified substantial individual and cumulative water quality threats from the operation of CAFOs and AFO environmental hazards on the White Earth Reservation including E.coli, dissolved oxygen, turbidity, phosphorus and nitrogen environmental and impairments, and
- WHEREAS,** the WEDNR, working with relevant scientific and community experts, has thoroughly analyzed and identified substantial individual and cumulative water quantity threats including water table drawdown, residential and community well interference and surface waterbody drawdown, dissolved oxygen impairment and temperature impairment from the operation of high-capacity water wells associated with CAFOs and AFO environmental hazards on the White Earth Reservation, and
- WHEREAS,** the WEDNR, working with relevant scientific and community experts, has analyzed and identified substantial individual and cumulative air quality threats including the emission of hazardous chemical gases such as ammonia, hydrogen sulfide and

Division of Natural Resources – Concentrated Animal Feeding Operation Moratorium (Technical Amendment)

methane from the operation of CAFOs and AFO environmental hazards on the White Earth Reservation, and

**WHEREAS,** the WEDNR, working with relevant scientific and community experts, has analyzed and identified substantial individual and cumulative human health threats including cancer, brain damage, dizziness, headache, nausea, sore throats, sinusitis, burning eyes, acute gastrointestinal illness, increased cardiovascular mortality risk, anemia, kidney disease and septicemia from the operation of CAFOs and AFO environmental hazards on the White Earth Reservation, and

**WHEREAS,** the WEDNR has identified that the individual and cumulative air, water and human health threats from the operation of CAFOs and AFO environmental hazards on the White Earth Reservation directly threaten the health, welfare, natural resources, economic security and cultural continuity of the Band, and

**WHEREAS,** the Band possesses “inherent powers of a limited sovereignty which has never been extinguished” and has plenary and exclusive power over its members and territory subject only to limitations imposed by federal law, *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978); *Worcester v. Georgia*, 31 U.S. 515,555 (1832), and

**WHEREAS,** with the establishment of the White Earth Reservation, the Band obtained federal property rights to a sufficient quantity and quality of water to fulfill the purposes of the reservation now and in the future, *United States v. Winans*, 198 U.S. 371 (1905), *Winters v. United States*, 207 U.S. 564 (1908), and

**WHEREAS,** the Band is entitled to sufficient quantity and quality of water in order to make the reservation livable, enable tribal members to maintain customary ways of life and permit tribal members to change and adopt to new ways of life, *Arizona v. California*, 373 U.S. 546, 599 (1963); *Menominee Tribe v. United States*, 391 U.S. 404, 406 (1968); *Winters v. United States*, 207 U.S. 56, 577 (1908), and

**WHEREAS,** federal law provides that the Band “retain[s] inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Montana v. United States*, 450 U.S. 544, 565,66 (1981).

**NOW, THEREFORE,** in consideration of the above Recitals, which are incorporated herein by reference, the White Earth Reservation Business Committee pursuant to the above referenced authority, scientific and cultural review and recommendation of the WEDNR, and after reviewing the materials in the record including scientific studies, news reports, violation data, testimony of community members, testimony of organizations and reports of outside experts ordains as follows:

**Section 1—Title and Purpose:**

1.1 Title. The title of this Ordinance is the **White Earth Band of Minnesota Chippewa Indians' Moratorium on Concentrated Animal Feeding Operation and Animal Feedlot Operation Environmental Hazard Construction Inconsistent With Existing Activities and Land Uses, And Expansion of Concentrated Animal Feeding Operation and Animal Feedlot Environmental Hazard Operation Activities and Land Uses Pending the Study of Possible Regulatory Action.**

1.2 Purpose. The purpose of this moratorium is to allow the Band sufficient time to undertake an interdisciplinary process of data collection, review, analysis and regulatory and technology development sufficient to regulate CAFOs and AFO environmental hazards in a manner that protects the Band's core interests related to human health, natural resource protection and economic security. A moratorium is necessary for the reasons set forth in the Recitals and consistent with the findings made by the White Earth Reservation Business Committee, each and all of which are incorporated herein by reference.

**Section 2 – Authority:**

2.1 The White Earth Reservation Business Committee relies on the authorities set forth in the Recitals.

**Section 3 – Moratorium Imposed:**

3.1 For the duration of the Moratorium, the White Earth Reservation Business Committee prohibits CAFO and AFO environmental hazard construction inconsistent with existing activities and land use, changes in existing CAFO and AFO environmental hazard activities and land use, and expansion of CAFOs and AFO environmental hazard existing activities and land uses within the exterior boundaries of the White Earth Reservation.

**Section 4 – Duration of the Moratorium:**

4.1 The Moratorium shall be in effect for two years from the date of adoption, unless terminated earlier or extended further by an ordinance duly adopted by the White Earth Reservation Business Committee.

**Section 5 – Action Anticipated During the Moratorium:**

5.1 The White Earth Reservation Business Committee, working with the WEDNR and outside experts, shall review the Band's Zoning Ordinances and conduct an interdisciplinary study of water quality, water quantity, soil health, air, and environmental and human health impacts from location of additional or expansion of existing CAFOs or AFO environmental hazards within the exterior boundaries of the White Earth Reservation to develop appropriate regulatory controls for such facilities. The White Earth Reservation Business Committee, working with the WEDNR and outside experts, shall also work to develop priority protection areas based on identified

Division of Natural Resources – Concentrated Animal Feeding Operation Moratorium (Technical Amendment)  
natural resource concerns as well as Geographic Information Systems (GIS) tools to map and evaluate risks and harms from the operation of CAFOs and AFO environmental hazards, including manure land-spreading activities, within the exterior boundaries of the White Earth Reservation.

5.2 The White Earth Reservation Business Committee shall act upon recommendations from the community, WEDNR and outside experts as deemed necessary to protect the public health and welfare, natural resources and economic security of the Band.

5.3. The White Earth Reservation Business Committee shall take such action as it deems appropriate to terminate or extend the Moratorium within two years of its passage.

**Section 6 – Effective date:**

6.1 This ordinance shall be effective at the time of its passage by the White Earth Reservation Business Committee.

The White Earth Reservation Business Committee does hereby certify that the foregoing resolution and ordinance was adopted by a vote of 4 for, 0 against, 0 silent, a quorum being present at a meeting of the White Earth Reservation Business Committee held on December 1, 2022 in White Earth, Minnesota.

  
\_\_\_\_\_  
Michael A. Fairbanks, Chairman

  
\_\_\_\_\_  
Michael LaRoque, Secretary/Treasurer