

TRIBAL LEGAL CODE PROJECT



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Overview

Tribal Legal Code Project

In order for Indian Nations to develop and implement effective housing and community development programs, there is a need to adopt comprehensive tribal codes that address a broad range of housing and community development issues. The tribal code development process, however, is a difficult, expensive, and time-consuming process. Consequently, tribal governments are in need of technical assistance concerning the development of the legal infrastructure necessary to facilitate housing and community development in Indian country which incorporates both general information concerning the tribal code development process and information concerning specific tribal codes (such as housing, land use and planning, zoning, and building codes) which are critical for tribal housing and community development.

In 1995-1996, the Office of Native American Programs (ONAP) of the United States Department of Housing and Urban Development (HUD) contracted for the design and development of a comprehensive Tribal Housing Code (including eviction and foreclosure procedures). The Tribal Housing Code (see Part Three of this Tribal Legal Code Project) was intended to provide tribal governments with an outline and an illustrative guide for drafting their specific tribal codes and to greatly reduce the cost of designing individual tribal housing codes. This Tribal Housing Code, however, was in need of significant update and revision - especially in light of the enactment and implementation of the Native American Housing and Self-Determination Act of 1996 (NAHASDA).

Moreover, there is a critical need for expanded tribal legal resource materials. Tribal governments need resource information concerning additional related tribal codes in order to facilitate housing and community development in Indian country. These additional related tribal codes might include zoning, land use and planning, building, commercial, corporations, environmental review, and probate codes.

Most of these codes are not easily adaptable to "model" codes since the land use, building, and zoning needs vary substantially from tribe to tribe. Instead, it was determined that it would be useful to provide tribes with representative examples of different types of land use, building, and zoning codes along with explanatory resource materials. This task required a survey of existing tribal codes and an identification of best practices. Moreover, it involved the collection, analysis, and annotation of existing tribal codes - including tribal land use, building, and zoning codes.

This project is designed to allow tribal governments to easily access tribal specific resources in a cost-effective manner without having to "reinvent the wheel." It is also designed to demystify the tribal code development process - making it easier for those involved in tribal housing and community development to develop tribal code provisions that more effectively reflect their individual community needs.

This Tribal Legal Code Project was prepared for the Office of Native American Programs (ONAP) of the United States Department of Housing and Urban Development (HUD) by the Tribal Law and Policy Institute under a contract with ICF Housing and Community Development Group. The Tribal Law and Policy Institute is an Indian owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the improvement of justice in Indian country and the health, well-being, and culture of Native peoples.

This Tribal Legal Code Project was developed under a very short time frame during February and March 1999. The following people were primary authors of this Tribal Legal Code Project:

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A Draft Version of this Tribal Legal Code Project was provided for review and comment at the March 1999 Shared Visions: The Native American Homeownership, Legal and Economic Development Summit, sponsored by HUD. The final version of the Tribal Legal Code Project was developed in April 1999.

The following is an overview of the resources contained within this Tribal Legal Code Project:

- Part 1: General Information concerning the Tribal Legal Infrastructure for Housing and Community Development in Indian Country**
- Part 2: Bibliography of Resources for Tribal Legal Codes**
- Part 3: 1999 revised Tribal Housing Code**
- Part 4: Land Use and Planning Codes**
- Part 5: Zoning Codes**
- Part 6: Building Codes**
- Part 7: Commercial Codes**
- Part 8: Corporations Codes**
- Part 9: Environmental Review Codes**
- Part 10: Probate Codes**

Each tribal code section is organized to include (1) explanatory information concerning the development of the specific type of code, (2) identification and inclusion of specific tribal codes representing best practices, and (3) analysis and annotation of each of the tribal codes included in the collection.

The following is a detailed listing of the tribal codes that are analyzed and annotated in this Tribal Legal Code Project:

Land Use and Planning Codes

Navajo Nation (Arizona/New Mexico/Utah)
Cabazon Band of Mission Indians (California)
Gila River Indian Community (Arizona)

Zoning Codes

Navajo Nation (Arizona/New Mexico/Utah)
Colville (Washington)
Muckleshoot (Washington)
Menominee (Wisconsin)

Building Codes

Colorado River (Arizona)
Standing Rock Sioux (North and South Dakota)
Grand Traverse Band (Michigan)
Commercial Codes
Navajo Nation (Arizona/New Mexico/Utah)
Model Tribal Code (University of Montana Indian Law Clinic)
Lummi Indian Nation (Washington)

Corporations Codes

Navajo Nation (Arizona/New Mexico/Utah)
Cherokee Nation (Oklahoma)

Hoopla Tribe (California)

Environmental Review Codes

Model Tribal Environmental Review Code

Probate Codes

Chitimacha Tribe (Louisiana)



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Part One

Tribal Legal Infrastructure for Housing and Community Development in Indian Country

Introduction

Indian nation leaders face unique challenges when they attempt to meet the needs of their people for housing and development of communities where that housing will be built. Aside from the challenges of planning and land development control law,¹ Indian nations have a great deal more to address.

First, Indian nations have had to deal with complex issues concerning the nature of ownership of land in Indian country. Indian nations do not "own" their own land, just as individual Indians do not "own" their interests in an allotment. The United States of America holds the title to Indian reservations in trust for the "benefit" of the Indian nations which reside on them, and the United States holds the title to allotments in trust for the "benefit" of individual Indians and heirs. Indian land planners, therefore, must address the issue of federal approval for land use plans.

Second, today's Indian nations must still deal with the legacy of past federal Indian policy. As Professor Charles F. Wilkinson points out,² the General Allotment Act of 1887 created a climate of conflict and confusion which lies at the heart of contemporary legal conflicts in Indian Country. That is, the General Allotment Act of 1887 (the "Dawes Act") provided for the breakup of Indian reservations. Under the Act, individual Indian families received allotments of land for their own use. Following a period of "proving up" the land (i.e. showing that the family knew how to farm and use the land), the family head would receive a fee patent³ and the land would pass under state jurisdiction. Remaining "surplus" land was opened for purchase or homesteading by non-Indians. Despite the fact that Indian reservations were created by treaty, statute, or presidential executive order for the "exclusive" use of the Indian Nations upon a given reservation, this massive breakup of America's Indian reservation led to "checkerboarding" and conflict. Today, Indian nation land planners must answer several questions before they can successfully begin

¹ "Planning and Land Use Control Law" includes the subjects of planning law, zoning, subdivision control, building and housing codes, growth management and planning, constitutional [or civil rights] limitations, windfalls and wipeouts [conflicts between regulation and land rights], protection and preservation of the natural and built environment (environmental protection, aesthetic regulation, historic preservation, and farmland preservation), new and revitalized communities, private land use control, eminent domain, and land use litigation and practice. DONALD G. HAGMAN AND JULIAN CONRAD JUERGENSMEYER, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW 2-6 (2nd ed. 1986). While the title of this text has the word "urban," these subjects apply to both urban and rural land use planning and control.

² CHARLES F. WILKINSON, AMERICAN INDIANS, TIME, AND THE LAW (1987).

³ A "fee patent" is a deed for absolute ownership of a piece of land received from the federal government.

the planning process: What does my reservation look like when it comes to land ownership? There are land ownership maps for most reservations which show the nature of the owner (i.e. Indian lands, private lands, and lands held by the state, the Bureau of Land Management, the U.S. Forest Service, etc.). The different-colored squares (of one square mile per square) show the checkerboard ownership pattern. Do I have jurisdiction over a given piece of land? Is it within the reservation or outside? Can I regulate land where there are pockets of non-Indian settlement or towns? Do I have jurisdiction to regulate non-Indians?

Third, land use planning requires a great deal of time and attention. Given the nature of "ownership" of reservation and allotted lands, land planners need to deal with federal approvals for given land uses, environmental and archaeological assessments and clearances, and many federal regulations. Indian Country land use planners also must take into account possible resistance by non-Indian landowners within the reservation, conflicting state laws and jurisdictional demands, and even the objections of individual tribal members with varying kinds of land use rights or expectations.

This introduction addresses the basics of a legal infrastructure for housing and community development in Indian Country. It recognizes the fact that there are over 500 Indian tribes, reservations and communities within the United States. There are Indian nations with treaties with the United States and those without a treaty. Some Indian nations are large, such as the Navajo Nation with over 25,000 square miles of land, and others can be as small as one-quarter of an acre. Some Indian nations with large populations, such as the Cherokee Nation of Oklahoma, do not have a reservation area or distinct land base. Some Indian nations are buying lands for casinos, sports complexes, or other development. While there are vast legal, cultural, and historical differences among America's many Indian nations, there are many considerations in common.

This introduction will discuss (1) legal foundations and infrastructure, (2) code development process, and (3) some practical considerations of the process of developing a legal infrastructure for housing and community development.

Legal Foundations and Infrastructure

Infrastructure

The word "infrastructure" means nothing more than a basic framework. It is like the frame of a house or a skeleton. "Legal" refers to the basic laws needed to begin to undertake housing and community development. The basic laws are (1) federal, (2) the laws of the given Indian nation, and (3) state laws (in some areas).

Federal Law

The sources of the applicable federal law are the United States Constitution, treaties with Indian nations, statutes regarding "Indians" in Title 25 of the United States Code, other statutes which specifically apply to Indians or their nations, "laws of general application," federal Indian

common law, and the regulations of various federal agencies which apply to the development process.⁴

The two most important provisions of the United States Constitution affecting Indians are the "Indian Commerce Clause" and the "Treaty clause." The Indian Commerce Clause is in Article I, Section 8 of the Constitution, and it gives Congress the exclusive power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The President can make Treaties with the "advice and consent" of two-thirds of the Senate under Article II, Section 2, and a treaty is "the supreme Law of the Land" under Article VI. Planners should first look to their Indian nation's treaty (if there is one) because the United States recently ruled that where an Indian nation does not have inherent (see below) jurisdiction to regulate or exercise court jurisdiction over a given person or subject, that jurisdiction or power can come from either an Indian treaty or a statute passed by Congress.⁵

The word Indian "reservation" comes from the idea that when Indian nations make treaties with the United States, they "reserve" certain lands for their own exclusive use. They also "reserve" governmental powers. When a planner wishes to do an inventory or audit⁶ of the law which applies to the given plan, the planner should always start with the treaty.

Treaties are unusual documents because they are often old⁷ and very broad in their language. There are special rules for reading treaties:

1. Ambiguous expressions [in the treaty] must be resolved in favor of the Indian parties concerned.⁸
2. Indian treaties must be interpreted, as the Indians themselves would have understood them.⁹
3. Indian treaties must be liberally construed in favor of the Indians.¹⁰

Many treaties set aside certain lands for the "exclusive" use of named Indian nations and that is the source for the general authority of Indian nations to exclude nonmembers from their lands.

⁴ Federal regulations are published in the Federal Register, a periodical which publishes proposed regulations, adopted regulations, and other agency notices. Adopted federal regulations are published in the Code of Federal Regulations. The U.S. Government Printing Office publishes agency regulations in paperback format each year.

⁵ *Strate v. A-1 Contractors*, 520 U.S. ___, 117 S. Ct. 1404, 137 L.Ed.2d 661 at 670, 677 (1997).

⁶ Planners should have a "legal audit" done before starting the planning process. A "legal audit" is simply a review of applicable federal, Indian nation, and other law which addresses priorities set by the planner. So, for example, if the planner wants to know what power his or her Indian nation has to develop a comprehensive land use plan, the lawyer would be instructed to review all laws required for such a plan. The lawyer would then advise what laws are in place, what the various requirements for the plan are, and what other laws may be needed to carry out the process as instructed by the planner.

⁷ The United States Congress ended the process of making treaties with Indian nations in 1871, while confirming existing Indian treaties.

⁸ *E.g.* *McClanahan v. State Tax Comm=n.*, 411 U.S. 164 (1973); *Carpenter v. Shaw*, 280 U.S. 363, 367 (1930); *Winters v. United States*, 207 U.S. 564, 576-77 (1908). *See also*, Charles F. Wilkinson & John M. Volkman, *Judicial Review of Indian Treaty Abrogation: AAs Long as Water Flows or Grass Grows Upon the Earth= - How Long a Time is That?* 63 Cal. L. Rev. 601, 608-19 (1975) and Craig A. Decker, *The Construction of Indian Treaties, Agreements, and Statutes*, 5(2) American Indian L. Rev. 299 (1977).

⁹ *E.g.*, *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970); *United States v. Shoshone Tribe*, 304 U.S. 111, 116 (1938); *Starr v. Long Jim*, 227 U.S. 613, 622-23 (1913); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 582 (1832).

¹⁰ *E.g.*, *Choctaw Nation v. United States*, 318 U.S. 423, 431-32 (1943); *Tulee v. Washington*, 315 U.S. 681, 685 (1942).

Many treaties set aside certain lands for the "exclusive" use of named Indian nations and that is the source for the general authority of Indian nations to exclude nonmembers from their lands. Planners should look at how the courts have read that language in a given treaty and in Indian treaties generally to support the power for land use controls needed in planning.

Planners should then consider the obligations of the United States under the U.S. Constitution. For example, federal case law has developed a special "trust responsibility" for the United States Government toward Indians and their nations. This term is confusing, because we may think of a "trust" as being someone holding something for the use of another, as the United States holds title to Indian lands for the use of given Indians or Indian nations. The "trust responsibility" also speaks to a long-standing historical relationship whereby Indian nations agreed to come under the United States and to surrender lands to it in exchange for promises to protect the Indian nation and its people. The Government of the United States is also required to observe Indian nation rights under the Due Process Clause of the Fifth Amendment to the Constitution. That Clause requires the U.S. Government to observe certain standards of fairness in making laws regarding Indians and in addressing Indian rights and freedoms.

There are many federal statutes that apply to Indians and Indian nations.¹¹ There are statutes that apply generally to Indians or their nations, and statutes that apply only to a given Indian nation.¹² Prior to the adoption of the U.S. Constitution, the Continental Congress began enacting a series of Indian "trade and intercourse acts" to regulate land purchases, trade, and other contacts with Indian nations. The trade and intercourse legislation culminated in the Act of June 30, 1834, which summed up basic Indian legislation. Today, 25 U.S.C. Sec. 177 from the 1834 statute deals with purchases, grants, leases and other conveyances of land from Indian nations. As mentioned above, Congress passed the General Allotment Act in 1887 to break up Indian reservations into individual Indian and non-Indian ownership. By 1934, when the Indian Reorganization Act was passed, Congress saw that allotment was a failure and stopped the allotment process.¹³

The general responsibility of the United States to provide governmental services to Indians is found in the Snyder Act of 1921 (25 U.S.C. Secs. 13, 42). This law assumed that the United States has a general responsibility to Indians for health, law enforcement, education, etc. In 1975, Congress passed the Indian Self-Determination and Education Assistance Act (25 U.S.C. Sec. 450 et seq.) to change the delivery of governmental services. That is, under the Self-Determination Act, the Departments of Interior and Health and Social Services make grants "638 law" (so called because it was initially enacted as Public Law 93-638) is essential to Indian government because it provides the base funds for most governmental operations.

The Indian Reorganization Act of 1934 is important because it recognizes the legitimacy of Indian governments. Many Indian governments are organized under the Act and many are not. What is the difference? Section 16 of the Act recognizes the "existing powers" of Indian nations and then goes on to provide that a given Indian nation can adopt a constitution and bylaws under the Act upon a vote of enrolled members. Governments such as that of the Navajo Nation, which does not have a constitution or bylaws, are recognized under the "existing powers" language of

¹¹ There is a good table of "Statutes, Court Decisions and Executive Orders" at <http://www.doi.gov/bia/stats930html>. That listing sets out the major federal Indian statutes which planners should know for the planning process, federal requirements, and Indian nation authority.

¹² When the University of New Mexico Press republished the 1942 edition of FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW in 1982, it included a useful "Tribal Index of Materials on Indian Law" which lists pertinent treaties, statutes, case decisions, and other useful materials for Indian tribes by name. *Id.* at 457-484. While the work is badly out of date, it is still a useful place to start a legal audit of any given Indian nation.

¹³ Some provisions of the General Allotment Act are still in place at 25 U.S.C. Secs. 331, 334, 348, 349 and 397.

Section 16. "Existing powers" are "inherent" powers, or those which Indian nations have always had. In addition, Congress may enact laws to provide that Indian nations can have other powers.

Some examples of such laws include the important Indian Land Consolidation Act of 1983 (25 U.S.C. Sec. 2201 *et seq.*). It addresses the problem of checkerboarding by allowing Indian nations to adopt comprehensive plans to buy, sell, or trade land to deal with scattered ownership patterns and allotments where individuals may own as little as a 1/5,000 interest in a piece of allotted land.

There are other statutes that deal with community development, education, trust services, real estate, forestry, wildlife and parks, water resources, transportation and land and water claims.¹⁴ These should be consulted to see how they apply to the given Indian nation's development priorities. One statute which is particularly relevant to housing development is the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. Sec. 4101 *et seq.*).¹⁵ It is a comprehensive Indian housing law that permits eligible Indian nations to develop Indian housing plans and receive block grants for housing initiatives. The Act recognizes the fact that we cannot simply set aside places for houses and build them. We must think of total infrastructure. That is, housing is not simply building a house. It involves things such as where you want your houses; water, electricity, and sewage; and things such as roads, transportation, trash disposal, and services for people who live in those houses. There is something much larger and very important - implementation of your dream for how your community will grow and develop and what the lives of the people of the community will be in the future. As one Indian health planner put it, "a plan is a dream with deadlines."

Planners may find statutes regarding Indians in other parts of the United States Code besides Title 25 ("Indians"). In recent years, federal agencies outside the Bureau of Indian Affairs and Interior or the Department of Housing and Urban Development have initiated Indian programs, either under new legislation or the application of existing legislation to Indian Country. Those programs are also part of your inventory or legal audit when you commence planning activities.

Planners should be aware that there are conflicts over the "laws of general application" doctrine. That is, when Congress passes a law, to whom does it apply? For example, when Congress enacted the U.S. Civil Rights Act of 1964, which deals with discrimination, it specifically exempted Indian nations under the definition of "employer" in Title VII. What happens if Congress does not mention Indian nations in a given law? What about major federal employment statutes, such as the Fair Labor Standards Act? The law in this area is not settled. There are some decisions which state that (particularly where an Indian nation has a treaty with the United States) general statutes do apply to Indian nations. However, there are other case decisions that state that "laws of general application" passed by Congress do apply to Indian nations. Planners should be aware of this split in case decisions and be prepared to address a given federal statute. While some lawyers for Indian nations advise that resolutions, ordinances, or personnel policies should not acknowledge that certain federal laws apply, the better practice is to make certain that compliance is built into plans and policies.

There is a large body of American law which the American Bar Association calls "Indian Affairs Law." That is the federal law that applies to Indians. Aside from the constitutional provisions mentioned above (the Indian Commerce Clause and the treaty clause) and federal statutes, there is a large body of law made by the courts which is not based upon the Constitution, treaties, or statutes. It is called "federal common law," and it is made up of decisions where the courts (most often the federal courts) say that Indian nations have or do not have certain powers and

¹⁴ See "Statutes, Treaties, Court Decisions and Executive Orders" above at n. 11.

¹⁵ See the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. Sec. 4101 *et seq.*).

authority. For example, in the recent case of *Strate v. A-1 Contractors* (cited above) the U.S. Supreme Court said that Indian nations have limited court jurisdiction over non-Indians. The Court cited earlier decisions on the power to regulate non-Indians, and the conditions for the exercise of regulatory jurisdiction (essentially consent and basic public health, safety and welfare). These must be examined when an Indian nation intends to regulate activities on fee lands within a reservation or the activities of individuals who are not tribal members.

A statute passed by Congress is like a general plan. When Congress passes laws to be administered by an agency, it usually gives the agency the authority to make regulations or "rules." The Administrative Procedures Act requires agencies to publish notice of the intent to adopt a given set of regulations, and when they are adopted by an agency, they are law.

Indian Nation Law

Indian nation planners begin the planning process with a review of the treaty (if any) and applicable federal law and regulations. Then the planner turns to his or her own law to see if (1) existing law will support the desired planning activity or (2) there must be new tribal legislation to put a foundation in place for the desired activity.

Does the Indian nation have a constitution? Many have constitutions and bylaws under the Indian Reorganization Act of 1934. While many of the existing constitutions and bylaws are similar, there can be some differences. When reading an I.R.A. constitution and bylaws, you should look for the powers of the business committee or council to see if they support the activity you want to undertake. The constitution and bylaws should also be reviewed to see what kind of land rights members may have. Some constitutions provide for "selections" or "allotments" of tribal land to individual members, and in that situation, the individual rights of landholders will have to be taken into account in planning.

Section 15 of the Indian Reorganization Act of 1934 provided for federal tribal business corporations. Many Indian nations have them but rarely use them. The federal charters typically provide that the Indian nation that has a charter can engage in a wide variety of business activities. Many Indian nation leaders are aware of the federal corporation because when an Indian nation does business under a charter, it surrenders sovereign immunity to the extent of "assets pledged" to do business. Despite that, planners should consider whether the federal business corporation may be a desirable vehicle for development plans.

Indian nations differ in the way they make law. Most Indian nations enact laws in the form of "resolutions" or "ordinances." Those terms are usually used to refer to law and policy-making by corporations and municipalities. Some Indian nations enact "statutes," which are laws made by a legislature.

One of the difficulties in "finding" the laws of Indian nations is the way they are published. Many councils still pass ordinances but do not re-publish them in encyclopedia format (i.e. a "code" which has classifications of subjects). In that situation, a planner must carefully go through years of ordinances to see what laws have been passed and what old laws are still in effect. Other Indian nations collect their resolutions in codes of law. Two notable examples are the Navajo Nation, which uses a commercial publisher to publish its code, and the Cherokee Nation, which has West Publishing Company publish its code.

One of the major elements of developing a good infrastructure for housing and community development is the simple act of gathering all of the old resolutions and ordinances and

publishing them in a way where anyone can know the law. That is very important to federal agencies, commercial lenders, and those who want to do business in Indian Country, because their lawyers want to know what the applicable law is.

Code Development Process

Visioning Policy and Law

Ada Pecos Melton of the Jemez Pueblo speaks about "visioning" in the planning process. She makes the important point that if you are going to have a "vision" for your community to plan for the future, you must know a great deal about it in terms of geography, history, culture, and the wants and needs of the members of the community. However, even before that, you must take a look at the political decision-making process.

One of the problems in the field of planning and land use control law is that the many codes which fall under that classification can be complex, confusing, and have no meaning for the ordinary reader. When lawyers write such codes, many lawyers do not know this specialized area of law very well. There have been many developments in land use law in recent years, including discussions of whether existing codes are suitable for the future and recent court decisions on the power of any government to regulate land use. When specialists, such as environmentalists or planners, develop a code, they may not be aware of recent changes in the law or court cases that may have an impact on the code. Tribal leaders may not be aware of the technicalities and complexities of planning and land use law and they may not have the expertise to review a proposed code.

It is important to distinguish between "policy" and "law." Most Indian nations have councils or business committees as the political policy-making body that makes law. They are composed of leaders who are elected to office to do the business of the people. They are expected to make law and to exercise oversight over existing programs. The problem is, without knowledge of what it is the council or business committee is "seeing" when it exercises the oversight power, how can such a body make decisions?

Too often, a council will recognize a need and ask the tribal attorney to quickly draft a code to address that need. If the council says, "We are having problems with stray dogs, so we want a dog code," what does the attorney do? Most often the attorney will photocopy a state code or a municipal ordinance, retype it with the Indian nation's name, and present it to the council. The code, which is adopted, may not be realistic. It may provide for enforcement officers that the Indian nation cannot afford or call for fines that are unrealistic. Sometimes a council will look at a "model" code and cut out sections it does not like, only to find that the code has little meaning without the section that was cut. How can Indian leaders guide the process of code development so they know what is going on?

Indian nation councils and business committees make policy. That is, they decide the direction they feel is best for their nation. "Policy" is an act of identifying the problem you want to address, finding the choices which are available, listening to arguments about the better policy choice to make, and making decisions about the development of law and codes. "Law" means

the actual law that the Indian nation chooses to adopt after the council or business committee makes its policy choices.

How do Indian nation leaders go about the process of making policy?

Visioning Revisited

In the past, a federal government grant notice would arrive in the mail, and after it sat on someone's desk for a while, someone would be selected to write a grant proposal a day or two before the grant deadline. That person would simply write a grant package without having time to talk with the people who will implement the program, mail it off, and wait. When the grant proposal was approved, the people who managed the grant would have to struggle with stacks of forms and regulations. The grant might involve a new housing project in an area where members of the community did not want a housing project or things such as roads, water, sewers, electricity or telephones were not considered.

The modern trend in federal grants is to require the community to develop a comprehensive plan to carry out a given project. One example of the new trend in federal grant law is the Native American Housing Assistance and Self-Determination Act of 1996, which requires extensive plans for housing which take into account things such as land use, utilities, roads, employment and shopping for residents, public safety, and education.

The visioning process begins with a map of the given Indian reservation. Tribal leaders should look at maps which show land ownership, topography (i.e. features such as mountains, rivers, and lakes), land use (i.e. grazing, timber, farmland), roads and highways, and the various towns and communities within the reservation. The maps will tell the leadership and planners the kinds of choices they can make when it comes to housing and community development.

Leaders and planners should carefully review their population. How many tribal members are within the reservation? How many live nearby in border towns or off-reservation service areas? How many non-member Indians are there?¹⁶ How many non-Indians are there? What are the ages of the people? Populations are listed in "age cohorts" of ten years, e.g. 0-9, 10-19, 20-29, etc. This is important because it tells you what kind of population you must serve. Many Indian nations have many young children. For example, half of the Navajo Nation population is under age 20; 41% is under age 18; and 25% is age 9 and younger. That is a very important planning consideration, because it means that you must serve the needs of a young population.

How many people are in the employment market and how many are unemployed? Often, tribal leaders may see the state or U.S. Labor Department statistic that 35% of tribal members are unemployed, while Bureau of Indian Affairs statistics may indicate that 70% are unemployed. Which figure is correct? The answer is "both." Labor department unemployment statistics are based on the number of people in the work force. That is people who have applied for jobs or are registered with the state employment office as looking for work. The unemployment figure comes from identifying how many people do not have jobs but are looking

¹⁶ This is a difficult statistic to find. The Census Bureau counts American Indians and Alaska Natives under that general category and generally does not count people by tribal membership. If the given Indian nation has a good periodic census, that can be used to subtract identified tribal members from Census data for the reservation which gives the numbers of American Indians and Alaska Natives to obtain an estimate of nonmember Indians.

What are the income levels of your population? What is the source of their income? This information is important because you will need to know who can afford different kinds of housing or services and what they can pay. While most Indian nations do not have a personal tax for individuals, policy-makers need to know what they can afford when it comes to public services, housing, or other programs.

What are your social problems? Do the police report high rates of family violence, assaults, driving while intoxicated, or alcohol-related crime? Do you have gangs and vandalism? These are important planning facts because housing development can be a source of crime. The way housing development is done can impact and reduce crime. Planners need to be aware of social problems, as difficult as they may be to discuss, because they must be addressed as a factor in the planning process.

What is your history and culture? The people of different reservations many want to travel down different paths. That is, some Indian nations are "modern" and they may want to follow a municipal model of planning. That is, they may want to look at what similar non-Indian communities (in size and population) are doing about housing and community development. Some Indian nations may be rural, remote, and maintain traditional ways. How many native-speaking members do you have? (This can be found from Census statistics.) Language retention is often a sign that traditional patterns are followed. Aside from traditional Indian housing styles, residence patterns are very important. That is, are there identified communities on your reservation? Who lives in those communities? Do people tend to live with groups of relatives? Do people prefer to live in a community or do they want scattered-site housing? Does your community have religious practices where groups of people participate?

These are only a few of the things a good planner must consider when starting the planning process. Visioning enables leaders and planners to look into the future. It tells them what they have, what they do not have, and what they have to work with when it comes to a long-range vision of what should be done and what can be done. The next problem is the process of policy development and planning.

Transparency and Inclusiveness

"Transparency" means keeping things in the open. It means letting people know what is going on. It means news and information. Letting the people know what is being proposed is a good way of finding out your mistakes before you make them. It is a good way to get information and to see if your plan will be acceptable. "Inclusiveness" means including everyone in the planning process who will help carry out the plan. That can include the people who will be served by the plan, relevant tribal programs, federal programs (including the Bureau of Indian Affairs in most instances), state agencies, county government, and programs such as the nearby rural electric or telephone cooperative that provides service.

For example, if you are going to build a housing project in a rural area, is there existing police protection for the project? Are there schools nearby? If so, are they ready to receive the children who will live in the project?

What does the community think of your project? Does the community want a cluster housing project? If so, how will the people get to school or to work? Are there stores nearby for residents to do their shopping (and particularly the elderly or families without transportation).

Do you have an essentially non-Indian community within your reservation boundaries? What do its members think of the proposed plan or project? In the past, Indian nation councils have disregarded the views of non-Indians in their planning and that has been a mistake. Today, many non-Indians will challenge tribal jurisdiction over land use, zoning, taxation, or regulation on the ground that a given Indian nation cannot touch them. It is better to seek support for a project, showing how the proposal will benefit the non-Indian community. In addition, Indian nations may be able to seek and obtain the support of counties, cities, and the State for projects that will benefit everyone in the area. While there are still many difficulties to overcome in Indian-non-Indian relationships, there are new partnerships in and near Indian Country which are successful.

Transparency means getting the word out about what you are thinking of doing. It means informing people and agencies that will be involved and it means informing communities that will be affected. Inclusiveness means getting the views of those whom will be affected by a plan. Planners can use door-to-door surveys, town meetings, focus groups, conferences, summits of leaders and other methods to make certain that everyone knows what is being done and that everyone's opinion and information are heard.

Resources

One of the difficulties in planning is a lack of money. Planning can be very expensive. There are some Indian nations that are small, do not receive a great deal of federal money, and do not have a large resource or tax base for income. On the other hand, states receive federal block grants for planning and community development and some states finance planning and community development initiatives from their general fund budgets. Many universities have programs that teach or research land use planning, community development, and similar subjects. Many cities and counties have planners who specialize in housing and community development.

Indian nation planners should consider those resources. They should also keep in mind that their tribal members are voters and have the right to public services as citizens of the state. One part of your "legal inventory" should be the identification of all possible resources in your area that are available to provide assistance.

Many state, county, and city politicians in or near Indian Country are aware of the power of the vote. Many have good feelings about the future of their community and region, and many universities have specialized programs that will help if they are asked.

Mapping

"Mapping" is a comparatively new method of planning. It uses community surveys, an examination of the population and resources, and the identification of community needs and desires to develop plans. These kinds of information can be seen in maps that show what a community has and what it wants to do. If you know your people, your land, your resources and what you can do with them, as shown in maps and charts, you can make intelligent policy choices about your vision and how you can carry it out.

The Plan There should be both long-term and short-term plans. A "long-term" plan is one that will be implemented over a long period of time. For example, if your plan is to build housing, you will need to know how many people need housing and which people are eligible for a particular housing program. You will not be able to fund or obtain funding for everyone who is eligible at once. If you are going to develop a land use plan that controls particular land uses (e.g. housing areas, shopping centers, future roads, agriculture, parks, tourist facilities, etc.), you will need to go through a process

A "short-term" plan is the way you will carry out a particular part of your long-term plan. If, for example, you choose to adopt a code that will deal with a regional landfill for trash, you will need to develop a short-term plan to carry out that goal. Who can use the landfill? What kind of trash can it accept or not accept under federal law? Will the landfill have an impact on the environment? What kinds of clearances and approvals will be needed? Will you charge a fee to use the landfill? Will you need to put out bids for trash collectors or which trash collectors will be able to use the landfill?

These are all issues where a council or business committee can become involved in developing policy. The governing body should identify who will obtain that information and how it will be presented. The council or business committee should tell the people who will be presenting information how the council or committee wants to receive it. Most leaders do not have time to read thick reports and sometimes statistics tell them little. There should be preliminary discussions with planners and presenters so they will know that the council or committee wants to make its decisions and how that information will be presented.

Policy development is about making choices. Leaders must have accurate and complete information to make wise choices, and it must be presented in a way that people understand. Once tribal leaders and planners have sufficient information to make choices, they can adopt a policy to get ready for the code-drafting process.

A Word about Lawyers

Many Indian nations have various arrangements for legal services. Some have lawyers on staff. Some have "tribal attorneys" in cities. Federal law provides that contract attorneys (those whom the tribe hires under a written contract where the lawyer is not an "employee") must have their contract approved by the Secretary of the Interior (through the Bureau of Indian Affairs). Not all lawyers can do the same thing. That is, some lawyers are courtroom litigators and know little about writing laws. Your staff attorney may be a few years out of law school and may not know how to write legislation or work with land use and planning law. Lawyer's ethics codes provide that a lawyer should not take on a project where that lawyer does not know the law of the field.

You may have the situation where a lawyer is willing to learn a new area of law,¹⁷ but you already have a planner or program director that knows a given program. That could include a housing director, planner, housing director, or someone else with expertise in a given area. In that situation, tribal leaders should make assignments to the lawyer and the person with expertise, with a scope of work and deadlines so the two can work together to deliver the specific product the council or business committee wants.

¹⁷ Lawyer ethics codes also provide that a lawyer cannot charge a fee for learning the basics about a new area of law. If a given contract lawyer is going to get into a new area of law, the contract should state that the lawyer will not charge a fee for studying some of the fundamentals of that new area. You can find out what a lawyer does or does not know by asking, checking with the state bar association, and looking up the lawyer in legal directories (many of which are available on the worldwide web).

Code Drafting

There are many state or "model" codes available in the field of housing and community development. There are specialized codes for zoning, land use controls, and other specific areas. Tribal leaders should be aware of the limitations of outside models.

There are advantages and disadvantages to adopting outside codes. Some of the advantages include having legislation which has survived challenges in court, passing a code which people know how to work with because others have used it, or adopting a law without controversy because it is generally acceptable. For example, if you are going to adopt a zoning code, there may be a state zoning code which is generally accepted or a nearby municipal code which works well. Some of the disadvantages include the fact that the outside code is too expensive to use, you cannot find qualified people to administer it, or it just won't work in your community.

A lawyer who is about to undertake code development should identify available drafting models. There are national associations and commissions which study and recommend "model" codes on a wide variety of subjects, and most such codes can be found in a law school library or a State law library. While attorneys should look for state codes in the subject area chosen by the policy-maker, attorneys should be aware that there might have been unacceptable political compromises made when the code was adopted. Attorneys who are working on new codes should always look at regional and national case decisions on the code, and law journal articles on the subject, to find out what challenges have been brought against the code and what problems there have been administering it. Often a visit with state officials who are administering a given code will be useful and save time and money. State attorneys who work with an agency that administers a code will often be able to help.

One of the difficulties with Indian nations adopting codes which are modeled after "model" or state codes is the fact that there are special twists and turns to code development in Indian country. Will the code apply to non-Indians? If the tribal court will be used to enforce the code in the event of litigation, will the court's code have to be amended to give it jurisdiction? Will the code apply to fee lands within the reservation? Will the code apply to an off-reservation "checkerboard" area? Does the council or business committee have the authority to adopt the proposed code? What is the most recent federal case law on Indian nation jurisdiction?

Rulemaking

There is a specialized area of law called "administrative law." It works this way: A legislature wants to deal with a specific problem but it does not want to get into details. For example, housing is a very complicated area, so Congress passes general housing laws which set out national housing policy, and the housing law gives an agency (the U.S. Department of Housing and Urban Development for federal housing programs) the power to make "rules."¹⁸ When proposed rules are published in the Federal Register and they are adopted, they are published in the Code of Federal Regulations and become law. They are "law" because Congress authorizes an agency to fine-tune general policy in statutes by means of rules or regulations.

Will you have a tribal agency, board, or body that will carry out your law? Do you need to give

¹⁸ The U.S. Administrative Procedures Act calls them "rules." Most of us know them as "regulations" because they are published in the Code of Federal Regulations. Lawyers call them "rules," and most of us know them as "regulations."

that body the power to make rules? If so, how will they be adopted? Will there be public notice and an opportunity to comment on proposed rules? What happens if there is a dispute with the agency over a particular rule or how it is applied? Will the agency have the power to make a legal decision on the dispute?¹⁹ Will an outside agency decide the dispute or will it be decided by the tribal court? If someone is dissatisfied with the agency decision, can it be reviewed by the tribal court?

Most often, housing and community development codes provide for an administrative agency to administer the code, and often, the agency has rule-making power. The tribal legislature will have to make decisions about the structure, powers, and cost of the agency and its authority to make rules and resolve disputes when the rules are applied.

Another option is to provide that an agency (e.g. a housing authority) will carry out its business by adopting policies. What is the difference? Agencies that have rule-making authority can make law to carry out a code. Where the agency has participants who deal with the agency by a contract, the internal method of enforcement is usually a policy. For example, there should be a policy on homeowner and tenant conduct which can be enforced by having a policy which spells out the kinds of conduct which are prohibited and which will break the contract, and fair procedures for homeowners and tenants to protest an agency decision.

Code Review

Some Indian nation councils or business committees consider proposed legislation directly, and others have committees to review proposed laws. Whatever method is used, the council or committee which considers new legislation should know what it is they are about adopt.

One of the worst ways a new law can be adopted is for the lawyer or expert to say, "Trust me. This is why you want. Adopt it." Another poor approach is to attempt to go through a proposed law line-by-line. As it is with policy development, the law-making body should know what is in the proposed law. What does it say? What will it do? Do we expect any problems implementing this law? Do we have people who know the law well enough to administer it?

One of the problems with legislation in Indian Country (and elsewhere) is that too often, lawmakers do not understand what they are voting on. They must know what they are doing and why they are doing it.

Another part of code review is obtaining approvals from other agencies. If, for example, the Indian nation has an Indian Reorganization Act constitution and bylaws that require Secretarial approval of resolutions and ordinances, there should be Bureau of Indian Affairs review before the code goes to the legislature. Most often, such code review is done by the Bureau of Indian Affairs Area Office solicitor, and that lawyer should be part of the development process early on. If a given code deals with an area under federal funding or program administration, the program staff and agency attorney should also be a part of the process early on. Federal or state agencies which will be involved with the implementation of the law are often valuable resources and they can prevent mistakes before a law is adopted.

¹⁹ This is called "quasi-judicial power," because the agency acts something like a court in deciding the dispute, using its expertise on the area of law.

Code Implementation

Another unfortunate mistake in Indian Country (and elsewhere) is to pass "a law" and think that takes care of the problem. Unfortunately, that is not the case. Laws most often fail where the people who administer them do not know how to do so or where people whom the law affects do not know what is in it. Code implementation requires (1) publicity, (2) orientation or training, and (3) more planning.

The general public should know when a new law is adopted, what is in it, and how that law will affect them. There should be news releases for publication in area newspapers and airing on local radio and television. There should be pamphlets in plain language, which give information on what is in the new law and how it will work. Individuals who want a copy of the law should be able to obtain it (for free or for a reasonable reproduction cost). People should know where they need to go or who they need to see if they have questions or want more information.

Obviously, there should be orientation and training for the people who will directly administer the law. Others may need to be involved. For example, if the code provides for court review in the event of a dispute, judges should have orientation on the law. If there is a new curfew ordinance that will be administered by the police, with cases heard in the courts, obviously both police and judges will need to know the ordinance well. Schoolteachers, businesses that stay open late at night and others will also need to know what is in the law. Who should receive orientation is determined by the duties set out in the law.

When a legislature adopts a law it sets policy. The law tells people what they must do, what they must not do, or how to obtain a benefit. After a law is passed, there will need to be plans to implement the law by those who have the responsibility to administer it. The "plans" can be in the form of rules, policies, and internal agency plans to assign responsibilities and give guidance on implementing the law.

Review

Your law is in place and there are also plans to carry it out. Is that enough? Not all laws work well. Even the best legal drafter will fail to include something, or there will be confusion about what a portion of the law means. Laws passed by legislatures are reviewed by courts, and sometimes a court may make a mistake in interpreting a law or make an interpretation which the legislature does not like. Councils and business committees should also be concerned about how the law is working. There are several ways to review legislation after it is adopted.

The most common kind of review is an agency report, which can be filed with a council or business committee on a quarterly or annual basis. The report may be reviewed by the entire council or business committee or a specialized committee. Reports can be boring and many people do not read them. To address that problem, there should be a way for the program director or its board to appear before a council or committee to give an oral report and to answer questions about the program's report.

Another method of reviewing legislation is to conduct oversight hearings. For example, the United States Senate Committee on Indian Affairs sometimes holds oversight hearings on particular subjects. How well is the Indian Self-Determination and Education Assistance Act of 1975 (as amended after other oversight hearings) doing? What are the problems with law enforcement or Indian courts? Some oversight hearings can be scheduled on an annual or other basis, and sometimes legislatures hold oversight hearings when a problem makes the news.

Many legislatures use "sunset" provisions to review a law. That is, a legislature may create an agency that will go out of existence at a specific time. The agency may "exist" for five years and go out of existence unless the legislature reapproves it. Most often, there will be some kind of oversight and hearings before the agency expires so that the legislature can identify problems and decide whether to abolish the agency or change the law which created it.

Practical Considerations

The reader may be frustrated at this point because the details of legal foundations and infrastructure and code development process may seem to be complex, lengthy, or just too much to do. It may seem that involving professionals will cost too much. As everyone knows, when you propose something new, there will always be that individual or a group that will protest. This section addresses some of those concerns.

Big Picture - Baby Steps

Tribal decision-makers should always have the big picture in mind. Councils and business committees are responsible for the health and well being of their tribes and the people expect them to plan for the future. Seeing the "big picture" is important, and the previous section suggested how leaders can "see" the picture, dream about it, make policy, and undertake the process of passing and administering codes.

If you have a plan which deals with a large subject and lays out the details on how to carry out a vision in long-term and short-term plans or objectives, that gives you a way to take "baby steps." Another way of putting it is that you must walk before you can run.

A good comprehensive plan with legislation to back it up and oversight gives policy-makers the ability to see what is going on.

One good device to stay on top of the process is to use flow charts, diagrams, and wall charts to monitor the progress of a plan. That enables policy makers to know what is going on and to make changes as they are needed. The council or business committee should decide how it wants to be involved in the process of code development and implementation very early in the process.

Rights

Planners and policy-makers should be very aware of the idea of "rights." There are different kinds of rights. For example, if you are going to adopt a land use code and people will be stopped from doing things on a particular area of land, they are going to complain about their rights. A person who owns land or owns an interest in land (such as the holder of a tribal allotment or selection of land) may claim that it is unfair or illegal to stop doing something or be required to do something. In some communities, piles of trash on land by a roadside can be considered dangerous or people may object to a law that requires them to junk old cars that no longer run. People may object to hunting restrictions where they have hunted for a long time, or people may protest a housing project or dump near where they live.

In other words, people will object. How do you address those objections? This introduction stresses transparency and inclusion above to give people an opportunity to raise their various kinds of rights in advance. The validity of legislation is often much safer when there has been a

process where people can object and the legislature can deal with the good policy reasons why they will adopt a law in advance. The United States Supreme Court has made it clear that when non-Indians will be regulated or subjected to tribal court jurisdiction, Indian nations do not have the power to regulate or subject non-Indians to court action unless (1) they consent or (2) the jurisdiction has to do with interests of public health, welfare, or safety. Code drafters need to take those things into account when drafting legislation which will apply to non-Indians, carefully document them, and spell out the Indian nation's interests in adopting a law.

When an agency or program has the authority to make rules or adopt policies to implement a code, there should be provisions for people to protest and raise their rights. The law can provide for fair hearings by a board or a hearing officer, or the law can provide for alternative methods to resolve disputes, e.g. meetings, mediation, arbitration, peacemaking, or some other form of dispute resolution.

Ultimately, your tribal court should have the authority to decide challenges to a law or how it is applied. There is a doctrine of civil rights law that everyone who has a claim under your Indian nation's Bill of Rights or the Indian Civil Rights Act has the right to access to the courts to raise civil rights challenges. That right should be respected in your code and it should provide for court review even when a "civil right" may not be involved.

The idea of rights people can enforce in a fair way should be a part of your vision. This is not a perfect world. Governmental officials and program administrators have been known to read their own law wrong, make mistakes, or deny or give benefits based upon favoritism or prejudice.

Democracy

Democracy, or involving people in public life, is an ancient Indian tradition. One Indian tradition that is common throughout the United States is the notion of "consensus," where people talk things out and agree to a decision. Too often, Indian nation councils and business committees have been accused of making decisions behind closed doors. They have been accused of favoritism toward relatives or bias against non-Indians or nonmember Indians. They have been charged with denying peoples rights in an arbitrary way. In the legal world, judges and lawyers have written articles that say that Indian courts are great, but isn't it too bad that tribal councils control them.

In 1928, the famous Merriam report said that federal Indian policy had been a failure because decisions were made for Indians by Bureau of Indian Affairs agents who were not members of the tribe. The U.S. Congress passed the Indian Reorganization Act in 1934 in hopes of shifting power and authority to tribes. Unfortunately, Congress imposed what is essentially a business corporation model of government where a powerful "board" make decisions for a tribe. Sometimes governing bodies are out of touch with their communities and they do make decisions without regard for their impacts on others.²⁰

That is why there is a strong emphasis on free information and involvement in this introduction, along with suggestions on ways to fairly resolve disputes. Housing and community planning should be open and involve people, with due respect for individual rights, because it affects everyone. If I do not have housing and want it, I need an opportunity to tell someone that and have them listen to me. If a new law affects me, I should have an opportunity to know what will be in it and have an opportunity to comment upon it. If a new law affects me or is administered

²⁰ To be fair, many of the same criticisms are true of county boards of commissioners or city councils.

unfairly, I should have an opportunity to be heard by the person or agency that administers the law and to go to court or some other dispute resolution body if I am treated unfairly.

Indian nations are at a crossroads. This introduction is designed to introduce tribal leaders to a new world of planning. It tells leaders what planning, policy development, and code development are about and how to go about it. That is not enough.

As Vine Deloria has said, Indian nations are laboratories for positive change. They do not have to do what the rest of the country is doing, and it may be that Indian nations will set examples for the future which the general American society should follow. There are two traditional Indian ideas that everyone should consider: The first is respect. Respect for people, the land, and everything in reality. The second is community. Indian nations need to honor individual rights (which is also a traditional Indian concept), but they do so in the context of the good of the community as a whole. Those seemingly contradictory ideas are not contradictory. It is possible to develop and carry out housing and community development in a legal infrastructure that is as concerned with the ways we plan and implement as it is with the technical methods.

Part Two

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Tribal Housing Code

Overview

The following is the 1999 revised edition of the Tribal Housing Code. The initial version was published by HUD's Office of Native American Programs (ONAP) in 1996 under the title *Our Home: Providing the Legal Infrastructure Necessary for Private Financing*. Both the initial 1996 Tribal Housing Code and this 1999 revised Tribal Housing Code were designed to provide tribal leaders with an outline and an illustrative guide for drafting their specific tribal codes and to greatly reduce the cost of developing individual tribal housing codes. No single code, however, can meet the needs of all Indian Nations. This sample code provides a series of options for Indian Nations to consider in evaluating and adapting the Tribal Housing Code to meet the needs of their individual communities.

The 1996 version was developed prior to the enactment of the Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104-330). This 1999 revised version reflects significant update and revision of the 1996 Tribal Housing Code. Some of the update and revision was necessary due to the enactment and implementation of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). This 1999 revision, however, also reflects significant update and revision based upon issues raised by tribes who have used the 1996 Tribal Housing Code to enact their housing codes.

This revised 1999 Tribal Housing Code was developed for ONAP by the Tribal Law and Policy Institute under a contract with ICF Housing and Community Development Group. The Tribal Law and Policy Institute is an Indian owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the improvement of justice in Indian country and the health, well-being, and culture of Native peoples. The 1999 revisions were completed by Tribal Law and Policy Institute Executive Director Jerry Gardner and Mary Wynne (an attorney, former Chief Judge of the Colville Tribal Court, and current judge for a series of tribal courts in the Northwest). The 1999 revisions also incorporate revisions recommended by California Indian Legal Services attorney Dorothy Alther.

In 1995, ONAP identified the need for a comprehensive Tribal Housing Code, including eviction and foreclosure procedures. Few tribal governments had enacted housing codes, and the lack of codes had caused substantial problems for tribal administrations, tribal court systems, Indian housing authorities (IHA's) and individual homebuyers and tenants.

The 1996 Tribal Housing Code was developed for ONAP by the National Indian Justice Center (NIJC) under a contract with ICF Kaiser International. NIJC developed the 1996 Tribal Housing Code in conjunction with a Project Advisory Group. The Members of the Project Advisory Group were as follows:

Dorothy Alther, Directing Attorney
California Indian Legal Services
(Bishop Office)

Bonnie Craig, Director
Native American Studies
University of Montana

Rebecca Margiotta, Executive Director
Red Cliff Chippewa Housing Authority

Carey Vicenti, Chief Judge
Jicarilla Apache Tribal Court

The Project Advisory Group was involved in all aspects of drafting, reviewing, and revising the 1996 Tribal Housing Code. The primary NIJC staff person responsible for drafting, reviewing, and revising the 1996 Tribal Housing Code was NIJC Senior Staff Attorney Jerry Gardner with assistance from Staff Attorney Maureen Geary.

A great deal of time and effort was spent attempting to locate examples of existing tribal housing codes. Ultimately, only a limited number of examples of tribal housing codes were obtained for review and analysis by NIJC and the Project Advisory Group. Most tribes had not enacted tribal housing codes beyond the tribal ordinance establishing their Indian Housing Authority (Most tribal ordinances are essentially the HUD model IHA Tribal Ordinance although HUD regulations no longer require tribes to strictly follow a model ordinance.). Many tribes began enacting housing code provisions during the mid-1990s in order to comply with the provisions of the Section 184 Indian Housing Loan Guarantee Program. Most of these codes, however, were designed primarily to meet the specific needs of the Section 184 Program rather than to address more comprehensive tribal housing issues.

Many different codes were used as resource materials in the development of the 1996 Tribal Housing Code, including the housing code of the Shoshone and Arapaho Tribes; a draft housing code from the Mississippi Choctaw Tribe; a leasehold mortgages and foreclosure ordinance developed by Wagenlander and Associates of Denver, Colorado; and a leasehold mortgaging code developed by Fannie Mae. In addition, the Cheyenne River Sioux Tribe modified and adopted the first working draft and some of their modifications were utilized in the final document.

General Commentary

This code is titled "Tribal Housing Code" rather than "Model" Tribal Housing Code in order to highlight the potential pitfalls involved in proposing a "one size fits' all" model code. No single code can meet the needs of all tribes. This Code provides a series of options for tribes to consider in evaluating and adapting the Code to meet the needs of a specific tribe. The Tribal Housing Code should be read in conjunction with the commentary which is done on a section by section basis. Any tribe considering the adoption of this Code should carefully review the Code and the commentaries to determine the extent to which the Code meets the needs of their individual community and then make the necessary changes before enacting it.

There are a number of critical issues which should be addressed by an individual tribe before enacting a Tribal Housing Code, including:

1. Loan Guarantee Programs

One of the driving forces behind the movement towards enacting tribal housing codes has been the need for tribes to enact mortgage and foreclosure codes in order to comply with the provisions of the Section 184 Loan Guarantee Program. The necessary provisions are included here in Chapter 5 (Mortgages and Foreclosures) and additional information concerning the program is included in the Commentary to Chapter 5. It is important to note that this Tribal Housing Code is designed not only to meet the needs of the Section 184 Program, but also to address a broader range of all mortgages on the-reservation. Also, the language used throughout the Code is broader than needed to simply meet the requirements of this specific program. The Code is designed to meet the needs of other current and future governmental programs.

2. Public Law 280/Procedural Provisions

There are a number of tribes that do not currently have functioning Tribal Court Systems. This is especially true in P.L. 280 states (Act of Aug. 14, 1953, Pub. L. No.83-280, ch. 505, 67 Stat. 588 (codified as amended at 18 U.S.C. §§1162, 25 U.S.C. §§1324-1326, 28 U.S.C. §1360, 1360 note) where the affected states were granted limited jurisdictional authority. Some tribes in P.L. 280 states are considering developing tribal court systems that may initially handle only a limited range of cases - such as housing disputes. This Tribal Housing Code is designed so that it can meet the needs of these tribes that may not have other comprehensive code chapters. Consequently, those tribes which do have comprehensive tribal codes may not need all of the detailed procedural code provisions included in this Code, especially some of the provisions in Chapter 4.

3. Mutual Help Home Ownership Program

The Mutual Help Home Ownership Program presents difficult conceptual problems due to the fact that it is a hybrid program. There have been legal disputes concerning whether Mutual Help Housing participants are tenants or equity owners and whether the Mutual Help and Occupancy Agreement (MHOA) is a lease/option contract or an installment contract. At times, Mutual Help participants are referred to and treated as tenants -- at other times as homeowners. For the purposes of this Tribal Housing Code, we have defined mutual help tenants/homeowners as both tenants and lessees (see §1-1-5). An individual tribe, however, may decide to add more specific provisions addressing this program. Moreover, it should be noted that the 1996 enactment of NAHASDA provides tribes with the authority to change the nature of what had been the Mutual Help Home Ownership program in their communities.

4. Model Indian Housing Authority (IHA) Tribal Ordinance

Most Indian housing authorities were established through tribal enactment of the HUD model Indian Housing Authority Tribal Ordinance. (Note that tribes are no longer required to use this model ordinance). There has been some confusion concerning these IHA establishment ordinances. These ordinances do not provide a comprehensive housing code which addresses the broad range of issues set forth in this Tribal Housing Code. This Code is designed to help implement and supplement title establishment ordinance - not replace it. The only current reference to the IHA establishment ordinance in this Tribal Housing Code is contained in §1-1-4 (Relation to Other Laws).

5. Native American Housing Assistance and Self-Determination Act (NAHASDA)

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Public Law 104-330) was enacted into law on October 26, 1996. NAHASDA reorganized the system of federal housing assistance to Native Americans by eliminating several separate programs of assistance and replacing them with a single block grant program. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA was to provide federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance. The Final Rule implementing NAHASDA was issued on March 12, 1998 following a negotiated rulemaking process.

Early drafts of the 1996 Tribal Housing Code contained provisions which set out various additional protections for tenants when the landlord is the Indian Housing Authority – or Tribally Designated Housing Entities (TDHE) under NAHASDA. These protections are set forth in applicable federal laws and regulations. The most relevant current provision is section 207 of NAHASDA. Indian Housing Authority protections were included in early drafts of the 1996 Tribal Housing Code to provide general notice that additional protections may apply, but the specific provisions were deleted from the final 1996 version because these provisions may vary from time to time based upon federal laws and regulations and the Indian Housing Authority's rules and regulations. This decision not to specifically list these additional provisions greatly simplified the necessary revisions to the 1996 Tribal Housing Code following the enactment of NAHASDA.

6. Notice to Quit Time Requirements

An individual tribe needs to address the difficult issue of Notice to Quit time requirements prior to enacting this Tribal Housing Code. These provisions are set forth in §1-3-2 of this Code along with the detailed commentary that outlines the critical issues involved. The most important issues concern the determinations of appropriate time requirements and whether the TDHE termination notice should qualify as the notice to quit (see §1-3-2 and commentary for more information).

7. Grievance Process

Some Indian Housing Authorities (or TDHEs) currently utilize an eviction process whereby the tenant is first given a full administrative hearing/grievance process through the TDHE before the case goes to tribal court, and then the tenant is given an expedited procedure rather than a full hearing at the tribal court level. The administrative hearing may be before the TDHE commissioners or an administrative law judge.

This Tribal Housing Code requires a full hearing at the tribal court level if the case proceeds that far in the process (and it does not result in a default judgment). It is critical that all due process requirements be met in the tribal court.

Ultimately, if a tribe enacts this Tribal Housing Code, a TDHE which currently provides a full administrative hearing may find that two full hearings are overly burdensome. In that case, the TDHE may decide to scale back their administrative hearing/grievance process so long as it still meets the minimum requirements of the HUD and TDHE rules and regulations.

8. Mobile Homes

During the course of developing the 1996 Tribal Housing Code, several Project Advisory Group (PAG) members raised the issue of ways that a Tribal Housing Code might afford protection to mobile home owners on the reservation. Since mobile homes are often the second most popular form of housing in Indian Country the PAG felt that repossession of mobile homes should somehow be addressed in the Code.

One option considered and referenced throughout the Code is to require mobile home lenders to follow the Mortgage and Foreclosure procedure outlined in Chapter 5 in order to gain possession of a mobile home from a defaulting borrower. This option requires that lenders treat the mobile home as real property (i.e. land or a house) and record its mortgage/security interest with the tribe's Recording Clerk. If the mobile home borrower defaults on his/her mobile home loan, the lender will have to foreclose on the mobile home pursuant to Chapter 5, instead of following the usual course of repossession. If a tribe is interested in including mobile homes in its foreclosure process, we have placed Commentary throughout the Code to assist it to do so.

A tribe considering placing mobile homes within its foreclosure process should be cautioned however, since doing so could make mobile home lenders reluctant to loan to tribal members. Requiring a mobile home lender to proceed through a foreclosure process to gain possession of a mobile home in default will mean more time and cost to the lender, which may make mobile home loans in Indian Country less desirable. Another problem might be pursuing tribal judgments in state courts against mobile home lenders who have failed to follow tribal foreclosure procedures. A state court, under the doctrine of comity, might find that a tribal foreclosure process is too burdensome of a process for repossessing a mobile home. State laws generally consider mobile homes personal property and not subject to foreclosure law. As such, a state court might conclude that the tribal foreclosure law, as applied to mobile homes, is contrary to state law and thus refuse to enforce the tribal judgment.

An alternative solution to subjecting mobile homes to a foreclosure process is to adopt a tribal repossession law that provides that mobile homes cannot be taken off the reservation unless the borrower gives his or her written consent or the mobile home lender has a tribal court order allowing the removal. This option provides a mobile home borrower more protection than is usually provided under most state repossession laws but does impose as burdensome a judicial process as is found under a foreclosure law.

This second option is currently used by the Navajo Nation. Title 7 of the Navajo Nation Code provides;

§607. Repossession of personal property

The personal property of Navajo Indians shall not be taken from land subject to the jurisdiction of the Navajo Tribe under the procedures of repossession except in strict compliance with the following;

1. Written consent to remove the property from land subject to the jurisdiction of the Navajo Tribe shall be secured from the purchaser at the time repossession is sought. The written consent shall be retained by the creditor and exhibited to the Navajo Tribe upon proper demand.
2. Where the Navajo refuses to sign said written consent to permit removal of the property from land subject to the jurisdiction of the Navajo Tribe, the property shall be removed only by order of a Tribal Court of the Navajo Tribe in an appropriate legal proceeding.

Each tribe will need to assess mobile home owner protection on its reservation and decide whether its Tribal Housing Code or a Tribal Repossession Code may best address the problem of mobile home repossession.

Chapter 1

General Provisions

1-1-1 Applicability

The following title shall hereinafter be referred to as the "Tribal Housing Code." It shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for human occupation and residence. It shall also apply to any and all mortgages, leasehold mortgages and agreements to secure an interest in a building.

The following arrangements are not governed by this Code:

- (A) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service; or
- (B) Occupancy in a hotel, motel, or other commercial lodging.

COMMENTARY: This Section first establishes that this Title shall be referred to as the "Tribal Housing Code." For purposes of a particular Tribe, other terms such as "ordinance," "title," "law," or "act" could be substituted for "code." Furthermore, the name of the specific tribe could be inserted into the Title.

The remainder of the Section sets fourth an overall statement of the applicability of the Code. The statement is written very broadly to cover almost all possible housing arrangements with the exception of institutional residence and hotel/motel accommodations. An individual tribe should carefully review this Section prior to adoption of this Code to determine if any modifications are required to meet their needs. The term "occupancy" is used with regard to hotel/motel accommodations instead of "transient occupancy" to make it clear that all hotel/motel accommodations are excluded from coverage under this Code. An individual tribe, however, may decide that long term hotel/motel occupancy should be covered (for instance, when hotels and motels are used as alternative long term housing while waiting for housing construction or renovation). In this case, the word transient should simply be added before the word occupancy in §1-1-1(B).

1-1-2 Jurisdiction

- (A) Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which may lie within:
 - (1) The exterior boundaries of the Tribal Reservation;
 - (2) Lands owned by, held in trust for, leased or used by the Tribe, its members, its housing authority, or any other entity of the Tribe; or
 - (3) The Indian Country of the Tribe, as may be defined from time to time by the laws of the Tribe or of the United States.
- (B) Jurisdiction is extended over all persons or entities within the jurisdiction of the Tribe who sell, rent, lease, or allow persons to occupy housing, dwellings, or

accommodations for the purpose of human dwelling, occupation, or residence, and all persons who buy, rent, lease, or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether or not they are members of the Tribe, whether they are Indian or non-Indian, and whether they have a place of business within the Tribal Reservation. Any act within the Reservation dealing with the subject matter of this Code shall be subject to the jurisdiction of the Tribe.

(C) Jurisdiction is extended over:

(1) All buildings which may lie upon lands owned by, held in trust for, leased or used by the Tribe, its members, its Housing Authority, or any other entity of the Tribe.

(2) All persons or entities within the jurisdiction of the Tribe who lease, mortgage, or otherwise secure an interest in a building.

(D) Jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this Code, and jurisdiction with respect to any person or entity acting or causing actions which arise under this Code shall be exercised by the Tribal Court.

COMMENTARY: This Section sets forth a broad statement of jurisdiction over housing cases. An individual tribe should carefully review this section prior to adoption of this Code to determine if any modifications are required to meet their individual needs.

1-1-3 Purposes and Interpretation

This Code shall be interpreted and construed to fulfill the following purposes:

(A) To simplify the law governing the occupation of dwelling units, and to protect the rights of landlords and tenants.

(B) To preserve the peace, harmony, safety, health and general welfare of the people of the Tribe and those permitted to enter or reside on the Reservation.

(C) To provide eviction procedures and to require landlords to use those procedures when evicting tenants.

(D) To encourage landlords and tenants to maintain and improve dwellings on the Reservation in order to improve the quality of housing as a tribal resource.

(E) To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees, of buildings.

(F) To avail the Tribe, tribal entities, and tribal members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of mortgages given to secure loans made by or through any government agency or lending institution.

(G) To establish laws and procedures which are necessary in order to obtain governmental funding for tribal housing programs or loan guarantees for private or tribal housing construction, purchase, or renovation.

COMMENTARY: This is a very important Section which sets forth the purposes and philosophy of this Tribal Housing Code. It contains an overall statement

requiring the court to interpret and construe the Code to meet the purposes set forth in this section. A purpose section is a very useful provision in most codes especially a tribal housing code because it gives the court guidance and flexibility interpreting the specific provisions of the code. An individual tribe should carefully review this section prior to adoption of the Code to determine whether the seven purposes set forth in this section are appropriate to meet their needs and whether there are other purposes which should be added.

1-1-4 Relation to Other Laws

- (A) Applicable Law. Unless affected or displaced by this Code, principles of law and equity in the common law of the Tribe and tribal customs and traditions are applicable, and the general principles of law of any other Tribe or any other state may be used as a guide to supplement and interpret this Code.
- (B) Other Applicable Laws. Additional tribal and federal laws may apply with regard to tribal housing such as the ordinance establishing the Indian Housing Authority and governmental housing laws and regulations.
- (C) Conflicts With Other Laws
 - (1) Tribal Laws: To the extent that this Code may conflict with tribal laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such tribal laws or ordinances shall govern over the provisions of this Code if it has specific applicability and it is clearly in conflict with the provisions of this Code.
 - (2) Federal Laws: Where a conflict may appear between this Code and any statute, regulation, or agreement of the United States, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this Code.
 - (3) State Laws: To the extent that the laws of any state may be applicable to the subject matter of this Code, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

COMMENTARY: This Section sets forth the applicable law and guidance for the court in handling potential conflicts with other laws. §1-1-4(A) recognizes that (1) tribal common law and tribal custom and tradition can be introduced to supplement and interpret this code and (2) that other tribal and state laws may be used as a guide to supplement and interpret this Code. §1-1-4(B) and §1-1-4(C) recognize that there may be current or future tribal and/or federal laws which may conflict with this Code and that these tribal/federal laws may govern over this Code only if these tribal/federal laws have specific applicability and are clearly in conflict with this Code (state laws are held to be advisory only). An individual tribe should carefully review this section prior to adoption of this Code to determine if any modifications are required to meet their individual needs.

1-1-5 Definitions

As used in this Code, the following words will leave the meanings given them in this Section unless the context plainly requires other definitions

- (A) *Action, suit or lawsuit, claim, complaint or defense* shall include any dispute between persons or entities which relates to the sale, rental, use or occupancy of

any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such units or the relationships between owners and occupiers of such units, including the right to occupy them.

- (B) *Adult Person*, is any person eighteen (18) years of age or older.
- (C) *Borrower/Mortgagor* is the Tribe, the Indian Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s) or non-Indian(s) who has executed a Mortgage as defined in this Code or a Leasehold Mortgage as defined in this Code.
- (D) *Building* is a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.
- (E) *Building or housing codes* are any law, ordinance, or governmental regulation of the Tribe or an agency of the United States which deals with fitness for habitation, health conditions, or the safety, construction, maintenance, operation, occupancy, use, or appearance of any dwelling unit.
- (F) *Dwelling unit* is a house or building or portion thereof which is rented or leased as a home or residence by any person, not including public transient accommodation, such as hotel rooms.
- (G) *Guest* is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- (H) *He/His*: the use of he/his means he or she, his or her, and the singular includes the plural.
- (I) *Housing Authority* is the _____ which is the Tribally Designated Housing Entity, authorized or established under the authority of the Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104-330).

COMMENTARY: The blanks left in the above definition should be filled in by the tribe, for example: "Housing Authority is the Navajo Nation Housing Authority"

- (J) *Indian* is any person recognized as being an Indian or Alaska Native by any Tribe, or by the government of the United States.
- (K) *Landlord* can be the Tribe, Indian Housing Authority, a person, entity or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.
- (L) *Lease* is an agreement, written or oral, as well as valid rules and regulations, regarding the tenants and conditions of the use and occupancy of real property, dwelling unit, building, or premises, including a lease-to-purchase agreement.
- (M) *Leasehold Mortgage* is the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency homebuyer program, the Indian Housing Authority, or any other agreement entered between a Borrower/Mortgagor and a Lender/Mortgagee.
- (N) *Mortgage Foreclosure Proceeding* is a proceeding:

(1) To foreclose the interest of the Borrower(s)/Mortgagor(s), and each person or

entity claiming through the Borrower(s)/Mortgagor(s), in real property, a building, or in the case of a Leasehold Mortgage, a Lease for which a Mortgage has been given under the home purchase program of any federal agency; and

- (2) To assign where appropriate the Borrower(s)/Mortgagor(s) interest to a designated assignee.

COMMENTARY: Should the tribe decide to require lenders to foreclose on mobile homes located on the reservations it should include "mobile homes" with the list of properties that are subject to the tribe's foreclosure proceedings.

- (O) *Lender Designated Assignee*. Any lender as defined in this Code may assign or transfer its interest in a Mortgage or Lease and/or Leasehold Mortgage to a Designated Assignee.
- (P) *Lender/Mortgagee* is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tribe, an Indian Housing Authority, or a U.S. government agency or private individual which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home. It is also any lender designated assignee(s) or successor(s) of such Lender/Mortgagee.

COMMENTARY: Should the tribe decide to subject mobile homes to the foreclosure proceeding you should make the following amendment to definition (P): "Lender/Mortgagee loans to Borrower construction, rehabilitation, or acquisition of a home including a mobile home. It is also any lender . . ."

- (Q) *Lessor* is the legal, beneficial, or equitable owner of property under a Lease. Lessor may also include the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the lessor.
- (R) *Lessee* is a tenant of a dwelling unit, user and/or occupier of real property, or the homebuyer under any federal mortgage program including the Mutual Help program. The lessee may, for purposes of federal agency home mortgage programs, be the Indian Housing Authority.
- (S) *Mortgage* is a lien as is commonly given to secure advances on, or the unpaid purchase price of a building or land, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.

COMMENTARY: Should the tribe decide to subject mobile homes to the foreclosure process please add in "mobile home" after the word "building" on the second line of definition (S).

- (T) *Mortgagor/Borrower* - see Borrower/Mortgagor.
- (U) *Mortgagee/Lender* - see Lender/Mortgagee.
- (V) *Mobile home* is a structure designed for human habitation and for being moved on a street or highway. Mobile home includes pre-fab, modular and manufactured homes. Mobile home does not include a recreational vehicle or a commercial coach.
- (W) *Nuisance* is the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health or

safety of the public or neighboring land users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

(X) *Owner* is any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

(Y) *Person* includes the Tribe, Indian Housing Authority, an individual or organization, and where the meaning of a portion of this Code requires, it means a public agency, corporation, partnership, or any other entity.

(Z) *Premises* is a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, common areas, and facilities intended for the use of tenants or the use of which is promised for tenants.

(AA) *Rent* is all periodic payments to be made to a landlord or lessor under a lease.

(BB) *Rental agreement* - see Lease.

(CC) *Reservation* is the _____ Reservation in the state of _____.

COMMENTARY: The blanks left throughout this Code indicate where the tribal name should be placed.

(DD) *Shall*, for the purposes of this Code, will be defined as, mandatory or must.

COMMENTARY: The word "shall" as used throughout this Code will be defined as "mandatory" or "must." For example: "Each tenant shall pay rent" translates to "Each tenant must pay rent" or "Each Tenant has a mandatory duty to pay rent." In the alternative, an individual tribe could decide to change "shall" to "must " throughout this Code.

(EE) *Subordinate Lienholder* is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Code, except the Tribe shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.

(FF) *Tenant* is the lessee(s), sublessee(s), or person(s) entitled under a lease or Mutual Help Occupancy Agreement to occupy a dwelling unit to the exclusion of others.

(GG) *Tribal Court* is the Court as established by the laws of this Tribe or such body as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a Court of law.

(HH) *Tribal Recording Clerk* is the director of the Tribal Real Estate program or such other person designated by the Tribe to perform the recording functions required by this document or any deputy or designee of such person.

COMMENTARY: Should the tribe decide to rely on a state or Bureau of Indian Affairs recording system, definition (HH) should be deleted.

(II) *Tribe* is the _____.

COMMENTARY: This Section sets forth an extensive list of definitions in alphabetic order. Note that an individual tribe would need to fill in the blanks

in three definitions (I) Housing Authority, (CC) Reservation and (II) Tribe with their specific tribal information and/or adding the specific tribe identification information throughout the Code. Also, note that two terms ("borrower/mortgagor" and "lender-mortgagee") are used together throughout the code to reduce potential confusion created by using the terms mortgagor and mortgagee by themselves and that these terms are each referenced twice in this definitions Section. There may be additional definitions which could be added to this Section.

Chapter 2

Landlord/Tenant Responsibilities And Remedies

1-2-1 Rental Agreements

- (A) Effect of Rental Agreements. The provisions of this Code, as well as the applicable laws identified in §1-1-4, establish the minimum rights and responsibilities of landlords and tenants. Unless inconsistent therewith, rental agreements may supplement these minimum rights and responsibilities.
- (B) Terms Prohibited in Rental Agreements. No rental agreement shall provide that the tenant agrees: (1) to waive or forfeit his rights or remedies under this Code or any other applicable laws as identified in §1-1-4; (2) to exculpate or limit the liability of the landlord or to indemnify the landlord for that liability or the costs connected therewith; (3) to permit the landlord to dispossess him without resort to court order; or (4) to pay a late charge prior to the expiration of the grace period set forth in §1-3-1(A). A provision prohibited by this subsection shall be unenforceable.
- (C) Term of Tenancy. In the absence of a definite term in the rental agreement, the tenancy shall be month-to-month.
- (D) Payment of Rent. In the absence of definite terms in the rental agreement, rent is payable at the landlord's office (if known) or at the dwelling unit. In the absence of definite terms, the amount of rent shall be the fair market value of the rental unit.

COMMENTARY: This Section sets forth specific provisions concerning rental agreements. First, it establishes that this Code establishes the minimal rights and responsibilities for landlords and tenants. Second, specific rental terms are prohibited. Third, it establishes that in the absence of definite terms, the tenancy shall be month-to-month, the rent shall be fair market value and the rent shall be payable at the landlord's office (if known) or at the dwelling unit. There are at least two additional issues which could also be addressed here. First, there may be a need to include a provision excluding those whose residence is conditional upon employment (such as resident managers and some seasonal workers) from the Code requirements - or at least to substantially modify the provisions for them. Second, although subsection (B) identifies prohibited terms, it does not contain a remedy - some states have recently been adding laws which provide that a landlord who intentionally includes an illegal provision is required to pay damages and attorneys fees.

1-2-2 Rules and Regulations

- (A) The landlord may promulgate reasonable rules and regulations regarding the use and occupancy of the dwelling unit.
- (B) Such rules and regulations are enforceable against the tenant only if:
 - (1) their purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for all the tenants generally;

- (2) the rules and regulations are reasonably related to the purpose for which they are adopted;
 - (3) the rules and regulations apply to all tenants in the premises in a fair manner;
 - (4) the rules and regulations are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he shall or shall not do to comply; and
 - (5) the tenant has notice of the rules and regulations at the time he enters into the rental agreement or when they are adopted.
- (C) If a rule or regulation that would result in a substantial modification of the terms of the rental agreement is adopted after the tenant enters into the rental agreement, such rule or regulation is not valid unless the tenant consents to such rule or regulation in writing.

COMMENTARY: This Section sets forth specific procedures by which landlords may establish rules and regulations concerning the use and occupancy of dwelling units. An individual tribe should review these provisions to determine if they should be applicable to all types of housing on an individual reservation.

1-2-3 Landlord Responsibilities

Except as otherwise fairly and reasonably provided in a rental agreement or a Mutual Help Occupancy Agreement, each landlord subject to the provisions of this Code shall:

- (A) Maintain the dwelling unit in a decent, safe, and sanitary condition.
- (B) Comply with applicable building and housing codes.
- (C) Make all necessary repairs to put and maintain the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant or his guest, in which case such duty shall be the responsibility of the tenant.
- (D) Keep common areas clean, safe, and secure.
- (E) Ensure tenant access to the dwelling unit.
- (F) Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, where such things are not the responsibility of the tenant or are generated by an installation within the exclusive control of the tenant.
- (G) Provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish, and other waste.
- (H) Provide running water, hot water, and heat in accordance with applicable building and housing codes, except to the extent the tenant is required to provide such for himself.
- (I) Guarantee the right of quiet enjoyment of the dwelling unit to the tenant and insure that the conduct of other tenants, their guests, and other persons on the premises does not cause a nuisance, endangerment of public health and safety, breach of peace, or interference with the quiet enjoyment of the tenant.
- (J) Give sole possession of the dwelling unit to the tenant in accordance with the rental

agreement and refrain from:

- (1) entering the unit, except as authorized in §1-2-4(K);
 - (2) making repeated demands for entry otherwise lawful under §1-2-4(K) but which have the effect of unreasonably harassing the tenant;
 - (3) sexually harassing or physically assaulting the tenant in or around his dwelling unit; or
 - (4) locking the tenant out of his dwelling unit without the tenant's consent.
- (K) Disclose, in writing, the name, address, and telephone number of the person responsible for receiving rent, notices and demands under this code, the person authorized to manage the dwelling unit, the owner of the premises or his agent, and the person responsible for making repairs, where they are required.

COMMENTARY: This Section sets forth eleven specific landlord responsibilities. An individual tribe should carefully review these landlord responsibilities for applicability and determine if revised and/or additional responsibilities are needed. In addition, it may be necessary to clarify that the landlord cannot simply alter or eliminate many of these responsibilities - some responsibilities (such as who provides garbage cans) should be subject to contract negotiations, but other responsibilities (such as the warranty of habitability) should not be subject to contract negotiations.

1-2-4 Tenant Responsibilities

Except as otherwise fairly and reasonably provided in a rental agreement or mutual help occupancy agreement, each tenant subject to the provisions of this Code shall:

- (A) Pay rent without demand or notice at the time and place agreed upon by the parties.
- (B) Immediately notify the landlord of any defects in the premises hazardous to life, health, or safety.
- (C) Keep the dwelling unit reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner.
- (D) Use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances which are part of the dwelling unit or premises, and the property of the landlord, in a proper, safe, sanitary, and reasonable manner.
- (E) Refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, premises, or common areas, and to require guests to act in like manner.
- (F) Pay reasonable charges for the repair of damages, other than normal wear and tear, to the dwelling unit, premises, or common areas caused by the tenant or his guests, or to repair such damages as required under the rental agreement, within thirty (30) calendar days of such damage.
- (G) Conduct himself, and require his guests to conduct themselves, in a manner which does not disturb the quiet enjoyment of others or cause a breach of the peace.
- (H) Not give up the dwelling unit to others, assign a lease arrangement, or sublease the dwelling unit without the written or oral permission of the landlord.
- (I) Use the dwelling unit only for residential purposes as agreed, and not to use the unit

or permit its use for any other purpose, including illegal conduct or any other activity which may harm the physical or social environment of the premises or the area around it.

- (J) Abide by all rules and regulations promulgated by the landlord in accordance with §1-2-2 of this Code.
- (K) Provide the landlord access to the dwelling unit to perform maintenance and repairs, inspect the premises, supply necessary or agreed services, or show the dwelling unit to prospective buyers or tenants, provided that such access shall be at reasonable times when the tenant is present, and upon reasonable written or oral notice from the landlord, except in emergency situations where the health, safety or welfare of the tenant or the tenant's neighbors is in immediate danger or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

COMMENTARY: This Section sets forth eleven specific tenant responsibilities. An individual tribe should carefully review these obligations to determine if revised and/or additional responsibilities are needed. In addition, it may be necessary to clarify that the tenant cannot simply alter or eliminate many of these responsibilities - some responsibilities (such as who provides garbage cans) should be subject to contract negotiations, but other responsibilities (such as the prohibition against illegal or unsafe usage) should not be subject to contract negotiations.

1-2-5 Tenant Remedies (Option A)

Where a landlord has not complied with this Code or the agreement of the parties, the tenant has the following rights:

- (A) To give reasonable notice to the landlord to comply with his obligations, including the right to require repairs or maintenance which are the responsibility of the landlord.
- (B) Should landlord fail to comply with his duties after the provision of notice under subsection (A) above within a reasonable period of time, the tenant may make necessary repairs and take other necessary remedial action and deduct the cost from the rent payment, or may terminate the agreement under which the tenant occupies the premises.
- (C) To seek a Court order or judgment for the payment of monies or costs, compliance with the agreements and obligations of landlords, terminate an agreement, pay damages, or any other relief to which he may be entitled by law or the agreement of the parties.

1-2-5 Tenant Remedies (Option B)

- (A) Conditions. Where a landlord has not complied with his responsibilities regarding dwelling unit conditions, as set forth in §1-2-3(A)—(K) of this Code, and where the tenant has given notice to the landlord and the landlord has failed, within a reasonable period of time, to cure his noncompliance, the tenant may:
 - (1) Withhold rent in cases where the landlord's noncompliance renders the dwelling unit uninhabitable; or
 - (2) Make necessary repairs and deduct the cost of such repairs from his rent; or

(3) Institute an action in the Tribal Court seeking:

(i) an order compelling the landlord to comply with his responsibilities as set forth in §1-2-3(A)—(K) of this Code;

(ii) an award of money damages, which may include a retroactive abatement of rent; and/or

(iii) such other relief in law or equity as the court may deem proper, provided that no tenant may institute such an action if a valid notice to quit based upon nonpayment of rent has been served on him prior to his institution of the action. Where a landlord violates his responsibilities as set forth in §1-2-3(I) or §1-2-3(J) of this Code, damages shall be not less than an amount equal to one month's rent and tenant shall be further entitled to reasonable attorney's fees.

(4) Terminate the rental agreement.

(B) Identification of Landlord. Where a landlord fails to identify himself to the tenant in accordance with §1-2-3(k) of this Code, the tenant is under no obligation to pay rent and may terminate any existing rental agreement.

COMMENTARY: There are two separate Tenant Remedies sections set forth in this Code. Option A is a more general provision. Option B is a more specific and detailed provision. An individual tribe should carefully review both of these options to determine which option is most appropriate. It also may be necessary to define "reasonable" time for specific actions and to clarify the time period during which there is "no obligation to pay rent" when there is a failure to identify the landlord.

1-2-6 Landlord Remedies (Option A)

Where a tenant has not complied with this Code or the agreement of the parties, the landlord has the right to:

(A) Give reasonable notice to the tenant to comply with his obligations, pay any monies due and owing under the agreement of the parties, or landlord has right to terminate the agreement under which the tenant occupies the premises, and demand that he and those with him leave the premises.

(B) Require repairs or maintenance which are the responsibility of the tenant and compliance with reasonable rules and regulations for occupancy.

(C) Seek a Court order or judgment for the payment of monies or costs, for compliance with the agreements and obligations of tenants, for termination of an agreement, payment of damages, eviction of tenants, or any other relief to which he may be entitled by law or the agreement of the parties.

1-2-6 Landlord Remedies (Opinion B)

Where a tenant has committed serious or repeated violations of his responsibilities as set forth in §1-2-4 of this Code, the landlord may institute an action in the Tribal Court seeking an order compelling the tenant to comply with his responsibilities as set forth in §1-2-4, an award of money damages, and/or such other relief in law or equity as the court may deem just and proper.

COMMENTARY: There are two separate Landlord Remedies sections set forth

in this draft. Option A is a slightly more detailed provision. Option B is a more summary provision. An individual tribe should carefully review both of these options to determine which option is most appropriate.

1-2-7 Abandoned Dwelling Units (Option A)

Where a dwelling has been abandoned (the tenant has vacated without notice and does not intend to return which is evidenced by removal of possessions, nonpayment of rent, disconnected utilities, or expressed to the landlord or third party) a landlord, without further notice to the tenant may post a notice on the dwelling stating that the landlord intends to take possession and that the tenant's possessions will be inventoried and removed within ten (10) days from the posting. If the tenant's possessions are not claimed within thirty (30) days from their removal from the abandoned dwelling, the landlord may dispose of the possessions. If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Tribe in order to return these items.

1-2-7 Abandoned Dwelling Units (Option B)

A landlord may regain possession of a dwelling unit, in accordance with this section, where the tenant has vacated the Unit without notice to the landlord and does not intend to return, which is evidenced by the removal by the tenant or his agent of substantially all of his possessions and personal effects from the premises and either:

- (1) nonpayment of rent for two or more months,
 - (2) terminated water or electrical utility, service for more than one month, or
 - (3) an express statement by the tenant that he does not intend to occupy the premises after a specified date.
- (A) The landlord may the send notice to the tenant at his last known address both by regular mail, postage prepaid, and by certified mail, return receipt requested, stating that:
- (1) he has reason to believe that the occupant has abandoned the dwelling unit,
 - (2) he intends to reenter and take possession of the dwelling unit unless the occupant contacts him within ten (10) days of receipt of the notice,
 - (3) if the tenant does not contact him, he intends to remove any possessions and personal effects remaining in the premises and to rent the premises, and
 - (4) if the tenant does not reclaim such possessions and personal effects within sixty (60) days after the notice, they will be disposed of in accordance with §1-4-15 of this Code. The notice shall be in clear and simple language and shall include a telephone number and a mailing address at which the landlord can be contacted. If the notice is returned as undeliverable, or if the tenant fails to contact the landlord within ten (10) days of the receipt of the notice, the landlord may reenter and take possession of the dwelling unit, at which time any rental agreement in effect shall terminate.
- (B) The landlord need not comply with the procedures set forth in Chapter 3 of this Code to obtain possession of a dwelling unit which has been abandoned.
- (C) If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Tribe in

order to return these items.

COMMENTARY: This Section sets forth two options concerning abandoned dwelling units. Option A is a more summary provision. Option B is a more detailed provision. An individual tribe should carefully review both of these options to determine which option is most appropriate. Note that sections have been added to both options setting out an affirmative duty to locate next of kin and/or the Tribe and return items of cultural, religious, or ceremonial significance.

Chapter 3

Grounds For Eviction/Notice To Pre-Eviction Options

1-3-1 Grounds for Eviction

A person may be evicted for:

- (A) Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.
- (B) Any agreement in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.
- (C) Nuisance, intentional or reckless damage, destruction, or injury to the property of the landlord or other tenants, or disturbing another tenant's right to quiet enjoyment of a dwelling unit.
- (D) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with §1-2-2, this Code, or any applicable building or housing codes.
- (E) Occupation of any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.
- (F) Under other terms in the rental agreement which do not conflict with the provisions of this Code.

COMMENTARY: This Section sets forth six specific grounds for eviction. An individual tribe should carefully review these six grounds to determine if revised and/or additional grounds are needed. For example, this Code only allows a "no cause" eviction by a private landlord if it is set forth in the rental agreement under §1-3-1(F). An individual tribe may decide to broaden this to allow a private landlord to evict for no cause so long as it is not for "illegal purposes."

1-3-2 Notice to Quit Requirements

- (A) When Notice to Quit is Required. When a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in §1-3-1, the landlord shall give notice to the adult tenants to quit possession of such dwelling unit according to the provisions of this chapter.
- (B) Purpose of Notice to Quit. The purpose of the notice to quit is to provide advance notice to the tenant of a specific problem which needs to be addressed. It is also intended to induce the tenant to enter into discussions with the landlord in order to resolve the problem.
- (C) Statement of Grounds for Eviction Required. The notice to quit shall be addressed to

the adult tenants of the dwelling unit and shall state the legally cognizable reasons(s) for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.

(D) Form of Notice. The notice shall be in writing substantially in the following form:

"I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason (here insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the landlord, as well as the date and place of signing,)"

(E) Time Requirements for Notice. The notice must be delivered within the following periods of time:

- (1) No less than seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the agreement.
- (2) No less than three (3) calendar days prior to the date to quit specified in the notice for nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.
- (3) No less than fourteen (14) calendar days in all other situations.

COMMENTARY: This is a very important Section which sets forth the general requirements for the notice to quit. It sets forth when the notice to quit is appropriate, that a statement of the grounds for the eviction is needed (see §1-3-1), the general form of the notice, and the time requirements for the notice to quit. An individual tribe should carefully review these provisions especially the time requirements to determine if these provisions are appropriate.

Note that an early draft of this Code set forth a separate section for termination which was required before the notice to quit could be utilized. The advantage of a separate termination system is that it is designed to give the tenant an opportunity to cure the problem. The tenant must first get a termination notice stating that the tenancy will terminate unless the problem is corrected. If the problem is not corrected, then the landlord can proceed to serve a notice to quit. Thus, it requires a two step process to evict a tenant - first a termination notice and then a notice to quit. This final version, however, combines and simplifies the process utilizing a one step notice to quit. The process is easier to understand, but the potential impact on tenants could be significant (It may be useful, however, to change the notice from simply a Notice to Quit to a Notice to Comply or Quit).

Consequently, the timing requirements should be carefully examined. This Code provides a general seven day notice to quit. It might be necessary to extend this time period to protect the tenants. We would certainly recommend against reducing the time requirement from seven days. In fact, an individual tribe might decide that it is necessary to increase all three time requirements under this provision. For example, the time requirements under

§1-3-2(E)(1) could be increased from 7 days to 15 days, the time requirements under §1-3-1(E)(2) could be increased from 3 days to 5 days, and the time requirements under §1-3-2(E)(3) could be increased from 14 days to 30 days.

An additional issue is whether the IHA notice to terminate counts as the notice to quit required under this Code. The current draft language of this Code assumes that the IHA must use a two step process by first going through the termination process and then going through the notice to quit process under this Code. If an individual tribe decides to reduce one step in this two step process by allowing the termination notice to count as the notice to quit, then an additional provision could be added to this section such as the following:

(F) Indian Housing Authority Termination Notice. When the landlord is an Indian Housing Authority, the housing authority termination notice shall qualify as the notice to quit required under this section so long as the time requirements of the housing authority termination notice are at least as long as the time requirements set forth in §1-3-2(E) of this Code.

1-3-3 Serving the Notice to Quit

Any notice to quit must be in writing, and must be delivered to the tenant in the following manner:

- (A) Delivery must be made by an adult person.
- (B) Delivery will be effective when it is:
 - (1) Personally delivered to a tenant with a copy delivered by mail, or
 - (2) Personally delivered to an adult living in the premises with a copy delivered by mail, or
 - (3) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
- (C) If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
 - (1) Certified mail, return receipt requested, at the last known address of the landlord or tenant, or
 - (2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.
- (D) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

COMMENTARY: This Section sets forth the specific requirements for serving the notice to quit.

1-3-4 Pre-Eviction Options

- (A) Negotiated Settlement. After a Notice to Quit is served upon a tenant, the landlord and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.
- (B) Stay of Proceedings. Where the parties mutually agree in good faith to proceed with such discussions, and Judicial Eviction procedures have been initiated, the Court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.
- (C) Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options:
 - (1) The parties may employ the use of advocates or attorneys;
 - (2) The parties may employ the use of a mediator or conciliator;
 - (3) The parties may agree to arbitrate the issues in binding arbitration;
 - (4) The parties may agree to options set forth in Section §1-4-8(A)(4)(8);
 - (5) The parties may agree to any other barter for services and goods, or to any other means of securing a fair exchange of value for the use of the dwelling;
 - (6) The parties may agree to dismiss the matter in exchange for any agreement reached;
 - (7) The parties may agree to stipulate to a judgment to be entered by the Court.

COMMENTARY: Many potential litigants do not realize their inherent powers to attempt to negotiate settlements to their disputes. This Section was inserted to encourage the parties in a dispute to enter into negotiations and give some ideas as to how such negotiations may take place and what may be considered.

Chapter 4

Judicial Eviction Procedures

1-4-1 Summons and Complaint

If, after the date set forth in the notice to quit for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the Tribal Court for eviction and such other relief as the Court may deem just and proper. The complaint shall state:

- (A) The names of the adult tenant(s) against whom the suit is brought;
- (B) A description of the rental agreement, if any;
- (C) The address or reasonable description of the location of the premises;
- (D) The grounds for eviction;
- (E) A statement showing that the notice to quit and any required termination notices have been served in accordance with this code or other applicable law; and
- (F) A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.
- (G) If the landlord is an Indian Housing Authority, a statement that the Indian Housing Authority has complied with all required regulatory processes prior to filing the eviction action.

COMMENTARY: This Section sets forth the procedures for summons and complaint under this Code. The provisions apply only when the steps set forth in Chapter 3 for notice to quit have been met. This Section sets forth seven specific requirements which shall be included in the complaint. An individual tribe should review these seven requirements to determine if revised and/or additional provisions are needed. For example, if an applicable traditional dispute resolution procedure is required prior to filing the complaint, it should be included here. This Section and other sections in the Chapter may not be necessary if these civil procedures are already adequately covered in the general tribal civil procedure code.

1-4-2 Action Upon Filing Complaint

When a complaint is filed in the Tribal Court, it shall be immediately presented to a Tribal Court Judge. This shall be on the date of filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with §1-4-1 and served as set forth in §1-3-3, issue an order of the Court requiring the defendant named in the complaint to appear before the Court on a certain date to contest the complaint. The date for appearance for answering the complaint shall be no less than three (3) calendar days after the date of the order in matters involving serious nuisance or ten (10) calendar days in all other cases. Upon setting of the date for appearance, the plaintiff shall have defendant served with the complaint and a summons to appear for the court date.

COMMENTARY: This Section sets forth the actions which shall be taken by the tribal Court once a complaint has been filed under this Code. Note that it may be necessary to add a summary or expedited process here for certain types of cases.

1-4-3 Commencement of Proceedings

- (A) If the tenant appears before the Court in person or in writing to contest the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.
- (B) The Court shall set a hearing date which is no more than fifteen (15) calendar days following the date for appearance, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Court day following that date.
- (C) A defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries provided in §1-3-1(C), and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.
- (D) The Court may in its discretion on motion from the landlord order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

COMMENTARY: This Section sets forth further guidance to the court concerning commencement of proceedings. An individual tribe should carefully review the time frames in this section to determine if these time frames are appropriate and realistic.

1-4-4 Defenses

The Court shall grant the remedies allowed in this Code, unless it appears by the evidence that:

- (A) The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.
- (B) The landlord has failed or refused to make repairs which are his responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.
- (C) There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord and the landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A tenant may be evicted after such a period if he fails or refuses to pay the reasonable rental value of the premises.
- (D) That due to the conduct of the landlord, there is injury to the tenant in such a way

that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.

- (E) That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy.
- (F) The landlord is evicting the tenant because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the tenant is disabled.
- (G) The landlord terminated the tenancy in retaliation for the tenant's attempt to secure his rights under this Code or to force the landlord to comply with his duties under this Code.
- (H) Any other material or relevant fact the tenant might present that may explain why his eviction is unjust and unfair.

COMMENTARY: This Section sets forth possible defenses to an action under this Code.

1-4-5 Discovery and Prehearing Proceedings

Extensive, prolonged, or time consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

COMMENTARY: This Section requires that discovery and prehearing procedures should be minimized.

1-4-6 Evidence (Option A)

Evidence in proceedings under this Code shall be under the provisions of the general tribal code of evidence.

1-4-6 Evidence (Option B)

Evidence in proceedings under this Code shall be informal, and may include relevant and reliable hearsay evidence if such evidence is not the basis for a final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records of the landlord with respect to the agreement of the parties will be received in evidence and the files and business records of the landlord with respect to the agreement of the parties will be received in evidence upon their presentation to the Court; provided, however, that a tenant may examine the custodian of such records as to their contents. All hearings will be informal and designed to receive evidence in a fair and just manner.

1-4-6 Evidence (Option C)

Evidence in proceedings under this Code shall be according to the following provisions:

- (A) All evidence may be admitted which can be shown to be relevant and material to the case.

- (B) Fairness will dictate the decision of the judge on challenges to admissibility of evidence.
- (C) The Court may avail itself of any recognized and authoritative materials, books or documents as guidance in reaching a decision on the admissibility of evidence.
- (D) Evidence of customs and traditions of the Tribes shall be freely admitted.
- (E) Hearsay objections will not be permitted to procedurally deny the Court access to reasonable reliable information which would aid in reaching a just decision. Where a hearsay objection is made, the Court will make an independent determination of the competency of the evidence which is sought to be offered. Objections may be overruled where facts indicate that the evidence is relevant and material and reasonably competent under the circumstances. Hearsay evidence may be freely admitted where all parties to the out of Court statement are present before the Court and qualified to testify as to the statement made.
- (F) At the discretion of the Judge, evidence may be excluded if its value as proof is outweighed by the risk that its admission will create a substantial risk of undue prejudice; confuse the issues; or, mislead the jury, or unfairly surprise the opposing party.
- (G) Upon request of a party, the Court may take judicial notice, of specific facts which are so certain as not to be subject to reasonable dispute.

COMMENTARY: There are three different options set forth for evidencing standards under this Code. The first option simply establishes that the general tribal rules of evidence shall apply. The other options provide more specific evidentiary guidance for housing cases. The choice of evidentiary standards is an important decision which should be carefully reviewed by a particular tribe prior to adoption of the Code. Furthermore, consideration should be given to the issue of whether or not to provide for jury trials in eviction actions.

1-4-7 Burden of Proof (Option A)

The burden of proof in all proceedings under this Code shall be clear and convincing evidence.

1-4-7 Burden of Proof (Option B)

The burden of proof in all proceedings under this Code shall be preponderance of the evidence.

COMMENTARY: There are two options provided for burden of proof - either preponderance of the evidence or clear and convincing proof. Clear and convincing proof is a significantly more difficult standard to meet. Again, this is an important choice for an individual tribe to decide before adopting this Code.

1-4-8 Judgment

- (A) Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:

- (1) Order the immediate eviction of a tenant and delivery of the premises to the

landlord;

- (2) Grant actual damages as provided in the agreement of the parties or this Code, including interest;
- (3) Order the parties to carry out an obligation required by law;
- (4) Establish a payment plan for the tenant;
- (5) Order rent payments out of per capita payment or through garnishment;
- (6) Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;
- (7) Remediate the action in part or in whole through appropriate recalculation of rent;
- (8) Order the tenant to perform work for the landlord or the owner to pay off back rent due and/or damages;
- (9) Order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation;
- (10) Order the parties into negotiations as provided in Section §1-3-4 of this Code; or
- (11) Grant any relief provided in this code or allowed in law or equity.

(B) If a tenant fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

COMMENTARY: This Section sets forth guidance for the court in housing case judgments. This provision includes a wide range of different judgment options in order to highlight for the judge that there are a wide variety of options which could be utilized to meet the requirements of both landlord and tenant without requiring an eviction.

1-4-9 Form of Judgment

The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge should, whenever possible, render his decision immediately after both parties have rested their case and award costs and restitution as appropriate.

COMMENTARY: This Section sets forth guidance for the court concerning the form of judgment. It may not be necessary to include this section.

1-4-10 Execution of Judgment

An eviction order may be executed by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose. To execute the order, the officer shall;

- (A) remove all the evicted persons from the dwelling and verbally order them not to re-enter;

- (B) provide a copy of the order of eviction to all adult tenants;
- (C) post copies of the order of eviction on the doors of the premises if there is not any adult tenant present at the time of execution; and
- (D) supervise the removal of the possessions of the evicted persons.

Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it with in five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Any law enforcement officer to whom a judgment or order is given for enforcement who fails, in the absence of good faith, or refuses to execute it shall be subject to the payment of reasonable damages, costs, and expenses to a party for failure to execute the judgment and/or suspension from employment. This Section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure code and/or tribal small claims procedure code. All other portions of the judgment shall be subject to execution in the manner otherwise provided under tribal law.

COMMENTARY: This Section sets forth provisions concerning execution of judgment and should be read in conjunction with the following sections.

1-4-11 Stay of Execution

If judgment for possession of the dwelling unit enters in favor of the landlord, the tenant may apply for a stay of execution of the judgment or order if within five (5) days of the judgment being rendered, the following is established:

- (A) Good and reasonable grounds affecting the well being of the party are stated; or
- (B) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or
- (C) Execution of the judgment could result in extreme hardship for the tenant(s); or
- (D) A bond is posted or monies are paid to the Court, to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed three months in the aggregate. The clerk shall distribute such arrearages to the landlord in accordance to any order of the court.

COMMENTARY: This Section provides the terms under which a tenant can apply for a stay of execution to postpone an eviction order. It may be necessary to add a provision allowing an appeal without posting bond due to the tenant's inability to pay.

1-4-12 Appeals (Option A)

Appeals under this Chapter shall be according to the general tribal appellate provisions.

1-4-12 Appeals (Option B)

Appeals under this Code shall be handled according to the general tribal appellate provisions, with the exception that the party taking the appeal shall have only five (5) days from the entry of the order of judgment to file an appeal. All orders from the Court will remain in effect during the pendency of an appeal under this Code unless otherwise ordered by the Court.

COMMENTARY: This Section sets forth two options for appeals either under the standard tribal appellate procedures or under a separate procedure established under this Code.

1-4-13 Miscellaneous Complaints and Claims

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this code may be made under the general tribal civil procedure code and/or tribal small claims procedure code.

COMMENTARY: This Section provides that miscellaneous complaints and claims including tenant complaints and claims (see §1-2-5) may be made under the general tribal civil procedure code and/or tribal small claims procedure code. Note that when an individual tribe is considering adopting this code it would be best to change sections such as this Section to refer to the specific applicable Chapters or Sections that individual tribe's tribal civil procedure code or small claims code.

1-4-14 Notice to Leave the Premises

Any notice to leave a premises, shall be by written order of the court, and shall be delivered to the tenant in the following manner:

(A) Delivery shall be made by:

- (1) A law enforcement officer of the Tribe or an agency of the United States Government, or
- (2) Any person authorized by the Tribal Court.

(B) Delivery will be effective when it is:

- (1) Personally delivered to a tenant with a copy delivered by mail, or
- (2) Personally delivered to an adult living in the premises with a copy delivered by mail, or
- (3) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.

(C) If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:

- (1) Certified mail, return receipt requested, at the last known address of the landlord or tenant, or
- (2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

1-4-15 Forcible Eviction

(A) Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a tribal

law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he does not vacate the premises voluntarily by the effective date, he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection (C) below.

- (B) Following eviction, the Court may allow the landlord, the Indian Housing Authority or the United States Government access to any property leased by either of them for purposes of preserving and securing it.
- (C) Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. The landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. Should the landlord attempt to condition return of personal possessions on payment of any other cost or fee, the landlord shall forfeit his right to the costs of removal and storage. Upon request by the former occupants, the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do it in a manner satisfactory to the owner. If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Tribe in order to return these items.

COMMENTARY: This Section sets forth procedures for forcible evictions and for storage of personal property following forcible eviction. Note that a section has been added setting out an affirmative duty to locate next of kin and/or the Tribe and return items of cultural, religious, or ceremonial significance.

1-4-16 No Self-Help Eviction

No landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace. All landlords shall give a notice to quit and obtain a court order as provided in this Code.

COMMENTARY: This Section simply prohibits self-help evictions by either the Indian Housing Authority or a private landlord.

1-4-17 Security Deposits

- (A) Security Deposit Limits. A landlord may demand a security deposit of an amount equal to one-hundred dollars (\$100) or one month's periodic rent, whichever is greater, which may be in addition to the current month's rent. Additional security deposits may be allowed for special circumstances such as animals or pets or tenant history or prior damages.
- (B) Payment of Security Deposit at Termination of Tenancy. The person who is the landlord at the time a tenancy is terminated shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit, was deposited less the value of

any damages which any person, who was a landlord of such premises at any time during the tenancy of such tenant, has suffered as a result such tenant's failure to comply with such tenant's obligations. Damages shall not include normal wear and tear.

(C) Action to Reclaim Security Deposit. Any tenant may bring a civil action in Tribal Court to reclaim any part of his security deposit which may be due.

COMMENTARY: This Section sets forth security deposit limits, procedures for payment of security deposit at termination of tenancy, and procedures for action to reclaim security deposits. An individual tribe should carefully review the limits in §1-4-17(A) to determine the appropriateness of these security deposit limits. Furthermore, it may be necessary to give the landlord legal impetus to return the deposit by requiring the landlord to account for any deposit not returned, allowing suit for the deposit without countersuit, and/or providing that damages for failure to return the deposit are equal to double the amount of the deposit.

Chapter 5

Mortgage And Foreclosure

1-5-1 Priority

All mortgages recorded in accordance with the recording procedures set forth in this Chapter, including Leasehold Mortgages, and including loans guaranteed or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage.

COMMENTARY: This Chapter sets forth general procedures for mortgages and foreclosures. It is designed to meet not only the needs of the Section 184 Loan Guarantee Program (a brief overview of the Section 184 Program is set forth below), but also other governmental loan guarantee programs, as well as private mortgages. Specific to the Section 184 Program, a tribe must notify HUD that they have foreclosure and eviction procedures in place. Adoption of this Chapter allows a tribe to meet this requirement.

Section 184 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub.L.102-550, approved October 28, 1992) authorized the establishment of the Indian Housing Loan Guarantee Fund (the Fund) to provide access to sources of private financing to Indian families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land. In general, these lands, held in trust by the United States for the benefit of an Indian or Indian tribe, are inalienable. Trust lands under this program also include lands to which the title is held by an Indian tribe subject to a restriction against alienation imposed by the United States. Because titles to individual plots do not convey, and liens do not attach, conventional mortgage lending practices do not operate in this forum.

The Fund addresses these obstacles to mortgage financing by guaranteeing loans made to Indian families or Indian housing authorities to construct, acquire, or rehabilitate 1 to 4 family dwelling that are standard housing and are located on trust land or land located in an Indian or Alaska Native area. Loans may be made by any lender approved by the Secretary of Housing and Urban Development, the Secretary of Agriculture, or the Secretary of Veterans Affairs; or, any lender which is supervised, approved, regulated or insured by any agency of the Federal Government. The first step in meeting the requirements of federal government loan guarantee programs is to provide a priority system with first priority for government guaranteed loans. The HUD home loan guarantee program, Section 184, allows a tribe to use either the state mortgage recording system or have mortgages filed with Bureau of Indian Affairs (BIA). Should your tribe choose either a state system or the BIA, you should amend §1-5-1 to reflect what system you will be utilizing. Also note that if your tribe decides to use a state recording system the tribe will need to enact a law providing for such use.

1-5-2 Recording

- (A) The Tribal Recording Clerk shall maintain in the Tribal Real Estate program a system for the recording of mortgages and such other documents as the Tribe may designate by laws or resolution.
- (B) The Tribal Recording Clerk shall endorse upon any mortgage or other document received for recording:
 - (1) The date and time of receipt of the mortgage or other document;
 - (2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received; and
 - (3) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

Upon completion of the above cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

_____ Tribe))Ss.

Indian Reservation)

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(SEAL) _____

(Signature)

(Date)

The Tribal Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage or other document to the person or entity that presented the same for recording.

- (C) The Tribal Recording Clerk shall also maintain a log of each mortgage or other document recorded in which there shall be entered:
 - (1) The name(s) of the Borrower/Mortgagor of each mortgage, identified as such;
 - (2) The name(s) of the Lender/Mortgagee of each Mortgage, identified as such;
 - (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents filed or recorded;
 - (4) The date and time of the receipt;
 - (5) The filing number assigned by the Tribal Recording Clerk; and
 - (6) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

- (D) The certified copies of the mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and designated by the Tribal Recording Clerk.

COMMENTARY: Note commentary under §1-5-1 above. Should the tribe adopt the Code as presented it is optional on whether or not the tribe wishes to house its Recording department within a "Tribal Real Estate" program. The tribe is free to place the Recording function in any tribal department it wishes.

1-5-3 Foreclosure Procedures

- (A) A Borrower/Mortgagor shall be considered to be in default when he is thirty (30) days past due on his mortgage payment(s) to the Lender/Mortgagee or when he has been in breach of any other material mortgage provision for at least thirty (30) days.
- (B) Before a Borrower/Mortgagor becomes ninety (90) days delinquent on his mortgage payments and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:
- (1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.
 - (2) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor, able to receive and relay messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.
- (C) Lender/Mortgagee may appoint an agent to perform the services or arranging and conducting the face-to-face interview specified in this action.
- (D) Before the Borrower/Mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:
- (1) Advise the Borrower/Mortgagor that information regarding the loan and default will be given to credit bureaus.
 - (2) Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.
 - (3) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.
 - (4) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements when a Leasehold Mortgage is involved: (i) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains in default for more than ninety (90) days, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is a requirement of the governmental program; (ii) notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government if the mortgage is assigned; and (iii) provide the Borrower/Mortgagor with names and address of government

officials to whom further communications may be addressed, if any.

- (E) If a Borrower/Mortgagor has been delinquent for ninety (90) days or more and the Lender\Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender\Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in §1-5-4 of this Code.

COMMENTARY: Note commentary under §1-5-1 above. This Section sets forth detailed foreclosure procedures designed to meet all of the foreclosure procedure requirements currently established under Section 184 and other relevant governmental loan guarantee programs.

1-5-4 Foreclosure Complaint and Summons

- (A) The verified complaint in a mortgage foreclosure proceeding shall contain the following:
- (1) The name of the Borrower\Mortgagor and each person or entity claiming through the Borrower\Mortgagor subsequent to the recording of the mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;
 - (2) A description of the property subject to the Mortgage;
 - (3) A concise statement of the facts concerning the execution of the Mortgage or in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the Mortgage or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrower/Mortgagor; and such other facts as may be necessary to constitute a cause of action;
 - (4) True and correct copies of each promissory note, if a Leasehold Mortgage then a copy of the Lease, the Mortgage, or assignment thereof relating to the property (Appended as exhibits); and
 - (5) Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations (2) tribal codes, ordinances and regulations; and/or (3) provisions of the Lease or Leasehold Mortgage, or security instrument.
- (B) The complaint shall be provided to the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

1-5-5 Service of Process and Procedures

- (A) Service of process shall be performed according to the procedures set forth for service of a notice to quit in §1-3-3 of this Code.
- (B) Parties to the matter shall include the creditor, debtor, and all subordinate lienholders. For a leasehold agreement, additional parties shall include the Tribe and the United States.
- (C) Defendants shall have twenty (20) days to file an answer, counterclaim, and/or affirmative defenses.
- (D) Evidence shall be admitted according to §1-4-6 of this Code.
- (E) The Burden of Proof shall be in accordance with §1-4-7 of this Code.

- (F) Other procedural issues shall be determined under the generally applicable civil procedures of the Tribe.

1-5-6 Cure of Default by Subordinate Lienholder

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

COMMENTARY: This Section does not allow for a "right of redemption. The "right of redemption" if provided in a Foreclosure Code allows a Borrower/Mortgagor to redeem (purchase) his/her foreclosed property after it has been sold at a foreclosure sale. Most state foreclosure laws have very strict time limits on how long a Borrower/Mortgagor has to redeem his/her property after a foreclosure sale, when the right to redeem will be allowed, and notice requirements that must be given the Borrower/Mortgagor following the sale of his/her foreclosed property. Because the right of redemption can be very specialized the drafters of this Code will leave to the discretion of the tribe whether or not to incorporate a "right of redemption" and under what terms. Some HUD mortgage insurance programs may not allow for a "right of redemption" and the tribe will want to qualify the right accordingly.

1-5-7 Judgment and Remedy

- (A) This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower\Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender\Mortgagee, the Tribal Court shall enter judgment foreclosing the interest of the Borrower\Mortgagor and each other defendant, including Subordinate Lienholder, in the Mortgage, transferring the Mortgage to the Lender\Mortgagee or the Lender's Designated Assignee and ordering the sale of the foreclosed property. Said sale shall be executed by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose in the manner specified in this Code.
- (B) In the case of a Leasehold Mortgage, the Lease will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:
- (1) The Lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage which is subsequently obtained by the Lender or Lender's Designated Assignee.
 - (2) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and/or Leasehold Mortgage to a Tribal member, the Tribe, or the Tribal Housing authority.
 - (3) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Tribal member, the Tribe, or the Tribal Housing Authority during the remaining period of the leasehold.

1-5-8 Foreclosure Evictions

Foreclosure evictions shall be handled according to the general eviction process set forth in Chapter 3 of this Code, with the added provision that foreclosure eviction proceedings shall not occur until after the Borrower/Mortgagor, lessee, occupier has received thirty (30) calendar day's notice, and remains in possession of title property contrary to the terms of the notice. All foreclosure evictions shall occur no later than sixty (60) days from the date of service of notice upon the Borrower/Mortgagor that foreclosure was completed.

1-5-9 No Merger of Estates

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

1-5-10 Certified Mailing to Tribe and Lessor

Any foreclosure proceedings on a Lease or Leasehold Mortgage where the Tribe or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the Lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the Lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor(s) in care of the superintendent of the applicable agency of the Bureau of Indian Affairs.

1-5-11 Intervention

The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding Under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

1-5-12 Appeals

Appeals under this Chapter shall be handled in accordance with the general tribal appellate provisions.

Chapter 6

Miscellaneous Provisions

1-6-1 Effective Date

This Code shall take effect on (Month) (Date), (Year).

1-6-2 Retroactive Effect

This Code shall apply to all rental agreements subject to the provisions of the Code, no matter when entered.

COMMENTARY: There are basic miscellaneous provisions covering effective date and retroactive effect. The effective date should be completed before the Code is finally adopted.

Part Four

Land Use and Planning

Introduction

The topic “tribal land use and planning codes” is a broad subject. Such codes can vary from very broad and comprehensive laws to provide for statutory reform and planning to very specific codes to deal with land permits. Generally, tribal land use codes cover these areas:

1. The allocation of tribal lands (held in trust by the United States) to individual members under a constitution and bylaws or by means of land leases or use permits.
2. Utilizing the Indian Land Consolidation Act to buy, sell, trade, or exchange lands to end small allotment interests and checkerboarded land ownership patterns and add lands to a reservation or Indian land area.
3. Comprehensive law reform and planning statutes.
4. Specific land use statutes.

Allocation of Tribal Lands

Some Indian nation constitutions and bylaws provide that tribal members may receive a certain number of acres of land for their use and that of their family. Some provisions indicate the nature of the land use, e.g. homesites or grazing. There are a few instances of Indian treaties which provide for the allocation of lands to tribal members for various purposes, and the given tribe’s treaty should be consulted to see if that is the case.

Specific lands may be set aside so that a given tribal member has the exclusive use of a specific area of land. This usually requires a survey of the reservation or available lands held in trust for the tribe to specifically identify what land a member will receive.

There are other kinds of land use which are not tied to exclusive possession and use by one person or family. Examples of such land uses include grazing permits to share open range areas, hunting or fishing permits, timber harvest permits, and other permissions to use natural resources.

The major issues in code development for the allocation of tribal lands include:

1. Who is eligible to receive a piece of land or a land use permit?
2. What body will survey and allocate the land and what are the eligibility conditions?
3. Is the lease or use permit permanent or is only for a fixed number of years?

4. What uses will be made of the land, i.e. is it for one's home, agriculture, business, grazing, or some other specific use? Are the land use conditions and restrictions set by law or set by a standard form lease or permit?
5. Can the lease or permit be inherited and if so, what are the rules of inheritance?
6. What are the procedures when there are disputes? Will they be handled by the courts, a special board or commission, by the tribal council, or using traditional methods of dispute resolution?
7. If a board manages land use, who are its members, what are their terms, and what are their procedures and powers?
8. What are the court appeal rights when a statutory body handles a dispute?

The tribe may elect to develop a comprehensive code which addresses these and other issues, or it may use standard form lease or permit documents which set out the conditions for receipt and use of land or a land use right. The advantage of comprehensive legislation is that it deflects accusations of favoritism or unequal application. However, statutory changes may be difficult to make. The advantage of standard form leases and permits is that it allows the tribe to periodically reconsider land use rights and conditions for changes to be made in the form documents.

One of the problems with land allocations is that there is actually a shortage of land for given uses. That creates problems when most or all of the tribal land base has been allocated; particularly when land use rights can be inherited. That creates the problem where many individuals will hold interests to the land but there are so many people that no one can effectively possess and use the land. Use rights, such as grazing permits, are also a problem when there are too many people having use rights to effectively exercise them.

The Indian Land Consolidation Act and Other Legislation

The Dawes General Allotment Act of 1887 required the breakup of Indian reservations. Portions of reservations were allotted to individual Indian family heads and the remainder was put into private (usually non-Indian) hands. Indian nations lost two-thirds of their land base until allotments were frozen in the Indian Reorganization Act of 1934. That meant that while the United States no longer gave allotments, individuals and families continued holding allotment interests where the United States owns the land in trust for individuals.

Also in 1934, Congress enacted a statute to help undo the adverse affects of allotments. 25 U.S.C. Sec. 465 allows the Secretary of the Interior to buy, give up, give, exchange or assign interests in lands, water rights, or surface rights "for the purpose of providing land for Indians." In 1974, Congress recognized the need to end small interests in allotments and checkerboarded patterns of land ownership and enacted the Indian Land Consolidation Act, 25 U.S.C. Sec. 2201, *et seq.* It permits Indian tribes to adopt a land consolidation plan for the sale or exchange of tribal lands or interests in lands to eliminate undivided factional interests in Indian trust or restricted lands (allotments) or consolidate tribal landholdings. 25 U.S.C. Sec. 2203. Lands must be bought, sold, or exchanged for the value of the land, with provisions for cash or exchange when land is traded. The Indian Finance Act of 1974 provides for an "Indian Revolving Loan Fund" for the purchase of land by a tribe or individual Indian. 25 U.S.C. Sec. 1466.

These are tribally-specific laws which are designed to deal with the anarchy of large numbers of people who hold as little as a 1/25,000th interest in a piece of land and to restore lands to the tribal land base. Legislation to utilize these statutes should address:

1. The tribal reservation or land base.¹
2. The source of funds for land acquisition (e.g. trust accounts from the general revenue of the tribe or dedicating certain kinds of income for land purchases).
3. Communication with federal, state and local agencies (e.g. counties or school districts with land titles) and with private landholders.
4. The responsible person or agency and method of determining fair market value of lands to be bought, sold, or exchanged.
5. An identification of lands the tribe wishes to sell, buy, or exchange and priorities for such land transactions.
6. Provisions for receiving land interests from allotment owners.
7. Eminent domain provisions for the condemnation and forced sale of land interests for public purposes by allotment holders or others.²
8. The revision of inheritance laws to provide who may or may not inherit interests in tribal or allotted lands.³

Comprehensive Land Use Planning Codes

The American Planning Association (<http://www.planning.org>) has model statutes and a *Guidebook* (<http://www.planning.org/plnginfo/growsmar/guidebk.html>) for comprehensive land use planning and specific land use planning codes. Any Indian nation, which wants to take a comprehensive look at controlling its lands and land base, should consider:

1. Planning Statute Reform
 - Study commission of legislators and department heads
 - Independent study commission with legislators, a department head, and citizen representatives
 - A permanent joint legislative study committee on planning, land use, and growth management
 - An interagency planning and land-use task force and advisory committee
2. A statement of purposes and grant of power to whatever reform model is chosen
3. Definitions
4. Planning agency organization
 - Creation of a planning agency
 - Functions and duties
 - Authority to adopt rules and issue guidelines and orders
 - Reports
5. Plans
 - Strategic futures plan

¹ The land title of a given reservation in the form of statutes, executive orders, and other land documents must be researched to see if there are Outer boundaries to the reservation, i.e. areas within which the tribe may acquire non-Indian, Indian, or allotted lands.

² Eminent domain is a very controversial but necessary area of law, because it gives the government the authority to take someone's land or an interest in land for fair value whether that person wants to give up the land or not. There are jurisdiction problems over non-Indians and non-Indian lands which should be considered.

³ Inheritance provisions should be studied carefully because they, along with escheat (when land will go to the government rather than an heir) have been the subject of a great deal of constitutional litigation.

- Agency strategic plan of operation
 - Comprehensive plan
 - Land development plan
6. Functional plans⁴
 - Transportation plan
 - Economic development plan
 - Telecommunications and information technology plan
 - Housing plan, with advisory committee and annual progress report
 - Planning for affordable housing:
 - Model Balanced and Affordable Housing Act
 - Strong Council method
 - Council and Regional Planning Agency together
 - Action by Council or Planning Agency
 - Application for Affordable Housing Development and appeals
 7. Plan review and adoption
 8. Capital budget and capital improvement program
 9. Siting of government facilities
 10. Areas of critical concern
 11. Regional impact developments
 12. Regional planning
 - Creation of agency
 - Boundaries
 - Representation
 - Voting
 - Officers and committees
 - Rule-making authority
 - Executive director, contracts, purchases and leases
 - Agency powers and duties
 - Reports
 13. Plan preparation
 14. Plan review and adoption
 15. Relationships and agreements with other levels of government
 16. These factors show the many possibilities that are available to undertake comprehensive planning.

⁴ These can be the subjects of specific land use codes.

Specific Land Use Laws

Indian nation leaders and planners should have a good understanding of the tribe's long- and short-term needs and goals. Land use planning is essential for economic development. That is, if you are to attract business to your reservation, you must think out what it is that will bring business in. If, for example, you want to attract retail stores, convenience stores, gas stations, shops and other businesses which provide goods and services to the public, you must first think of (1) where you want those businesses to locate; (2) whether land is available in those areas or it can be acquired; (3) whether the land is tribal trust, allotted, or private land; (4) the nature of the business you want; and (5) what steps are necessary to purchase or free up land for the use you desire. These approaches are usually used for small commercial development.

Much the same approach is used for large business development, such as industrial parks, shopping centers, resorts, or other large ventures. Assuming that the tribe has effective control of the land, it should set aside specific, surveyed, areas of land with all the necessary environmental and archeological clearances so that when a business is found to locate upon the land, all the clearances needed for secretarial approval of a lease are complete.

The public needs to be involved in this process too. Site plans should be made public so that people will know what is being done.

Special uses of land for commercial development require a great deal of thought. Are your restrictions going to be made by statute or in leases negotiated with developers or businesses? How will you address sovereign immunity? Will tribal assets or income be pledged as part of the venture? Are the plans to pledge such assets or income realistic?

Tribes should consider similar plans for other areas of development, including future housing projects, economic development ventures and other short- and long-term goals.

The land use code development agenda can be a big one and it can include:

1. Environmental protection codes
2. Aesthetic regulation (how you want your reservation to look)
3. Historic preservation
4. Farmland, grazing, wetlands, lake or forest preservation
5. The protection of civil rights to property or interests in property
6. Growth management
7. Eminent domain
8. Laws to revitalize communities
9. Eminent domain
10. Special provisions for tribal court jurisdiction and litigation.

Conclusion

This is only an overview of the possibilities for land use code development. It shows that there are tribal and Indian law-specific subject areas and alternatives to undertake either large planning and land use policy and law development or select only specific areas.

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Best Practices

Land Use and Planning

Navajo Nation Land Code

The Navajo Nation has the largest land base of any American Indian Nation, with approximately 25,000 square miles of land. It is almost the size of South Carolina in size. The Navajo Nation, as it is with most Indian nations, has difficulties administering its lands because they consist of lands held in trust by the United States for the benefit of the Navajo Nation ("reservation" lands), lands held in trust for individual Navajos ("allotments"), and lands purchased for the Navajo Nation as the result of the Navajo-Hopi land dispute (e.g. the "New Lands" area along the Arizona-New Mexico border) and lands purchased by the Navajo Nation (e.g. the "Big Boquillas Ranch" to the immediate south of the Grand Canyon) or leased by it (e.g. a Bureau of Land Management lease of lands at the San Francisco Peaks near Flagstaff).

The Navajo Nation land code materials in these materials consist of many of the provisions of Title 16 of the Navajo Nation Code (1995), which is the title that deals with land. This approach to land code development is important, because it deals with many different subjects of land use and control, and these statutes are published. That is important, because outside lenders, corporate attorneys, and others who wish to do business with or within the Navajo Nation want a reliable method to "find" the Navajo Nation law on land tenure and land use control.

The chapters included here deal with various kinds of land use problems. They are:

Policy on the Acquisition of Lands-Chapter 1

This policy, which was originally enacted in 1954 and updated at various times through 1968, is designed to consolidate Indian holdings in the "checkerboard" area of the Navajo Nation, provide grazing lands to Navajos who do not have grazing permits, provide additional lands to deal with population overcrowding, deal with "excessive use" or overgrazing, and obtain land for Navajo Nation Enterprises. The last purpose is designed to address land expansion for enterprises such as the Navajo Agricultural Products Industry and deal with housing sites for the Navajo Housing Authority.

This chapter follows the excellent publication device of publishing citations to other portions of the Navajo Nation Code dealing with similar subjects, and it references the applicable federal land statutes which must be used to implement this chapter. 16 NNC Sec. 1, "cross references."

The thrust of this chapter is to deal with open-range grazing in the checkerboard area, which is composed of many individual allotments, but 16 NNC Sec. 6 makes it clear that the Navajo Nation will acquire lands for business and industrial purposes in addition to agriculture and range lands. This chapter deals with procedures to purchase land, appraisals to find fair market value, and plans for the use of acquired lands.

This chapter deals with the reality that while the Navajo Nation has a pastoral history, there is not enough land for those purposes. While modern economic development land acquisition is covered in this chapter, there is a clear policy of keeping the traditional economy and expanding it. This is in keeping with "small is better" economic planning theories.

Land Acquisition Trust Fund-Chapter 2

Obviously, if the Navajo Nation is to have an aggressive policy to acquire new lands, it must have a plan to raise the money to buy them. This chapter establishes the Navajo Nation Land Acquisition Trust Fund, which is funded by taking at least 2% of all projected Navajo Nation revenues for each fiscal year and putting them in a trust fund which will earn interest. The Resources Committee of the Navajo Nation Council must adopt procedures for investments and land purchases.

Acquisitions of Lands-Chapter 5

This chapter takes advantage of the Isolated Tract Law, which deals with the purchase of certain public lands, and the possibility of receiving gifts of land (e.g. from missions that are closing or ranches that are going out of business). This chapter permits the President of the Navajo Nation to watch for and bid upon available public lands. It also permits the president to accept gifts of lands "within the exterior boundaries" of the Nation worth up to \$1,000. The President must obtain approval for lands within the Reservation worth more than \$1,000 and get approval for lands worth more than \$10,000 either within or outside the Navajo Nation.

Navajo Land Consolidation Plan-Chapter 6

This is the most ambitious Navajo Nation land acquisition chapter and it is an example of how an Indian nation can take advantage of the Indian Land Consolidation Act ("ILCA"). Section 501 carefully sets out the federal statutes it will take advantage of, including the ILCA, The Indian Finance Act, the Federal Property and Administrative Services Act, and specific Navajo-Hopi legislation.

Section 502 establishes a "land consolidation area" to indicate what land areas it intends to address. They include the boundaries of the Navajo Reservation, Navajo "Indian Country" under federal law, major counties in New Mexico, and all of the "aboriginal land area of the Navajo Tribe of Indians, as established by the Indian Claims Commission." The last area is important, because it seeks expansion through the original lands occupied by Navajos in historic times.

Section 503 requires the monitoring of available lands and the development of specific proposals for acquisition and consolidation by the Resources Committee of the Navajo Nation Council. This section takes advantage of deposits into an interest-bearing trust account held by the Secretary of the Interior for land acquisition.

This section gives the Resources Committee broad powers to buy, sell, and exchange land interests, and purchase small interests in allotments from allotment-holders. This is an administrative code, and the Office of Navajo Land Administration has the power to adopt regulations to implement the Land Consolidation Plan, with the approval of the Resources Committee.

Use and Disposition of Lands Generally-Chapter 7

Many of the provisions of this chapter are old. It is designed to set the policy for the use of lands by lease by non-Navajos (e.g. traders, religious organizations, and other non-Navajo persons and organizations), and it deals with rights-of-way, surveys for surface activities, oil and gas prospecting, and other exploration permits. Environmental concerns are expressed in Section 604, which cautions that injury to trees and shrubs requires special permission in advance.

Homesites-Chapter 9

This chapter deals with the procedures for individuals to obtain homesite leases for individual housing construction. This chapter is controversial to administer. That is, while it is designed to deal with setting aside lands "in or near communities," the withdrawal process spoken of can be difficult. A great deal of Navajo Nation "Reservation" land is actually open range. Some Navajos do not realize that a use right on an open range, a grazing permit, is *not* an interest in land. Despite that, individual Navajos attempt to get homesite permits within an open range to get control of "their" grazing area.

This chapter is important, because it is being used for non-public housing initiatives. The Navajo Nation has worked closely with area banks, the Fannie Mae Corporation, the Federal Deposit Insurance Corporation (which regulates bank loans) and others to prompt loans to individual Navajos to build homes. Separate deed of trust statutes permit Navajos with a lease of Reservation land to get mortgages on their homesite permit.

Residential and Use Rights on Lands Added to the reservation-Chapter 15

The Navajo Nation has been aggressive about locating and adding lands to its land base, and this chapter is an example of arrangements to deal with a special area, the McCracken Mesa, near Shiprock, Navajo Nation (New Mexico). One of the historical problems of the Navajo Nation is that Navajos tend to settle on public or other lands and then claim "customary use" right to the lands. When the lands are added, they claim preference, and this section deals with that. It establishes an application procedure, creates a land management district, and deals with range management and grazing permits. This is another example of the Navajo response to the special needs of its traditional economy and land management for both residential and pastoral purposes.

Conclusion

These portions of Navajo Nation land use statutes show how to deal with land acquisition and consolidation, the private use of lands set aside for the Navajo Nation, leases and uses for economic development, and other purposes. The drafters have taken advantage of general legislation for land development (i.e. the Indian Land Consolidation Act) and specific legislation. They have also sought to respond to new challenges and opportunities. These codes make use of organs of the Navajo Nation Council (e.g. the Resources Committee) and government agencies, and use administrative law models for enforcement.

Land

CHAPTER	SECTION
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3. Land Acquisition Trust Fund	201
5. Acquisition of Lands	401
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HISTORY

Note. Office of Tribal Land Administration previously codified as Chapter 1, Subchapter 3, §§201-204, has been deleted from this Code pursuant to Navajo Nation Attorney General's advice on Plans of Operation for Navajo Nation Divisions dated January 4, 1991.

CROSS REFERENCES

Navajo Nation Cultural Resources Protection Act, 19 NNC §1001 *et seq.*

ANNOTATIONS

See annotations under Allotted Lands in digest.

**Chapter 1. Navajo Nation Policy on
Acquisition of Lands**

SECTION

1. Major purposes
2. Methods of acquisition
3. Land acquisition program; code of use; priorities
4. Management of agricultural and range lands
5. Unrestricted lands; taxes and fees

6. Scope of land acquisition
7. Land acquisition proposals; plans for use
8. Cost of purchased lands
9. Appraisal of land
10. Procedure for acquisition of land

§ 1. Major purposes

A. The Navajo Nation's major purposes in acquiring new lands shall be to:

1. Consolidate Indian holdings in "checkerboard" areas wherever the best interests of the Navajos residing in the area and the welfare of the Navajo Nation are served thereby;
2. Provide grazing lands for members of the Navajo Nation who do not have grazing permits;
3. Provide additional or substitute lands for members of the Navajo Nation who reside in overcrowded areas of the Reservation;
4. Relieve Reservation land resources from excessive use; and
5. Provide land necessary for approved Navajo Nation Enterprises.

HISTORY

ACJN-117-68, June 13, 1968.
 CAP-49-68, April 23, 1968.
 ACJ-8-55, , January 11, 1955.
 CJ-23-54, June 9, 1954.
 ACM-14-54, March 23, 1954.

CROSS REFERENCES

Business Site Leasing Act, 5 NNC §2301 *et seq.*
 Industrialization program, acquisition of land, 5 NNC §5.
 Labor policy of Navajo Nation, provisions in leases to obey, 15 NNC §609.
 School purposes, withdrawal of land, 10 NNC §1201.
 United States Code. Allotment of Indian lands generally, see 25 U.S.C. §§331 and 461 *et seq.*
 Homesteads to Indians located on public lands, 43 U.S.C. §§190, 190(a); 25 U.S.C. §337(a).
 Lease of restricted lands for public, religious, educational, recreational, residential, business, grazing and farming purposes, with maximum term of 99 years, 25 U.S.C. §§415, and 635(a).
 Lease, sale, or other disposition of land owned in fee simple by Navajo Tribe, 25 U.S.C. §635(b).
 Rights-of-way through Indian lands, 25 U.S.C. §311 *et seq.*
 Title to certain lands held in trust for Canoncito Navajo Indians, 25 U.S.C. §§621, and 622.
 Transfer to corporation owned by Tribe or municipal corporation of legal title or leasehold interest in any unallotted lands held for Navajo Nation, 25 U.S.C. §635(c)

§ 2. Methods of acquisition

The Navajo Nation may acquire new lands by exchange, gift, or purchase.

HISTORY

ACJ-8-55; January 11, 1955.

§ 3. Land acquisition program; code of use; priorities

The Resources Committee of the Navajo Nation Council is authorized and directed to:

- (1) Formulate a land acquisition program;
- (2) Develop a code of use for land acquired; and
- (3) Establish areas to be given priority attention.

HISTORY

ACJ-8-55, January 11, 1955.

CROSS REFERENCES

Resources Committee generally, 2 NNC §§691 *et seq.*

§ 4. Management of agricultural and range lands

It is the policy of the Navajo Nation to manage agricultural and range lands in accordance with principles of sound and practical use, developing such lands to their maximum and preventing practices which damage or deteriorate them.

HISTORY

ACJ-8-55, January 11, 1955.

§ 5. Unrestricted lands; taxes and fees

Except as the United States may otherwise determine, the Navajo Nation shall, in acquiring unrestricted lands, assume responsibility for the payment of taxes lawfully imposed, and of all established fees for the use of federally or state-owned lands.

HISTORY

ACJ-8-55, January 11, 1955.

§ 6. Scope of land acquisition

Land acquisition includes agricultural and range lands and land for business or industrial purposes.

HISTORY

ACJ-8-55, January 11, 1955.

§ 7. Land acquisition proposals; plans for use

The Resources Committee of the Navajo Nation Council is authorized and directed to consider and investigate land acquisition proposals and to report findings and recommendations to the Navajo Nation Council. Proposals for land acquisition shall not be considered by the Navajo Nation Council unless the lands and the possible uses thereof conform to this land acquisition policy. Following acquisition thereof, a specific plan shall be prepared showing in detail the proposed use and operation of said land, which plan shall conform to the land use code and shall be strictly complied with. No deviation therefrom shall be permitted without the consent of the Navajo Nation Council based upon the recommendation of the Resources Committee.

HISTORY

CN-72-92, November 4, 1992.
CD-68-89, December 15, 1989.
ACJ-8-55, January 11, 1955.

CROSS REFERENCES

Land acquisition recommendations, 2 NNC §695(B)(3).

§ 8. Cost of purchased lands

Purchased lands shall be acquired within a total cost calculated to yield to the Navajo Nation sufficient income from such land to pay taxes, land use fees, cost of administration, and to amortize the Navajo Nation investment over a period not to exceed 50 years. Provided, however, that the cost of range lands purchased by the Navajo Nation in New Mexico may be amortized for a period not to exceed 99 years.

HISTORY

CMY-46-70, May 20, 1970.
ACJ-8-55, January 11, 1955.

§ 9. Appraisal of land

All acquisition of land shall be based on a comprehensive appraisal thereof, to be secured by the Navajo Nation and approved by the Navajo Nation Council and authorized officials of the Bureau of Indian Affairs. No Navajo Nation monies shall be expended for the purchase in excess of the appraisal value plus an amount equal to 10 percent in excess of such appraised value unless fully justified. Purchases must conform to the limitations established in 16 NNC §8, as indicated by the approved appraisal report.

HISTORY

ACJ-8-55, January 11, 1955.

§ 10. Procedure for acquisition of land

A. The procedure for acquisition of land shall be as follows:

1. Sufficient indication to Navajo Nation representatives that a property owner would consider sale of his or her property to the Navajo Nation, an instrument granting Navajo Nation representatives access to the property for the purpose of conducting preliminary investigations of the property will be secured.

2. When a preliminary investigation disclosing that the property is desirable when adjudged by the standards stated in the Navajo Nation land acquisition program, an appraisal report will be secured. After review by the Resources Committee, the appraisal report will be submitted to designated Bureau of Indian Affairs officials for approval.

3. After approval of the appraisal report by the Bureau of Indian Affairs, authorized Navajo Nation representatives may enter into negotiations with the property owner. Negotiations will be governed by the estimates in the approved appraisal report, and the principles of the Navajo Nation Land Purchase Program.

4. If negotiations are carried on longer than six months, the appraisal report will be supplemented to bring value estimates in line with current market conditions.

HISTORY

ACJ-8-55, January 11, 1955.

CM-37-53, May 21, 1953.

Chapter 3. Land Acquisition Trust Fund

SECTION

201. Establishment
202. Investment of the Fund
203. Definition of principal and income
204. Expenditure of Fund principal
205. Expenditure of Fund income
206. Annual audited report
207. Expenses
208. Amendments

HISTORY

CAP-41-94, April 20, 1989.

Note. Office of Tribal Land Administration previously codified as Chapter 1, Subchapter 3, §§201-204, has been deleted from this Code pursuant to the Navajo Nation Attorney General's advice on Plans of Operation for Navajo Nation Division dated January 4, 1991.

Slightly reworded for purposes of statutory form.

§ 201. Establishment

There is hereby established, the Navajo Nation Land Acquisition Trust Fund (hereinafter referred to as the "Fund"). Each year, and during the appropriation of the Navajo Nation Operation Budget, the Navajo Nation Council shall budget a sum equal to at least 2% of any and all projected revenues of the Navajo Nation, including, but not limited to revenues received from taxed, oil and gas mining and minerals, timber, land rentals, interest and dividends, gain on sale of securities and other revenue producing activities for transfer to the Fund. Supplemental appropriations may be added to the Fund at any time. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter.

HISTORY

CJY-54-94, July 20, 1994.

§ 202. Investment of the Fund

A. All monies deposited in the Fund shall be invested to purchase land for the Navajo Nation in accordance with the Land Acquisition Policies and Procedures adopted by the Resources Committee of the Navajo Nation Council.

B. Pursuant to 16 NNC §1, the major purposes of acquiring new lands are:

Chapter 5. Acquisition of Lands

Subchapter 1. Acquisition of Public Lands

SECTION

- 401. Purchases under Isolated Tract Law
- 402. Applications, bids and preference rights under Isolated Tract Law

Subchapter 3. Gifts of Lands

- 451. Gifts of lands within Reservation
- 452. Gifts of lands outside Reservation
- 453. Lands defined
- 454. Funds for taxes, rents or other charges

Subchapter 1. Acquisition of Public Lands

§ 401. Purchases under Isolated Tract Law

The Resources Committee and Navajo Nation Council are instructed to include the purchase of public land under the Isolated Tract Law (43 U.S.C. §1171) or other applicable law in the Navajo Land Acquisition Program, and the President of the Navajo Nation, in accordance with such procedures as the Committee may approve, is authorized to submit applications, present bids, and assert preference rights, on behalf of the Navajo Nation, to purchase any tract of public land pursuant to applicable law.

HISTORY

CM-19-56, May 22, 1956.

Note. 2 NNC §695(B)(3) gives the Navajo Nation Council final authority to acquire lands. "Government Services Committee" was not inserted in lieu of "Advisory Committee".

§ 402. Applications, bids and preference rights under Isolated Tract Law

A. The President of the Navajo Nation, upon and with approval of the Resources Committee is authorized to submit applications and bids and assert preference rights on all lands available for purchase under the applicable public law as, in his or her discretion, would be desirable for the Navajo Nation to acquire in the "checkerboard" area of New Mexico and in the states of Arizona and Utah.

B. The President is further authorized to take any action necessary for the completion of these acquisitions including but not limited to perfecting appeals from adverse decisions of the Bureau of Land Management.

HISTORY

CO-68-89, December 15, 1989.
ACD-174-59, December 14, 1959.
ACJ-8-58, January 16, 1958.

CROSS REFERENCES

Resources Committee Authority, 2 NNC §695(B)(3).

Subchapter 3. Gifts of Lands

§ 451. Gifts of lands within Reservation

A. The President of the Navajo Nation is authorized to accept on behalf of the Navajo Nation gifts of unimproved lands within the exterior boundaries of the Navajo Indian Reservation, and of other lands within the exterior boundaries containing improvements not in excess of the value of \$1,000.

B. The President of the Navajo Nation with the consent of the Government Services Committee is authorized to accept gifts of lands within the exterior boundaries of the Navajo Indian Reservation containing improvements in excess of the value of \$1,000.

HISTORY

CJ-34-58, July 21, 1958.

CROSS REFERENCES

Gifts of property, 2 NNC §1010.
Resources Committee Authority, 2 NNC §695(B)(3).

§ 452. Gifts of lands outside Reservation

A. The President of the Navajo Nation with the consent of the Government Services Committee is authorized to accept gifts of lands not exceeding the value of \$10,000, including the value of improvements thereon, outside the exterior boundaries of the Navajo Indian Reservation.

B. Gifts of lands outside the exterior boundaries of the Navajo Indian Reservation of a value exceeding \$10,000, including the value of improvements thereon, shall be accepted by the President of the Navajo Nation only pursuant to special authorization of the Navajo Nation Council.

HISTORY

CJ-34-58, July 21, 1958.

CROSS REFERENCES

Gifts of property, 2 NNC §1010.

Resources Committee Authority, 2 NNC §695(B)(3).

§ 453. Lands defined

The term "lands", as used in 16 NNC §§451 and 452 shall mean land or any parcel thereof, or any interest in land or in any parcel thereof, including leasehold interests.

HISTORY

CJ-34-58, July 21, 1958.

§ 454. Funds for taxes, rents or other charges

Before the President shall accept any gifts of lands on behalf of the Navajo Nation he or she shall ascertain what taxes, rents, or other charges will become due thereon during the remainder of the fiscal year in which such gift is to be accepted, and shall not accept any such gift unless sufficient funds are provided in the Navajo Nation budget currently in force to pay such charges during such fiscal year.

HISTORY

CJ-34-58, July 21, 1958.

Chapter 6. Navajo Land Consolidation Plan

SECTION

- 501. Purpose of Plan
- 502. Land consolidation area
- 503. Operational policy and procedure
- 504. Purchase, sale or exchange of interests
- 505. Purchase of undivided fractional interests
- 506. Public purpose; U.S. acceptance of trust allotments
- 507. Administrative rules and regulations

§ 501. Purpose of Plan

The purpose of the Navajo Land Consolidation Plan is to provide additional authority to consolidate and augment the Navajo land base, in accordance with the provisions of the Indian Land Consolidation Act, 25 U.S.C. §§2201, *et seq.* (ILCA). The Indian Finance Act (April 12, 1974; P.L. 93-262, Title I); 88 Stat. 78 (codified at 25 U.S.C. §1466 [1983], 25 U.S.C. 463(a)); 25 U.S.C. 465, the Federal Property and Administration Services Act of 1949, as amended (codified at 40 U.S.C. §483(a) [Supp. 1987]), and §5 of the Navajo and Hopi Indian Rehabilitation Act of 1950, as amended (codified at 25 U.S.C. §635) provide further authority for taking land and improvements into trust for the Navajo Nation under this Plan. Acquisitions of land under this Plan shall conform to the policies, priorities, and procedures of Chapter 1, Title 16 of the Navajo Nation Code, unless otherwise expressly stated in this Plan or any amendment thereto approved by the Navajo Nation Council or a duly authorized Committee. Lands so acquired will be administered for economic, industrial, residential, recreation, and other purposes as set forth by the Navajo Nation Council and its duly authorized Committees.

HISTORY

CMY-23-88, May 4, 1988.

§ 502. Land consolidation area

A. The land acquisition and consolidation area includes all lands, including federally administered and public domain lands, within:

1. The boundaries of the Navajo Reservation;
2. Navajo "Indian Country" as defined by 18 U.S.C. §1151;
3. The aboriginal land area of the Navajo Tribe of Indians, as established by the Indian Claims Commission;
4. The Counties of McKinley, San Juan, Sandoval, Cibola, Bernalillo, Socorro, and Valencia in the State of New Mexico; and

5. Such other lands as designated on the map attached as Figure "A" to Navajo Nation Council Resolution CMY-23-88.

B. Any land consolidation plans approved previously by the Bureau of Indian Affairs for the satellite Reservations of Alamo, Canoncito, and Ramah shall be deemed to be incorporated herein, and may be amended by the Navajo Nation Council or its duly authorized Committees.

HISTORY

CMY-23-88, May 4, 1988

§ 503. Operational policy and procedure

A. Tracts and properties within the land consolidation area will be continually monitored to identify available acquisitions. Close contact will be maintained with the Bureau of Indian Affairs, Navajo Area Branch of Realty personnel for identification of individual allotted and restricted heirship lands or minerals or water rights, with the Navajo Nation's preferential rights being exercised during the sale process.

B. Specific proposals for acquisition and consolidation will be developed by the Resources Committee of the Navajo Nation Council, with the assistance of the Navajo Division of Natural Resources and the Department of Justice of the Navajo Nation. The Resources Committee will recommend to the Navajo Nation Council resolutions for final action, and to authorize the Bureau of Indian Affairs to accomplish any federal actions needed to effect such transaction.

C. An interest bearing trust account shall be established by the Secretary of the Interior or his or her delegate pursuant to 25 U.S.C. §2203(a)(4). All proceeds derived from transactions of tribal land consolidations shall be deposited into this account and utilized only for the purposes of land consolidation.

D. An appraisal of value will be developed in accordance with the established standards of the appraisal profession by the Office of Navajo Land Administration and utilized as a guide in all acquisitions, disposals, exchanges, and other proposals for land consolidation. The Navajo Nation Code and all applicable provisions of the Code of Federal Regulations (25 C.F.R. Part 151—Land Acquisitions) shall be followed.

HISTORY

CO-43-88, October 25, 1988.

CMY-23-88, May 4, 1988.

§ 504. Purchase, sale or exchange of interests

The Navajo Nation Council upon recommendation of the Resources Committee, may sell, exchange, purchase, or acquire any Navajo trust or restricted or unrestricted lands, or interests in such lands for the purpose of eliminating undivided fractional interests in Navajo Nation

trust or restricted lands, or consolidation of Navajo Nation land holdings. Any such purchase, sale, or exchange shall conform to the following conditions:

A. The sale price paid or exchange value received by the Navajo Nation for land or interests in land covered by this section shall deviate by no more than ten per cent (10%) of the fair market value;

B. If the Navajo Nation land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the Navajo Nation may accept the land exchange or give or receive cash in such exchange to equalize the values of the property exchanged;

C. Proceeds from the sale of land or interests in land or proceeds received by the Navajo Nation to equalize an exchange made pursuant to this section shall be deposited into the account established pursuant to §503(C) above, and additional monies may be deposited in said account as authorized by the Navajo Nation Council;

D. The Navajo Nation may reserve the mineral and water rights to such sold or exchanged land; and

E. The Navajo Nation may purchase less than the whole estate.

HISTORY

CO-43-88, October 25, 1988.

CMY-23-88, May 4, 1988.

§ 505. Purchase of undivided fractional interests

A. The Navajo Nation may purchase at no less than the fair market value all of the surface interests of any tract of trust or restricted land within the land consolidation area described in §502 above with the consent of the majority of the owners of such tract or allotment as required by 25 U.S.C. §2204, under the following conditions:

1. Any Navajo person owning an undivided interest, and in actual use and possession of such tract for at least three consecutive (3) years preceding the Nation's offer may purchase such tract by matching the Navajo Nation's offer;

2. If at any time within five (5) years following the date of acquisition of such land by an individual under §505(A)(1), such property is offered for sale or a petition is filed with the Bureau of Indian Affairs for removal of the property from trust or restricted status, the Navajo Nation shall have 90 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value.

B. The Navajo Nation may purchase at no less than fair market value part of all of the interests in any tract of trust or restricted land from willing sellers and shall acquire pursuant to the Indian Land Consolidation Act any *de minimis* undivided fractionated interests in allot-

ments subject to the escheat provision of the Indian Land Consolidation Act (25 U.S.C. §2206).

C. All sales which comply with federal law shall be approved by the Bureau of Indian Affairs. Appeals of Bureau of Indian Affairs actions shall be pursuant to Title 25 Code of Federal Regulations, Part 2.

HISTORY

CMY-23-88, May 4, 1988.

§ 506. Public purpose; U.S. acceptance of trust allotments

A. It is hereby declared that the acquisition by the Navajo Nation of trust allotments or of interests in trust allotments within the land consolidation area described in §502 above is required in the public interest and constitutes a public purpose under Navajo law and under this Act.

B. Upon the approval of the President of the Navajo Nation or his or her duly authorized delegate and notwithstanding any provision of Navajo law to the contrary, the United States is authorized and directed to accept deeds of trust allotments or interest in trust allotments from any allottee or heir who owns any interest in such allotment and who has deeded such allotment or interest in such allotment or portion thereof to the United States in trust for the Navajo Nation.

C. No taxes shall be paid by the Navajo Nation on any lands to this section, and the requirements of §§5 and 7-10 (inclusive) of Title 16 of the Navajo Nation Code.

HISTORY

CMY-23-88, May 4, 1988.

§ 507. Administrative rules and regulations

The Director of the Office of Navajo Land Administration may, subject the approval by the Resources Committee of the Navajo Nation Council, promulgate regulations governing the implementation of the provisions of this Navajo Land Consolidation Plan.

HISTORY

CMY-23-88, May 4, 1988.

Chapter 7. Use and Disposition of Lands Generally

Subchapter 1. General Provisions

SECTION

- 601. Use by non-Navajos
- 602. Leases, licenses or easements on unrestricted lands
- 603. Approval of rights-of-way; damages
- 604. Trees and shrubs

Subchapter 3. Permits for Exploration, Mapping, Prospecting and Other Surface Activities

- 651. Surveys, mapping and other surface activities
- 652. Oil and gas prospecting permits
- 653. [Repealed]
- 654. Other permits
- 655. [Rescinded]
- 656. Fees for non-Navajo prospecting permits

Subchapter 1. General Provisions

§ 601. Use By non-Navajos

Grants of land-use to non-Navajo traders, religious organizations, and other non-Navajo individuals or organizations should be carefully considered and kept to a minimum. The approval of these matters by the Navajo Nation Council and the Assistant Secretary of the Interior for Indian Affairs is required.

HISTORY

1922-1951, Res. p. 167, June 23, 1942.

CROSS REFERENCES

Committee authority: Transportation and Community Development Committee, 2 NNC §423 *et seq.*; Resources Committee, 2 NNC §695(B)(2); and Economic Development Committee, 2 NNC §724(B).

§ 602. Leases, licenses or easements on unrestricted lands

A. The Resources Committee of the Navajo Nation Council is authorized to grant easements, leases, and licenses on lands owned by the Navajo Nation in fee simple where the best interests of the Nation are served thereby, provided, however, that in no case shall any lease or

license be granted for a period in excess of five years, except upon specific authorization by the Navajo Nation Council.

B. However, the Resources Committee may grant homesite leases according to established Navajo Nation policy for a term not to exceed 65 years, and may provide for the encumbrance of the leasehold interest to secure capital for the construction or modification of improvements.

HISTORY

CJY-75-71, July 29, 1971.

CJ-56-53, July 23, 1953.

CROSS REFERENCES

Authority of the Resources Committee at 2 NNC §695(B)(2) and (4);

§ 603. Approval of rights-of-way; damages

The President of the Navajo Nation and the Navajo Area Director are authorized to approve all applications for rights of way over Navajo Nation lands, and to assess proper damages therefor; all payments for damages shall be credited to Navajo Nation funds.

HISTORY

1922-1951 Res. pp. 177, 178, November 5, 1947.

Note. This section requires rescission by the Navajo Nation Council due to its inconsistency with current law despite the "null and void" provision of Navajo Nation Council Resolution CD-68-89, Resolved Clause 4.

CROSS REFERENCES

Navajo Nation Committee Authority: Resources Committee, see 2 NNC §695(B)(2); Transportation and Community Development Committee, see 2 NNC §423(C)(2), (3), and (4).

ANNOTATIONS

Jurisdiction of state. Authority under which state was permitted to construct a highway through and over Navajo Reservation failed to extinguish title to the Navajo Tribe to such lands in view of the fact that state has no jurisdiction over Indian lands until title of Indian *certiorari denied* has been extinguished. *State v. Begay* 63 N.M. 409, 320 P.2d 1017 (1958), *certiorari denied* 357 U.S. 918, 78 S.Ct. 1359, 2 L.Ed.2d 363.

§ 604. Trees and shrubs

All living trees and shrubs shall not be moved, cut, or injured without written permission of the Superintendent for legitimate purposes.

HISTORY

1922-1951 Res. p. 526, July 12, 1934.

CROSS REFERENCES

Authority of the Resources Committee, 2 NNC §695 (B)(6) (1992).

Subchapter 3. Permits for Exploration, Mapping, Prospecting, and Other Surface Activities

CROSS REFERENCES

CD-68-89, December 15, 1989, limited the powers of the Navajo Nation President and re delegated powers to Navajo Nation Council standing committees. Generally see 2 NNC *et seq.*

§ 651. Surveys, mapping and other surface activities

The President of the Navajo Nation with the approval of the Navajo Area Director may grant permission on any Navajo Nation lands for surveying, mapping and other surface activities which do not cause damage to the land.

HISTORY

CF-22-58, February 20, 1958.

CROSS REFERENCES

Sketch or diagram of land, survey and legal description necessary for business leases of land, see 5 NNC §2304.

Authority of Resources Committee, 2 NNC §695(B)(2).

§ 652. Oil and gas prospecting permits

Oil and gas prospecting permits without preference to lease may be issued for areas requested, but in no case for a larger area than a land management district. These permits may be granted by the President of the Navajo Nation Council with the consent of a majority of the district council delegates from the district concerned and the approval of the Navajo Area Director.

HISTORY

CF-22-58, February 20, 1958.

CROSS REFERENCES

Authority of the Resources Committee with regard to prospecting permits, 2 NNC §695(B)(2) (1992).

§ 653. [Repealed]

HISTORY

CMY-19-88, May 3, 1988.

§ 654. Other permits

The Resources Committee shall consider all other requests for permits and the President of the Navajo Nation, with approval of the Resources Committee, shall have authority to grant permits for exploration, prospecting, and other activities not otherwise provided for by Council action, with the approval of the Navajo Area Director.

HISTORY

CF-22-58, February 20, 1958.

CROSS REFERENCES

Resources Committee authority, 2 NNC §695(B)(2).

§ 655. [Rescinded. See ACN-310-70, November 20, 1970].

HISTORY

ACMY-65-68, May 15, 1968.

HISTORY

This section was based on ACMY-65-68, May 15, 1968 and established permit fees.

§ 656. Fees for non-Navajo prospecting permits

A. Geophysical permit. Includes but is not limited to seismic, gravimetric, and magnetic methods, requiring vehicular or airborne support. Applicant must post not less than \$5,000 bond.

Period..... 12 months

Fee \$100.00 per district

B. Geological permit. Designed for surface geologic studies, including mapping, outcrop examination, hand sampling, and the use of portable instruments carried by hand. (Does not include drilling, coring, trenching or other types of excavating). Applicant must post not less than \$5,000 bond.

Period..... 12 months

Fee \$50 per district

C. The permits as described above are applicable on Navajo Nation lands, regardless of the minerals ownership.

HISTORY

ACN-310-70, November 20, 1970.

CROSS REFERENCES

Authority of the Resources Committee, 2 NNC §695(B)(1992).

Chapter 9. Homesites

Subchapter 1. Homesite Permits Within Townsites

SECTION

- 801. Powers of Resources Committee
- 802. Procedure for granting homesite permits

Subchapter 3. Homesite Leases Outside Townsites

- 851. Powers of Resources Committee
- 852. Procedure for granting homesite leases outside townsites
- 853. Form NT 200, Application for Homesite Lease [Form Deleted, 1994]
- 854. Form NT 201, Homesite Lease [Form Deleted, 1994]

Subchapter 5. Homesite Leases Not To Exceed Ninety-Nine Years

- 901. Authority of Resources Committee

Subchapter 1. Homesite Permits Within Townsites

§ 801. Powers of Resources Committee

A. The Resources Committee of the Navajo Nation Council is authorized to act for and in lieu of the Navajo Nation Council to approve withdrawals, set-asides, or make allocations of Navajo Nation lands in or near communities and Government or Navajo Nation installations for homesite purposes.

B. The District Council Delegates of districts in which lands are proposed for such purposes shall consent thereto before approval may be granted by the Resources Committee.

C. The Area Director is requested to take such steps as may be necessary to cause any such areas withdrawn to be surveyed, plotted, and staked into lots for assignment to individual Navajo families or individuals for homesites under such procedures as shall be prescribed by the Resources Committee and approved by the Area Director.

HISTORY

- CN-72-92, November 11, 1992.
- CD-68-89, December 15, 1989.
- CN-52-87, November 17, 1987.

ACF-20-70, February 11, 1970.
CJ-14-53, 1953, January 16, 1953.

CROSS REFERENCES

Tables showing specific withdrawals of land for homesites or housing purposes, see Table 7d (Land Tables) at end of this Code.

Note. References to the "Advisory Committee" have been changed to "Resources Committee".

Powers of the Resources Committee, 2 NNC §695(B).

Powers of Transportation and Community Development Committee, 2 NNC §423(C)(2) and (3).

§ 802. Procedure for granting homesite permits

A. The following procedures are prescribed for the making of applications and the granting of homesite permits on Navajo Nation lands which have been withdrawn for that purpose under authorization of the Navajo Nation Council and which have been surveyed, platted and subdivided:

1. Applications shall be submitted on forms approved by the President of the Navajo Nation and Navajo Area Director;

2. The applications shall be referred to the District Council Delegate and the field representative of the Bureau in the area in which the lands are located;

3. The District Council Delegate and the field representative shall submit such applications to the Superintendent of the Navajo Agency with recommendations;

4. The President of the Navajo Nation and the Superintendent of the Navajo Agency are authorized to consider and take final action on the applications, and in the case of applications which are approved, grant to the applicant, a homesite permit on a form approved by the President and Superintendent of the Navajo Agency.

B. The foregoing prescribed procedures shall continue in effect as interim procedures until development and adoption of a land code for the Navajo Reservation.

HISTORY

CD-68-89, December 15, 1989.

RCJ-6-88, January 13, 1988.

CN-52-87, November 17, 1987.

ACM-13-54, 1954, March 23, 1954.

Note. Reference to "Chairman of the Tribal Council" changed to "President of the Navajo Nation".

CROSS REFERENCES

Powers of the Resources Committee of the Navajo Nation Council, 2 NNC §695(B)(1992).

Homesite Lease/Certificate Guidelines.

Subchapter 3. Homesite Leases Outside Townsites

§ 851. Powers of Resources Committee

A. The Resources Committee of the Navajo Nation Council is authorized and empowered, with the approval of the Area Director, to set aside and assign for homesite purposes any Navajo Nation lands, rent-free or at a nominal rent.

B. The Resources Committee is further authorized to adopt procedures and forms to govern the granting of homesite assignments and leases to individual applicants.

C. The President of the Navajo Nation, with the approval of the Navajo Area Director, is authorized to enter into lease of assignment agreements upon approval of the Resources Committee on behalf of the Navajo Nation.

D. Sections 852-854 of this title are confirmed, ratified and approved and any and all actions taken by the Resources Committee or President of the Navajo Nation pursuant to the procedures and authorities therein contained are ratified and confirmed.

HISTORY

CD-68-89, December 15, 1989.

CN-52-87, November 17, 1987.

CO-58-58, October 8, 1958.

Note. References to "Advisory Committee" have been changed to "Resources Committee", 2 NNC §695(B).

Reference to "Chairman of the Tribal Council" changed to "President of the Navajo Nation".

§ 852. Procedure for granting homesite leases outside townsites

A. The following procedures are prescribed for the making of applications and the granting of homesite leases on Navajo Nation lands which have not been withdrawn for that purpose, nor surveyed, subdivided, or plotted:

1. Applications shall be on forms approved by the Resources Committee of the Navajo Nation Council and the Navajo Area Director.

2. The applications shall be referred to at least two district Council Delegates, the District Grazing Committee, and the subagency Superintendent for the area in which the lands are located, for their recommendations.

3. The Resources Committee shall make the final decision on each application.

4. The President of the Navajo Nation with the approval of the Navajo Area Director shall grant a homesite lease to approved appli-

cants on a lease form approved by the Resources Committee of the Navajo Nation Council and the Navajo Area Director.

B. The foregoing procedures shall continue in effect as interim procedures until the development and adoption of a land code for the Navajo Nation.

HISTORY

CN-72-92, November 4, 1992.

CD-68-89, December 15, 1989.

CN-52-87, Nov. 17, 1987.

ACJ-7-58, January 16, 1958.

Note. Previously codified §852(C) has been deleted pursuant to §852(A)(1).

§ 853. [Deleted] Form NT 200, Application for Homesite Lease

HISTORY

Note. Form deleted. Current forms are available from the Division of Natural Resources.

§ 854. [Deleted] Form NT 201, Homesite Lease

HISTORY

Note. Form deleted. Current forms are available from the Division of Natural Resources.

Subchapter 5. Homesite Leases Not to Exceed Ninety-Nine Years

§ 901. Authority of Resources Committee

The Resources Committee is authorized and directed to negotiate and grant leases of Navajo Nation lands for homesite purposes for terms not to exceed 99 years, subject to the following conditions:

A. In order to encourage individual home ownership and community development, including local housing authorities, annual rentals shall be nominal.

B. No assignment of leasehold interests shall be permitted without the approval of the Resources Committee of the Navajo Nation Council.

C. No leases granted under this section shall be made to nonmembers of the Navajo Nation except to such individuals whose presence on the Reservation may be determined by the Government Services Committee to be of indefinite duration and beneficial to the Navajo Nation.

D. Each leasing instrument shall contain a provision permitting the Navajo Nation to reenter the premises upon the violation of any of its provisions, together with an option to acquire housing property equi-

ties whenever an individual defaults and foreclosure and sale is instituted.

E. Each leasing instrument shall contain a legal description of the leased premises prepared by a registered civil land surveyor and acceptable to the Land Investigations Department of the Navajo Nation, the Federal Housing Administration, and any other federal housing agency involved.

F. Each leasing instrument shall contain provisions binding the lessee to compliance with all ordinances of the Navajo Nation as they may relate to housing developments on Navajo Nation-owned land.

HISTORY

CN-52-87, November 17, 1987.

CAU-46-61, August 31, 1961.

CROSS REFERENCES

Section 601 of this title with respect to approval of leases to non-Navajos by the Navajo Nation Council.

Note. "Advisory Committee" changed to "Resources Committee", 2 NNC §695.

Section 901(A)(3) "Advisory Committee" was changed to Government Services Committee as the Resources Committee lacks specific authority to grant Homesite Leases to non-Navajo members.

CROSS REFERENCES

Congressional authority to lease Tribal lands for terms not to exceed 99 years, see 25 U.S.C. §415, in Appendix, Part 2, Acts of Congress, of Navajo Nation Code.

Navajo Nation Cultural Resources Protection Act, see 19 NNC §1001 *et seq.*

Chapter 15. Residential and Use Rights on Lands Added to Reservation

SECTION

- 1601. Navajos having rights to establish residence and use of area added to the Navajo Reservation; priorities
- 1602. Families of applicants
- 1603. McCracken Mesa area as part of Land Management District 12
- 1604. Procedure on applications to use or reside on lands added or to be added to Reservation
- 1605. Resettlement of Navajos displaced from areas eliminated from Reservation
- 1606. Determination of carrying capacity of McCracken Mesa Range Management Unit
- 1607. Issuance of grazing permits to persons permitted by Resources Committee to use McCracken Mesa Unit

§ 1601. Navajos having rights to establish residence and use of area added to the Navajo Reservation; priorities

A. Navajos desiring to reside in or use the lands added to the Navajo Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), may file applications therefor with the President of the Navajo Nation in the manner herein provided.

B. The President shall refer all applications to the Resources Committee, which may grant residence and use rights or use rights only to such applicants as prove to the satisfaction of the Committee that they fall within one of the following categories. In granting such rights, the Resources Committee shall give preference to applicants in the following order:

1. *Navajos having occupancy and/or use of the area prior to September 2, 1958.* It is the intention of the Council, in carrying out the purposes of the aforesaid act of Congress to confirm to Navajos who resided in the area added to the Reservation or to be added to the Reservation as aforesaid, or who regularly used the said area prior to September 2, 1958, such residence rights and the use of appurtenant grazing lands to the extent practicable, by dividing the area into grazing use areas compatible with the rights of other Navajos and the customs of the Navajo Nation. Navajos whose homes are or were close to the boundary line of the area added to the Reservation and who used other public lands adjacent to this area added to the Reservation, shall be regarded as entitled to preference in this category of applicants, provided that all applicants in this category shall prove to the satisfaction of the Resources Committee that they

regularly used or occupied the lands prior to September 2, 1958, for which application is made.

2. *Navajos who used or occupied other public land in San Juan County, Utah, prior to September 2, 1958.* Navajo Indians who have not lived upon or otherwise made use of the said lands added to the Navajo Reservation, but who have used other public lands in San Juan County, Utah, not in the said Navajo Reservation prior to September 2, 1958, may receive residence and grazing permits in the same manner as hereinabove specified; provided that the said applicant abandon his or her residence elsewhere in the public domain in San Juan County and establish his or her residence within said land added to the Navajo Reservation.

3. *Navajos who did not reside in or use areas added to the Reservation or other public lands in San Juan County, Utah.* After January 1, 1963, the Resources Committee may, in its discretion, grant residence and use rights or use rights only to other Navajos making applications for settlement within the area added to the Reservation by said act of Congress, provided that at the time of granting such rights there is unused range carrying capacity available in said area.

HISTORY

CN-56-59, November 5, 1959.

Note. "Advisory Committee" changed to "Resources Committee", 2 NNC §695(b)(2).

Throughout this chapter, the citation of the Act of Congress has been changed to a uniform style: "Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686)".

§ 1602. Families of applicants

The permission granted by the Resources Committee to any Navajo to establish residence on land added to the Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), shall include permission for all persons, related by blood or marriage, who regularly reside with such Navajo as members of his or her family to reside on such land in the same camp with such Navajo.

HISTORY

CN-56-59, November 5, 1959.

§ 1603. McCracken Mesa area as part of Land Management District 12

All areas which have been or may hereafter be added to the Navajo Indian Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), shall be a part of Land Management District 12, and shall constitute a new Range Management Unit of said district, to be known as the McCracken Mesa Unit. Notwithstanding any other provision of law or regulation, livestock permittees within the

McCracken Mesa Unit may elect one member to the District 12 Grazing Committee, and the membership of said committee is hereby increased by one.

HISTORY

CN-56-59, November 5, 1959.

§ 1604. Procedure on applications to use or reside on lands added or to be added to Reservation

A. The Director of the Natural Resources Division shall provide forms for applying for permission to use or reside in the area to be added to the Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), to all Navajo Indians who said Director has reason to believe may be eligible to use or reside in said area under the terms of this chapter. Said Director shall give all reasonable assistance to such persons in properly filling out and signing their applications, and in conjunction with the Land Administration Department shall make a thorough investigation of all applicants' claims and report thereon to the Resources Committee.

B. Hearing, action on disputes. The Resources Committee or a subcommittee thereof shall hold a hearing on each application to use or reside on any land added to the Navajo Indian Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686); and whenever it grants an application shall, with the advice and assistance of the District 12 Grazing Committee, designate the approximate area the applicant may use; and if the applicant desires to reside on such lands, the place or places he or she may establish a home or seasonal camp. Such areas and places shall be as nearly as conveniently possible the same as the areas or places within the added lands that the applicant or his or her ancestors previously lived on or used. Insofar as customary grazing use areas are not defined by the Resources Committee, they shall be determined by consent of the grazing permittees involved, and any dispute shall be decided by the District 12 Grazing Committee, subject to the right of appeal to the Central Grazing Committee. No grazing permittee who has been permitted by the Resources Committee to use any of the lands added to the Reservation shall be subject to civil or criminal action in the District Court of the Navajo Nation under 3 NNC §710(A)(5) for any alleged trespass occurring on such lands until after his or her customary use area has been defined by the District 12 Grazing Committee, or in case of an appeal, by the Central Grazing Committee; and the final decision of the District or Central Grazing Committee as to what constitutes any permittee's customary use area shall be conclusive on the Navajo Nation Courts in all such cases.

HISTORY

CN-56-59, November 5, 1959.

CROSS REFERENCES

Resources Committee authority, 2 NNC §695(B)(1).

§ 1605. Resettlement of Navajos displaced from areas eliminated from Reservation

Inasmuch as the Lichee Range Management Unit in District 1 of the Navajo Reservation is currently stocked to only part of its carrying capacity, all persons required to remove from the area eliminated from the Navajo Indian Reservation by the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), which is within the Lichee Range Management Unit, shall be permitted to resettle in said unit until said Lichee Unit is stocked to 100 percent of its actual carrying capacity. Persons displaced from the area eliminated from the Reservation shall resettle at such place or places in the Lichee Unit as the District 1 Grazing Committee may designate. Any such person aggrieved by any action of the District 1 Grazing Committee may appeal to the Central Grazing Committee, and shall be entitled to a hearing before said committee upon such appeal. The Resources Committee shall make provision for resettlement of any Navajos remaining displaced after full stocking of the Lichee Unit.

HISTORY

CN-56-59, November 5, 1959.

CROSS REFERENCES

Resources Committee authority, 2 NNC §695(B)(1).

§ 1606. Determination of carrying capacity of McCracken Mesa Range Management Unit

The Director of the Natural Resources Division of the Navajo Nation, in cooperation with the Navajo Agency personnel, is hereby directed as soon as possible to secure qualified range technicians to ascertain the carrying capacity of all lands included in the McCracken Mesa Range Management Unit or proposed for inclusion therein, in the manner provided in 3 NNC §706(C), and to submit his or her conclusions to the Superintendent, the Area Director, and the Commissioner of Indian Affairs, as a basis upon which the Commissioner may make a final determination of the authorized carrying capacity of such unit.

HISTORY

CN-56-59, November 5, 1959.

§ 1607. Issuance of grazing permits to persons permitted by Resources Committee to use McCracken Mesa Unit

The Superintendent of the Shiprock Subagency shall promptly issue grazing permits to each Navajo permitted by decision of the Resources Committee to use land added to the Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), for a number of sheep units, determined by the formula given below, so that the total permitted numbers will not exceed the carrying capacity of the McCracken Mesa Range Management Unit, less 10 percent reserved for range management and other Navajos entitled to preference. When the Resources Committee shall have determined that the reoccupation and resettlement of the lands added to the Reservation pursuant to the Act of September 2, 1958, is substantially complete, or on January 1, 1963, whichever date is later, the remaining capacity reserved above shall be added to the permits regularly issued. The regular grazing permits shall allow each permittee a number of sheep units determined by the following formula:

$$x = b \frac{c}{a}$$

Where:

x = number of sheep units to be allowed by permit.

a = total sheep units of all persons entitled to use McCracken Mesa Unit, as determined by the Resources Committee.

b = sheep units to which individual is entitled, as determined by the Resources Committee.

c = 90 percent of carrying capacity of McCracken Mesa Unit as determined by the Commissioner of Indian Affairs.

HISTORY

CN-56-59, November 5, 1959.

Chapter 17. *Forcible Entry and Detainer*

SECTION

- 1801. Definitions
- 1802. Time of possession by tenant
- 1803. Complaint, summons and answer; service and return
- 1804. Suit brought in adjoining district
- 1805. Trial and issue; postponement of trial
- 1806. Judgment; writ of restitution; limitation on issuance
- 1807. Appeal; notice; bond
- 1808. Stay of proceedings on judgment; record on appeal
- 1809. Trial on appeal
- 1810. Proceedings no bar to certain actions

§ 1801. Definitions

A. A person is guilty of forcible entry and detainer, or of forcible detainer, as the case may be, if he or she:

1. Makes an entry into any lands, tenements or other real property, except in cases where entry is given by law, and such an entry is by force.

2. Willfully holds over any lands, tenements or other real property after termination of his or her right to possession, after demand made in writing for the possession thereof by the person entitled to such possession.

B. A "forcible entry", or an entry where entry is not given by law within the meaning of this article, is:

1. An entry without the consent of the person having the actual possession.

2. As to a landlord, an entry upon the possession of his or her tenant, without the tenant's consent.

C. There is a forcible detainer if:

1. A tenant at will or by sufferance, after termination of his or her tenancy or after written demand of possession by his or her landlord, or a tenant from month to month or a lesser period whose rent is due and unpaid, fails or refuses for five days after demand in writing to surrender and give possession to his or her landlord.

2. The tenant of a person who has made a forcible entry refuses for five days after written demand to give possession to the person upon whose possession the forcible entry was made.

3. A person who has made a forcible entry upon the possession of one who acquired such possession by forcible entry refuses for five days after written demand to give possession to the person upon whose possession the first forcible entry was made.

Best Practices

Land Use and Planning

Cabazon Land Use Ordinance

The “Cabazon Land Use Ordinance” of the Cabazon Band of Mission Indians of the Coachella Valley of California is an important example of a land use code which is designed to deal with high density land use in a small area.

This code highlights an important point in Indian Country land use code development: You must know your land area very well and know exactly what you want to do with it. The Cabazon Band has a small land area near Palm Springs, California and an interstate highway runs through or by it. The Band obviously wanted a code that would respond to its needs for high-density land use and areas for low to high-density residences, mobile home and recreational vehicle development (to take advantage of “snow birds” who live in California in the winter) and commercial use. The code also deals with things such as industrial uses, advertising, outdoor events, parking and landscaping, and enforcement of the code. It is divided into 20 chapters with various subject matters.

Administration

There is a Planning Commission and a Planning Department with the ability to deal with plans by developers for land use. This is similar to county planning commissions and planning departments in the various states. That is, in the states, there are planning commissions and departments that must approve the plans of developers who wish to build on sites of land. The Cabazon ordinance similarly requires any developer of real property or a person authorized by an owner of land to develop a specific plan for use of the land which must be approved by the Planning Commission. Section 6-204 sets out the requirements for a land use plan, and they are actually a good checklist for land development, addressing things as varied as streets, waste disposal and utilities, seismic studies (i.e. earthquakes, because this is in an earthquake zone) and architectural design.

There are two approaches to land use development: One is where there is an attempt to anticipate every possible problem with land use and to put it in a statute, e.g. zoning ordinances. Another is to outline the elements of a land use plan and require the submission of a land use plan which can be approved after public hearings and a decision on whether the plan makes the best use of the land and best protects those who may buy or lease. This also gives an opportunity to use approved plans as the basis of regulation and the creation of individual rights against the developer (i.e. using an approved land use plan as a part of any land title or lease to place restrictions on those who lease or buy from a developer.¹

¹ This is called a Restrictive covenant.≡

Residential Use

This code anticipates various kinds of residential uses. It first discusses “low density residential” housing, which deals with one-family dwellings that may have crops, noncommercial animal use (e.g. horses kept for recreational use), and adjacent areas for public parks, playgrounds and country clubs.² Next, there is “medium-density residential” housing, which deals with two-family dwellings, multiple-family dwellings, bungalow courts and apartment houses. It also deals with churches, libraries, etc. Third, there is “high-density” residential housing to deal with apartments, hotels, motels and resorts, offices, etc. All three levels of density have restrictions on the land size, placement of buildings, and how the land area will be used in accordance with the best land use.

This is designed to plan neighborhoods and the kinds of land use there will be for a given kind of neighborhood or development. People have expectations when they move into an area that the character of the area will remain the same. This kind of density planning makes it possible for a family to be assured that if it buys or leases a little “ranchette” where they can have a horse for their children, that the neighborhood will remain the same and they will not find an apartment house next to their home. Similarly, high-density housing needs to be planned to take into account the nature of a more crowded neighborhood. These sections permit planners to review proposed housing plans to control population and use density for the kind of living people and the Band expect.

Mobile Home and Recreational Use

Another aspect of the particular area is the fact that people who cannot afford a house may want to have a mobile home. A given developer may want to develop a land area for visiting winter “snow birds” to put their recreational vehicles. These are sensitive development issues. Mobile home parks are controversial in many places because some look down on mobile homes. In other areas, there is a danger that mobile home parks may become overcrowded. There are also important law enforcement and criminal justice planning aspects of mobile home park development. Planners and administrators will want to be assured that mobile home residents can have a dignified and safe environment and that recreational vehicle parks are attractive to their users as well. This section of the code deals with the elements of planning that are necessary for these land uses.

Commercial Development

The code first deals with smaller commercial uses, including home furnishing businesses, food stores, restaurants, department stores, clothing stores, etc. This portion of the code is designed to attract those kinds of businesses, and development standards are set out. Next, the code deals with regional commercial uses, which is in the nature of a shopping center.

This code also addresses light, medium and heavy industrial uses. Examples of light industrial uses include research and design facilities, office buildings, warehouses, animal hospitals, gas stations and associated uses. Medium to heavy industrial uses include agricultural use, manufacturing, and thins such as junkyards, dumps, treatment plants, mining, and foundries. There are development standards for each kind of industrial use.

² Here, Cabazon is taking advantage of the fact that in the nearby valleys there are many golf courses and recreation areas. The Band obviously kept an eye on the area’s economic development potential.

Natural Resources and Agriculture

The code anticipates uses of the land for crops, grazing, apiaries (bee raising), fishing lakes, and other kinds of natural resource uses. Here too, there are standards for making an application for such use and restrictions upon uses.

General Provisions for Enforcement

This chapter of the code deals with public and private projects and clearly requires a land use permit which will hold the tribe harmless for any kind of liability which may arise from the particular kind of land use. Rather than rely upon sovereign immunity for protection, the code immunizes the Cabazon Band from suit by a "hold harmless" provision. The difficulty with this approach is that it assumes that the land user will have the resources to do that. Sovereign immunity is the backup.

The general provisions then go on to fix many different kinds of land use restrictions, including planned residential developments, location and size of dwellings, parking, loading zones, yards, and the usual subjects of land use. There are provisions for permits, plot plans, and other restrictions on building.

Advertising

The code has a section to deal with advertising and restrictions upon signs. There follow sections which deal with parking and landscaping and definitions.

Enforcement

This is an ambitious code, with many restrictions which require land users to submit detailed plans for land use and which regulate actual land use. The key to the enforcement of such provisions is the enforcement mechanism. Chapter 19 delegates the responsibility for enforcement to the Tribal Planning Commission and Planning Department to issue licenses and permits, and to a Code Enforcement Office, which is responsible to conformance with the land use code and conditions of approval of permits in accordance with plans.

The difficulty with the enforcement section is that there are no provisions for administrative remedies or administrative appeals, and no provisions for a Cabazon court for enforcement. This likely assumes that enforcement will be in the California court system because California is a "P.L. 280" state.

The enforcement section does not set out detailed instructions for enforcement. While the code is ambitious and has many provisions to assure the quality of land use development in accordance with land use plans, we do not know what resources or expertise the Planning Commission or Department have for the approval of permits, and we do not know what resources the Code Enforcement Department has to investigate for violations. The difficulty with such an ambitious code is that it is highly technical and requires expensive oversight and administration bodies. However, given the nature of any one who wishes to use the Cabazon code, it is an example of an approach to comprehensive land management using planning and land use standards.

**Best Practices:
Land Use and Planning
Code #2: Cabazon Land Use Code**

Title 6

LAND USE*

- Ch. 1. Administration, §§ 6-101–6-103
- Ch. 2. General Plan and Specific Plans, §§ 6-201–6-206
- Ch. 3. Zone Classifications, §§ 6-301, 6-302
- Ch. 4. R-L Low-Density Residential, §§ 6-401, 6-402
- Ch. 5. R-M Medium-Density Residential, §§ 6-501, 6-502
- Ch. 6. R-H High-Density Residential, §§ 6-601, 6-602
- Ch. 7. M/RV Mobile Home/Recreational Vehicle Development, §§ 6-701–6-707
- Ch. 8. C-C Community Commercial, §§ 6-801, 6-802
- Ch. 9. C-R Regional Commercial, §§ 6-901–6-903
- Ch. 10. I-L Light Industrial, §§ 6-1001–6-1003
- Ch. 11. I-M/H Medium-Heavy Industrial, §§ 6-1101–6-1103
- Ch. 12. N-R Natural Resources, §§ 6-1201, 6-1202
- Ch. 13. A-R Agricultural Reserve, §§ 6-1301, 6-1302
- Ch. 14. General Provisions, §§ 6-1401–6-1428
- Ch. 15. Advertising, §§ 6-1501–6-1503
- Ch. 16. Temporary Outdoor Events, §§ 6-1601–6-1606
- Ch. 17. Parking and Landscaping, §§ 6-1701–6-1703
- Ch. 18. Definitions, § 6-1801
- Ch. 19. Enforcement, Legal Procedure and Penalties, §§ 6-1901–6-1904
- Ch. 20. Validity, § 6-2001

CHAPTER 1. ADMINISTRATION

Section 6-101. Short Title.

This title shall be known and may be cited as the "Cabazon Land Use Ordinance."

*Editor's note--The land use ordinance codified in Title 6 was prepared for the Cabazon Band of Mission Indians in August, 1986 by Terra Nova Planning and Research, Inc. Immediately after the title of the ordinance was the following paragraph:

This ordinance repeals and supersedes any and all previous land use ordinances of the Cabazon Band of Mission Indians. The General Council of the Cabazon Band of Mission Indians of the Coachella Valley do ordain as follows:

Cross references--Housing, Title 4; construction and development standards, Title 7.

Section 6-102. Planning Commission.

The planning agency for the Cabazon Band of Mission Indians shall consist of the members of the Planning Commission. The Planning Commission will have final approval on all developments, permits, and variances which may be presented to the Tribe. The Planning Commission will carry out the duties described in this section.

- (1) The Tribal Business Committee will be sitting as the Planning Commission.
- (2) The Planning Commission shall perform planning and zoning duties including proceedings for adopting or amending general and specific plans, changes of zone, amendments to the text of the zoning ordinance, and review of property maps and development plans.
- (3) The Planning Commission shall elect one (1) member as chairman and one (1) as vice chairman, to hold office at the pleasure of the members. A quorum will be a simple majority of the commissioners. The Commission shall hold monthly meetings.

Section 6-103. Planning Department.

The Tribal Planning Department will consist of the Tribe's planning consultants who shall be appointed by the Planning Commission to conduct the Tribe's land use planning and hold this position at the pleasure of the Planning Commission. The Planning Department shall provide technical assistance to the Tribe on a wide range of land use planning activities. The Planning Department shall aid the Planning Commission by providing them guidance and technical assistance under contract to perform these duties. The Planning Department shall perform functions relating to technical planning, zoning and land use plans. The Tribal Planning staff shall take its direction from the Tribal Administrator and Planning Commission.

CHAPTER 2. GENERAL PLAN AND SPECIFIC PLANS**Section 6-201. General Plan—Adoption; Availability.**

The general plan of the Cabazon Band of Mission Indians, or any part or element thereof, and any amendment to the plan or

any part or element thereof, shall be adopted by the Planning Commission in its present form or hereafter amended, and in accordance with this chapter. The land use element of the general plan shall be available to the public.

Section 6-202. Same—Applications to Amend Land Use Element.

(a) A developer of real property, or a person authorized by the tribal authorities, shall have the right to request that the Tribe consider an amendment to the land use element of the general plan as it has been applied to a specific proposed parcel of tribal lands. The right to request consideration of land use or project approval does not imply that the request or change will be approved.

(b) Applications for proposed developments or modifications to an approved plan must be given to the Planning Department Director, prior to consideration for Tribal Planning Commission review and determination.

Section 6-203. Specific Plans—Adoption; Hearing.

Specific plans, and amendments thereto, shall be adopted upon the approval of the Planning Commission, as now written or hereafter amended, and this article. Any specific plan may be set for hearing by the Planning Director or Planning Commission.

Section 6-204. Same—Applications for Specific Plan of Land Use.

(a) The proposed developer of real property, or a person authorized by the owner, shall have the right to request that the Tribe consider a specific plan of land use or an amendment to an adopted specific plan for the real property. The right to request consideration of a specific plan does not imply that the plan will be approved. An application for a specific plan shall be made pursuant to this section.

(b) A proposal to adopt or amend a specific plan shall be given by the developer or his authorized representative to the Tribal Planning Director for a hearing before the Tribal Planning Commission.

(c) Applications shall be made to the Planning Department Director, on the forms provided by the tribal authorities. The application shall supply all required information, which may include part or all of the following, depending on the nature of the plan, and shall be in the form of a text and accompanying maps, plans and exhibits:

- (1) A preliminary development plan of the entire proposed development, drawn to scale, showing: land uses, densities, lot design, traffic circulation, street design, private roadways, pedestrian circulation, estimated population, reservations and dedications for public uses, including schools, parks, playgrounds, open spaces and major landscaping features. All elements and amounts to be listed shall be characterized as existing or proposed, including topography, and shall be shown only in such detail as is necessary to indicate clearly the intent and impact of development.
- (2) A tabulation of land area to be devoted to various uses, including open spaces, and a calculation of the overall density and the average densities per net residential acre of the various residential areas proposed.
- (3) A phasing plan showing various units of development through completion, and indicating the areas and sizes of such developmental phases.
- (4) A statement and graphics describing the existing topography, vegetation, soil conditions, and drainage of the proposed development.
- (5) A description of the proposed grading program.
- (6) A statement proposing the method of maintaining and perpetuating common open areas and facilities.
- (7) Identification of proposed future responsibility for and maintenance of all streets, driveways, sidewalks, pedestrian

ways, open space areas, recreation spaces, structures, and facilities.

- (8) Proposed use of natural features such as ponds, lakes, river beds, and floodplains.
- (9) Design and acreage of any golf courses and other open space features, their intended means of maintenance, and whether they are to be public, private or semiprivate.
- (10) A statement of solid waste disposal and utility service.
- (11) Such additional information as may be required by the tribal authorities for a particular project.

(d) Whenever a proposed specific plan of land use will substantially determine the location of any building sites or structures, a flood protection study may be requested by the Tribal Planning Department.

(e) Whenever a proposed specific plan of land use is for a project subject to the Alquist-Priolo Special Studies Zones, the developer may be requested by the Tribal Planning Department to complete a seismic study as part of the development processing of the specific plan.

(f) Whenever an application is filed for a commercial or industrial development, the application shall include the following additional information:

- (1) Proposed form of ownership and related application information as requested by the tribal authorities.
- (2) Description of basic types of uses, including their ultimate range of square footage.
- (3) Market analysis.
- (4) Traffic analysis.
- (5) Architectural design criteria for the proposed commercial or industrial complex, requiring an architectural perspective depicting the basic architectural theme of the project, or elevations sufficient to indicate architectural and design impacts.

Section 6-205. Hearings on General Plans and Specific Plans.

Proposals to adopt or amend the Cabazon Indian Reservation General Plan or any site specific development plan shall be first reviewed by the Tribal Planning Department, and then a hearing must be held before the Tribal Planning Commission where the final approval or denial will be given.

Section 6-206. Reports on Conformity with Tribal General Plan or Specific Plan.

The Tribal Planning Department is designated as the planning agency which will report on the progress of any major development on the Reservation, as to conformity with the adopted Tribal General Plan or any adopted specific plan.

CHAPTER 3. ZONE CLASSIFICATIONS**Section 6-301. Zones Enumerated.**

For the purpose of providing a uniform basis for zoning, the following zone classifications may be applied to the lands of the Cabazon Indian Reservation:

- R-L Low-Density Residential
- R-M Medium-Density Residential
- R-H High-Density Residential
- M/RV Mobile Home/Recreational Vehicle Development
- C-C Community Commercial
- C-R Regional Commercial
- I-L Light Industrial
- I-M/H Medium-Heavy Industrial
- N-R Natural Resources
- A-R Agricultural Reserve
- P-L Parking and Landscaping Requirements

Section 6-302. Use of Zone Classifications.

The zone classifications are specifically set forth in subsequent chapters of this title, to which reference should be made to determine all the uses permitted therein.

CHAPTER 4. R-L LOW-DENSITY RESIDENTIAL**Section 6-401. Uses Permitted.**

The following uses shall be permitted in the R-L Zone:

- (1) One-family dwellings.
- (2) Field crops, flower and vegetable gardening, tree crops, and greenhouses used only for purposes of propagation and culture, including the sale thereof from the premises.
- (3) The noncommercial keeping of animals on lots not less than twenty thousand (20,000) square feet in area and one hundred (100) feet in width.
- (4) Public parks and public playgrounds, golf courses with standard length fairways, and country clubs.
- (5) Home occupations.

Section 6-402. Development Standards.

The following standards of development shall apply in the R-L Zone.

- (1) Building height shall not exceed three (3) stories, with a maximum height of thirty (30) feet.
- (2) Lot area shall be not less than seven thousand two hundred (7,200) square feet. The minimum lot area shall be determined by excluding that portion of a lot that is used solely for access to the portion of a lot used as a building site.
- (3) The minimum average width of that portion of a lot to be used as a building site shall be sixty (60) feet with a minimum average depth of one hundred (100) feet. That por-

tion of a lot used for access on "flag" lots shall have a minimum width access drive of twenty (20) feet.

- (4) The minimum frontage of a lot shall be sixty (60) feet, except lots fronting on knuckles or cul-de-sacs, which may have a minimum frontage of thirty-five (35) feet.
- (5) Minimum yard requirements are as follows:
 - a. The front yard shall be not less than twenty (20) feet, measured from the existing street line, or from any future street line, whichever is nearer the proposed structure.
 - b. Side yards on interior and through lots shall be not less than ten (10) percent of the width of the lot, but not less than three (3) feet in width in any event, and need not exceed a width of five (5) feet. Side yards on corner and reversed corner lots shall be not less than ten (10) feet from the existing street line or from any future street line, whichever is nearer the propose structure, upon which the main building sides, except that where the lot is less than fifty (50) feet wide the yard need not exceed twenty (20) percent of the width of the lot.
 - c. The rear yard shall not be less than ten (10) feet.
- (6) Automobile storage space shall be provided by a garage or carport.

CHAPTER 5. R-M MEDIUM-DENSITY RESIDENTIAL

Section 6-501. Uses Permitted.

The following uses are permitted in R-M Zones:

- (1) Any use permitted in the R-L Zone.
- (2) Two-family dwellings, multiple-family dwellings, bungalow courts and apartment houses.
- (3) Boarding, rooming and lodging houses.

- (4) Churches, educational institutions, public libraries, museums and art galleries not operated for compensation or profit.
- (5) Mobile home parks may be permitted if the Planning Commission approves a specific project, and it will not negatively impact other housing existing or planned for the area.
- (6) All structures to be constructed on a tribal parcel must first have an approved plot/development plan approved by the Planning Commission.

Section 6-502. Multiple-Family Dwelling Standards.

- (a) Building standards such as height, lot area, yard requirements are the same as for R-L Zones.
- (b) Lot coverage by structures may not exceed sixty (60) percent of the net lot area.
- (c) Automobile storage space can be provided by garages, carports and/or parking stalls. A minimum of one (1) covered parking space shall be provided for each dwelling unit.
- (d) The distance required between main buildings is negotiated by the contractor/developer and the Tribal Planning Commission for each project.

CHAPTER 6. R-H HIGH-DENSITY RESIDENTIAL

Section 6-601. Uses Permitted.

- (a) The following uses shall apply in R-H Zones. Additional uses may be permitted by the Tribal Planning Commission as determined suitable by the tribal authorities.
 - (1) Any use permitted in the R-M Zone.
 - (2) Apartment houses.
 - (3) Hotels, resort hotels, and motels.
 - (4) Institutional uses.

- (5) Medical and dental offices.
- (6) Chiropractic offices.
- (7) Law offices.
- (8) Architectural, engineering, and community planning offices, provided there is no outdoor storage of materials, equipment, or vehicles, other than passenger cars.
- (9) Real estate offices.

(b) Accessory buildings, to a specific permitted use, provided that the accessory building is established incidental to a principal use and does not change the character of that use.

Section 6-602. Development Standards.

The following standards of development shall apply in the R-H Zone.

- (1) The minimum lot area shall be seven thousand two hundred (7,200) square feet with a minimum average width of sixty (60) feet and a minimum average depth of one hundred (100) feet, unless different minimums are specifically required in a particular area.
- (2) The minimum front yard setback shall be twenty (20) feet, rear yard setbacks shall be ten (10) feet for buildings that do not exceed thirty-five (35) feet in height. Any portion of a building which exceeds thirty-five (35) feet in height shall be set back from the front and rear lot lines an additional two (2) feet plus two (2) feet for each foot by which the height exceeds thirty-five (35) feet. The front setback shall be measured from any existing or future street line. The rear setback shall be measured from the existing rear lot line or from any recorded alley or easement; if the rear line adjoins a street, the rear setback requirement shall be the same as required for a front setback.
- (3) The minimum side yard shall be five (5) feet for buildings that do not exceed thirty-five (35) feet in height. Any portion of a building which exceeds thirty-five (35) feet in height shall be set back from each side lot line five (5) feet plus two

- (2) feet for each foot by which the height exceeds thirty-five (35) feet; if the side yard adjoins a street, the side setback requirement shall be the same as required for a front setback.
- (4) No lot shall have more than fifty-five (55) percent of its net area covered with buildings or structures.
- (5) The maximum ratio of floor area to lot area shall not be greater than two to one (2:1), not including basement floor area.
- (6) All buildings and structures shall not exceed fifty-five (55) feet in height, unless a height up to seventy-five (75) feet is specifically permitted under this title.
- (7) Automobile storage space shall be provided as required by this title.

CHAPTER 7. M/RV MOBILE HOME/RECREATIONAL VEHICLE DEVELOPMENT

Section 6-701. Uses Permitted.

- (a) The following uses shall be permitted in the M/RV Zone:
- (1) One-family mobile homes and one-family factory built and conventional dwelling units for residential use as a part of a subdivision development.
- (2) Travel trailers, recreational trailers and vehicles.
- (b) The following accessory structures and uses are permitted on individual lots:
- (1) Cabana,* ramada,* patio slab, carport or garage, storage and washroom buildings.
*Note: Excluded from R.V. Zone.
- (2) Community recreation facilities, as a part of the subdivision development.
- (3) Temporary real estate tract offices, to be used only for the sale of subdivision or membership interests.
- (4) On-site resident manager apartment.

Section 6-702. Mobile Home Subdivision Development Standards.

The following standards of development shall apply to mobile home subdivisions:

- (1) Mobile homes shall meet the following minimum lot setbacks: twenty (20) feet front yard, five (5) feet side yard and five (5) feet rear yard. The twenty-foot front setback may be reduced on interior streets to ten (10) feet if community recreation and open space areas are developed as a part of the subdivision.
- (2) Building height shall not exceed two (2) stories, with a maximum height of twenty (20) feet.
- (3) Minimum lot size shall be either of the following:
 - a. Minimum lot size of six thousand (6,000) square feet, with a minimum average width of sixty (60) feet and a minimum frontage of not less than forty-five (45) feet and a minimum average depth of one hundred (100) feet for each lot.
 - b. Minimum lot size of three thousand six hundred (3,600) square feet, with a minimum average width of forty (40) feet and a minimum frontage of not less than thirty (30) feet, if community open areas or recreational facilities, or a combination thereof, are developed as a part of the subdivision. A minimum of seven hundred (700) square feet of landscaped recreation/open space area shall be provided per mobile home lot.
- (4) The minimum site that may be developed for a mobile home park shall be five (5) acres gross.
- (5) Minimum area of landscaped open space for each mobile home site located on the lot or in common open space/recreation areas shall be not less than two thousand five hundred (2,500) square feet.

Section 6-703. Travel Trailer, Recreational Trailer/Vehicle Park Standards—Applicability.

The following standards of development shall apply to travel trailer, recreational trailer and R.V. parks.

Section 6-704. Same—General Requirements.

(a) Each trailer space shall have a minimum one thousand two hundred fifty (1,250) square feet, with minimum width of twenty-five (25) feet, measured at right angles to the side lines.

(b) No trailer, recreational vehicle or truck/camper unit may be larger than eight (8) feet by forty (40) feet.

(c) No cabanas or ramadas are permitted.

Section 6-705. Same—Setbacks.

(a) If the property across the street from the R.V. park is zoned residential or agricultural, trailers/vehicles shall maintain no less than a twenty-foot setback from the street right-of-way. On all other property lines, the trailer shall observe a five-foot minimum setback.

(b) No trailer or structure other than fences and walls may occupy the five-foot front, the three-foot side, and the three-foot rear yard setbacks hereby established for each trailer site.

Section 6-706. Plot Plan for General Development of R.V. Parks.

Twelve (12) copies of a plot plan, drawn to scale and showing the proposed development and improvements, shall be submitted with the conditional use permit application.

- (1) On travel trailer or recreational trailer parks up to ten (10) acres, the scale shall be one (1) inch to thirty (30) feet. On larger than ten (10) acres the scale may be one (1) inch to fifty (50) feet.
- (2) A vicinity map showing the general location shall be included on the plot plan.
- (3) A typical trailer space showing parking area, trailer location and all dimensions at one (1) inch to twenty (20) feet or one (1) inch to six (6) feet scale shall be included on the plot plan.

- (4) North arrow, property dimensions, access streets, adjoining property lines, side yard dimensions and all easements shall be shown.
- (5) A typical interior street cross section and proposed street grades shall be shown on the plot plan.
- (6) A drainage plan shall be shown on the plot plan. This shall include a plan to control both on-site or off-site storm water runoff through the project.
- (7) Existing contours shall be shown.

Section 6-707. Development Standards for Recreational Vehicles Parks.

Improvements shall conform to the following minimum standards:

- (1) A car space shall be provided for each trailer site not less than nine (9) feet by twenty-five (25) feet in size, and may be a part of the driveway into or through the site.
- (2) Minimum radii on street curves shall be not less than twenty (20) feet.
- (3) Streets of a minimum width of twenty (20) feet shall be compacted with decomposed granite treated with penetration oil (one-half ($\frac{1}{2}$) gallon per square yard), followed in not less than six (6) months by a seal coat (one-quarter ($\frac{1}{4}$) gallon per square yard).
- (4) Trailer site and driveways shall be of rock, decomposed granite or similar material.
- (5) Off-street visitor parking shall be provided at recreation areas at the rate of one (1) parking space for each ten (10) trailer sites and shall be surfaced in the same manner as the street.
- (6) Highway access shall be safe and convenient and designed in accordance with accepted trailer engineering standards. The number of access points to one (1) street shall be limited to two (2).

- (7) Sanitary facilities, sewage disposal and domestic water systems shall be provided and designed as required by the tribal authorities. Projects will tie into existing sewer and water systems wherever possible.
- (8) Laundry facilities shall be provided and located at the rear or interior of the park and shall be screened from view.
- (9) Rubbish and garbage disposal shall be provided, and enclosed or screened from view, and shall be maintained so as to prevent fly or rodent infestation. Those areas shall be situated at the rear or interior of the R.V. trailer park.
- (10) Recreational facilities should be provided, and located in the interior of the park rather than at the boundaries, and shall be properly maintained at all times.
- (11) Walls, fences, and landscaping will be required as defined in Chapter 14 of this title.

CHAPTER 8. C-C COMMUNITY COMMERCIAL

Section 6-801. Uses Permitted.

(a) A wide variety of businesses are allowed in C-C Zones. The following listing is abbreviated and not meant to be all inclusive. The Planning Department shall process applications and shall recommend to the Planning Commission the approval or denial of any project or business for which a plot plan application has been submitted. Those businesses listed below are to be enclosed within buildings with limited outdoor storage or display areas.

- (1) *Home furnishings.* Appliance, furniture, carpet, drapery, paint and wallpaper stores and household goods.
- (2) *Food stores.* Grocery, mini-markets, frozen food lockers, wholesale food jobbers, meat markets, poultry markets, delicatessens, candy stores and produce markets.
- (3) *Restaurants.* Bakery shops and distributors, catering services, ice cream shops, and restaurant and fast-foods outlets.

- (4) *Department stores.* Major department stores, book stores, dry goods, leather goods stores, record and video stores, tobacco shops, tailor shops, toy shops, watch repair, sporting goods and stationery stores.
- (5) *Clothing stores.* Men's and women's apparel, boutiques, fashion marts, jewelry stores, and shoe stores.
- (6) *Liquor stores.* Bars and cocktail lounges, wholesale and retail liquor stores.
- (7) *Car dealers.* Automobile repair garages, new and used car lots, tire sales and service, and automobile parts and supply stores.
- (8) *Drug stores.* Barber and beauty shops, drug stores, film, dental, medical, and research and testing laboratories.
- (9) *Entertainment.* Theaters, billiard and pool halls, bowling alleys, dance halls, and recording studios.
- (10) *Professional.* Banks and financial institutions and offices including business, law, medical, dental, chiropractic, architectural, engineering, community planning and real estate.

(b) The following uses are permitted, together with outside storage and display of materials appurtenant to such use, provided a conditional use permit has been approved by the Planning Commission. The following listing is abbreviated and not meant to be all inclusive.

- (1) *Vehicle sales.* Automobile sales and rental agencies, bicycle sales, motorcycle sales, boat and marine sales, golf carts, mobile homes and recreational vehicles, and truck sales, service and storage.
- (2) *Equipment rental services.* Gardening rental equipment, and truck and trailer rentals.

Section 6-802. Development Standards.

The following standards of development are required in C-C Zones.

- (1) The minimum lot area requirement of a community commercial center or facility is ten thousand (10,000) square feet.

- (2) Minimum front and rear yard setbacks shall be ten (10) feet, and the side yard shall be five (5) feet; where commercial development is bounded by residentially zoned land, twice the normal setback for that yard shall be required.
- (3) All roof-mounted mechanical equipment shall be screened from the ground elevation view to a minimum sight distance of one thousand three hundred twenty (1,320) feet.
- (4) Buildings shall not exceed thirty-five (35) feet, unless a higher limit is specifically approved by the Planning Commission and in no case shall exceed fifty-five (55) feet in height. Buildings in excess of thirty-five (35) feet shall provide an additional two (2) feet of setback per additional foot in height.

CHAPTER 9. C-R REGIONAL COMMERCIAL

Section 6-901. Uses Permitted.

(a) Regional commercial zones offer a wide variety of businesses. The following listing is abbreviated and not meant to be all inclusive. The Planning Department shall process plot plan applications and shall recommend to the Planning Commission the approval or denial of any project or business.

- (1) *Home furnishings.* Appliance, furniture, carpet, drapery, paint and wallpaper stores and household goods.
- (2) *Food stores.* Grocery, mini-markets, frozen food lockers, wholesale food jobbers, meat markets, poultry markets, delicatessens, candy stores and produce markets.
- (3) *Restaurants.* Bakery shops and distributors, catering services, ice cream shops, and restaurant and fast-foods outlets.
- (4) *Department stores.* Major department stores, book stores, dry goods, leather goods stores, record and video stores, tobacco shops, tailer shops, toy shops, watch repair, sporting goods and stationery stores.

- (5) *Clothing stores.* Men's and women's apparel, boutiques, fashion marts, jewelry stores, and shoe stores.
- (6) *Liquor stores.* Bars and cocktail lounges, wholesale and retail liquor stores.
- (7) *Auto service/supply.* Automobile repair garages, new and used car lots, tire sales and service, and automobile parts and supply stores.
- (8) *Drug stores.* Barber and beauty shops, drug stores, film, dental, medical, and research and testing laboratories.
- (9) *Entertainment.* Theaters, billiard and pool halls, bowling alleys, dance halls and recording studios.
- (10) *Professional.* Banks and financial institutions, and offices including business, law, medical, dental, chiropractic, architectural, engineering, community planning and real estate.
- (11) *Tourist accommodations.* Hotels, resort hotels, motels and country clubs.
- (12) *Tourist specialty businesses.* Amusement parks, outdoor and indoor recreation facilities (water slides, skating, miniature golf, etc.), specialized food and drink establishments, gambling casinos and gift/souvenir shops.

(b) The following uses are permitted, together with outside storage and display of materials appurtenant to such use, provided a conditional use permit has been approved by the Planning Commission. The following listing is abbreviated and not meant to be all inclusive.

- (1) *Vehicle sales.* Automobile sales and rental agencies, bicycle sales, motorcycle sales, boat and marine sales, golf carts, mobile homes and recreational vehicles, and truck sales, service and storage.
- (2) *Equipment rental services.* Gardening rental equipment, and truck and trailer rentals.
- (3) *Nurseries.* Garden supply houses and nurseries.

- (4) *Wholesale/retail home supplies.* Home supply centers, lumber yards, boat sales, and plumbing and electrical centers.

(c) *Accessory uses permitted.* An accessory use to a permitted use is allowed, provided the accessory use is established on the same lot or contiguous parcel of land, and is incidental to, and consistent with the character of the permitted principal use, including but not limited to:

- (1) Limited manufacturing, fabricating, processing, packaging, treating and incidental storage related thereto, provided any such activity shall be in the same line of merchandise or service as the trade or service business conducted on the premises, and in an enclosed building.
- (2) Reserved.

Section 6-902. Commercial Specific Plan Required.

For projects within regional commercial zones, developers shall provide the Tribal Planning Commission, in the early design phase, a specific commercial plan for the projected development. The plan will include a feasibility study and basic architectural designs such as a site plan, elevations and plot plan for the specific location desired.

Section 6-903. Development Standards.

The following shall be the standards of development in C-R zones.

- (1) There is a minimum lot area requirement of twenty thousand (20,000) square feet.
- (2) Minimum front and rear yard setbacks shall be ten (10) feet, and side yard shall be five (5) feet. Where commercial development is bounded by residentially zoned land, twice the normal setback for that yard shall be required.
- (3) Automobile storage space shall be provided by the developer.

- (4) All roof-mounted mechanical equipment shall be screened from the ground elevation view to a minimum sight distance of one thousand three hundred twenty (1,320) feet. All buildings and structures shall not exceed fifty-five (55) feet in height, unless a height of up to seventy-five (75) feet is specifically permitted under this title.
- (5) Trash areas shall be screened with an opaque six-foot high fence or wall and shall have an opaque gate.
- (6) Buildings shall not exceed thirty-five (35) feet, unless a higher limit is specifically approved by the Planning Commission and in no case shall exceed fifty-five (55) feet in height. Buildings in excess of thirty-five (35) feet shall provide an additional two (2) feet of setback per additional foot in height.

CHAPTER 10. I-L LIGHT INDUSTRIAL

Section 6-1001. Uses Permitted in I-L Light Manufacturing Zone.

(a) The following uses are permitted, provided an industrial park plot plan application has been approved pursuant to the Tribal Planning Commission, including preliminary plot plans, elevations, and floor plans. A wide variety of businesses and industries are permitted in the I-L Zone, and the following listing is abbreviated and not meant to be all inclusive.

- (1) Research and design facilities.
- (2) Office buildings.
- (3) Light manufacturing, conducted in an enclosed building, except that incidental outside storage is permitted.
- (4) Warehousing.
- (5) Wholesale distribution of manufactured products.
- (6) Public utility substations, not including power generation.
- (7) Financial institutions.

- (8) Restaurants.
- (9) Animal hospitals.

(b) The following uses are permitted, provided a conditional use permit has been granted by the Planning Commission:

- (1) Heliports.
- (2) Motels.
- (3) Gasoline service stations.
- (4) Mobile homes for caretakers or watchmen and their families, where a permitted and existing commercial or manufacturing use is established.

Section 6-1002. Industrial Specific Plan Required.

For projects located within I-L Light Industrial Zones, and consisting of fifteen (15) acres or more, developers shall provide the Tribal Planning Commission, in the early design phase, with an industrial specific plan of land use for the proposed development. The plan will include a feasibility study and basic architectural designs such as a site plan and elevations, street and landscaping plans for the specific location desired. In addition, the following are required from the developer:

- (1) A description of the proposed industrial operation, in sufficient detail to fully describe the nature and extent of the proposed use.
- (2) A description explaining the proposed method for handling traffic conditions, noise, glare, odor and vibration.
- (3) Description explaining the proposed method for treatment and disposal of sewage and industrial waste.
- (4) An architectural perspective and conceptual elevations of all buildings and grounds, showing the relationship of the proposed development to adjacent properties.

Section 6-1003. Development Standards.

The following standards of development are required in the I-L Zone:

- (1) There is a minimum lot area requirement of fifteen (15) acres with a minimum average lot width of one hundred (100) feet.
- (2) The maximum height of all structures, including buildings, shall be thirty-five (35) feet at the yard setback line. Any portion of a structure that exceeds thirty-five (35) feet in height shall be set back from each yard lot line not less than two (2) feet for each one (1) foot in height that is in excess of thirty-five (35) in feet. All buildings and structures shall not exceed fifty-five (55) feet in height, unless a height up to seventy-five (75) feet for buildings, or ninety-five (95) feet for other structures, is specifically permitted under this title.
- (3) A minimum fifteen (15) percent of the site shall be landscaped and automatic irrigation shall be installed.
- (4) A minimum twenty-five-foot setback shall be required on any street. A minimum ten-foot strip adjacent to the street line shall be appropriately landscaped and maintained, except for designated pedestrian and vehicular accessways. The remainder of the setback may be used for off-street automobile parking, driveways or landscaping.
- (5) The minimum sideyard setback shall be a minimum of ten (10) feet of the two (2) side lot areas combined, and the minimum rear yard setback shall be fifteen (15) feet.
- (6) Automobile storage space shall be provided by the developer in accordance with Chapter 17 of this title.
- (7) All roof-mounted mechanical equipment shall be screened from the ground elevation view to a minimum sight distance of one thousand three hundred twenty-five (1,325) feet.

- (8) Parking, loading, trash and service areas shall be screened by structures or landscaping, and shall be located in such a manner as to minimize noise or odor nuisance.
- (9) Outside storage shall be screened with structures and/or landscaping. Landscaping shall be placed in a manner adjacent to the exterior boundaries of the area so that materials stored are screened from view.

CHAPTER 11. I-M/H MEDIUM-HEAVY INDUSTRIAL

Section 6-1101. Uses Permitted.

The following businesses and industries are allowed in I-M/H Zone. The following listing is abbreviated and not meant to be all inclusive. The Planning Department shall process applications and shall recommend to the Planning Commission the approval or denial of any project or business.

- (1) Agricultural uses of the soils for crops, including the grazing of animals.
- (2) The following industrial and manufacturing uses are permitted, provided the Tribal Planning Commission approves of the use:
 - a. Food products.
 - b. Textile products.
 - c. Lumber and wood products.
 - d. Paper products.
 - e. Rubber, plastic and synthetic products.
 - f. Leather products.
 - g. Stone, clay, glass and concrete products.
 - h. Metal products, fabricated.
 - i. Machinery.
 - j. Electrical equipment.
 - k. Transportation and related industries.
 - l. Engineering and scientific instruments.
 - m. Other compatible industrial uses as determined by the Planning Commission.

- (3) The following uses are permitted, provided a conditional use permit has been granted by the Planning Commission.
- a. Auto wrecking and junk yards.
 - b. Abattoirs (slaughterhouses).
 - c. Paper storage and recycling.
 - d. Cotton ginning.
 - e. Acid and abrasives manufacturing.
 - f. Chemical and related products.
 - g. Fertilizer production, processing of either organic or inorganic fertilizer.
 - h. Petroleum and bulk fuel storage, above ground.
 - i. Paints and varnishes manufacturing and incidental storage.
 - j. Concrete batch plants and asphalt plants.
 - k. Disposal service operations.
 - l. Drive-in theaters.
 - m. Airports.
 - n. Dump sites.
 - o. Recycling of wood, metal, and construction wastes.
 - p. Sand blasting.
 - q. Gas, steam, and oil drilling operations.
 - r. Sewerage treatment plants.
 - s. Swap meets.
 - t. Smelting metal and foundries.
 - u. Mining.
 - v. Outdoor advertising structures.

Section 6-1102. Development Standards.

The following standards of development are required in the I-M/H Zone.

- (1) There is a minimum lot area requirement of twenty thousand (20,000) square feet with a minimum average lot width of one hundred (100) feet.
- (2) The maximum height of all structures, including buildings, shall be thirty-five (35) feet at the yard setback line. Any portion of a structure that exceeds thirty-five (35) feet in height shall be set back from each lot line not less than two (2) feet for each one (1) foot in height that is in excess

of thirty-five (35) feet. All buildings and structures shall not exceed fifty-five (55) feet in height, unless a height up to seventy-five (75) feet for buildings or ninety-five (95) feet for other structures is specifically permitted under this title.

- (3) A minimum fifteen (15) percent of the site shall be landscaped and automatic irrigation shall be installed.
- (4) A minimum twenty-five-foot setback shall be required on any street. A minimum ten-foot strip adjacent to the street line shall be appropriately landscaped and maintained, except for designated pedestrian and vehicular accessways. The remainder of the setback may be used for off-street automobile parking, driveways or landscaping.
- (5) The minimum sideyard setback shall equal not less than ten (10) feet. The minimum rear yard setback shall be fifteen (15) feet.
- (6) Automobile storage space shall be provided by the developer, in accordance with Chapter 17, "Landscape and Parking Requirements," of this title.
- (7) All roof-mounted mechanical equipment shall be screened from the ground elevation view to a minimum sight distance of one thousand three hundred twenty (1,320) feet.
- (8) Parking, loading, trash and service areas shall be screened by structures or landscaping. They shall be located in such a manner as to minimize noise or odor nuisance.
- (9) Outside storage shall be screened with structures or landscaping. Landscaping shall be placed in a manner adjacent to the exterior boundaries of the area so that materials stored are screened from view.

Section 6-1103. Industrial Specific Plan Required.

For projects located within I-M/H Medium to Heavy Industrial Zones, developers shall provide the Tribal Planning Commission, in the early design phase, with a specific industrial plan for the projected development. The plan will include a feasibility study and basic architectural designs such as a site plan, elevations,

and plot plan for the specific location desired. In addition, the following are required from the developer:

- (1) A description of the proposed industrial operation in sufficient detail to fully describe the nature and extent of the proposed use.
- (2) A description explaining the proposed method for handling traffic conditions, noise, glare, odor and vibration.
- (3) A description explaining the proposed method for treatment and disposal of sewage and industrial waste.
- (4) An architectural perspective of all buildings and grounds, showing the relationship of the proposed development to adjacent properties.

CHAPTER 12. N-R NATURAL RESOURCES

Section 6-1201. Uses Permitted.

(a) The following uses are allowed in N-R Zone. The following listing is abbreviated and not meant to be all inclusive. The Planning Department will review plot plan applications and shall recommend to the Planning Commission approval or denial of any proposed use of natural resource designated lands.

- (1) One-family dwellings, guest dwellings, automobile storage garages, accessory buildings.
- (2) Field and tree crops.
- (3) The grazing of animals.
- (4) Apiaries.
- (5) Golf courses and customary appurtenant facilities, including clubhouses, restaurants and retail shops.
- (6) Mobile homes, located on a parcel being farmed, which are occupied by the owner or operator of the farm, or employees thereof.
- (7) Riding academies and stables, commercial and noncommercial.

- (8) Fishing lakes, commercial and noncommercial.
- (9) Travel trailer parks.
- (10) Recreational trailer parks.
- (11) Migrant agricultural worker mobile home parks.
- (12) Resort hotels.
- (13) Mining operations.
- (14) Rock crushing plants, and aggregate washing, screening and drying facilities and equipment.
- (15) Solar and photovoltaic emergency systems/power plants.
- (16) Water wells and appurtenant pump houses.
- (17) Picnic grounds and parks.

(b) The following uses may be permitted, subject to approval of a conditional use permit by the Tribal Planning Commission:

- (1) Public utility substations.
- (2) Museums and menageries, commercial and non-commercial.

Section 6-1202. Development Standards.

The following shall be the standards of development in the N-R Zone, except for the above-listed uses that are specifically allowed a lesser standard:

- (1) Minimum lot size and depth will be decided by the Tribal Planning Commission on a case-by-case basis. Residential lots shall be a minimum of two and five-tenths (2.5) acres.
- (2) Reserved.

CHAPTER 13. A-R AGRICULTURAL RESERVE

Section 6-1301. Uses Permitted.

(a) The following agricultural uses are allowed in A-R Zone. The following listing is abbreviated and not meant to be all inclusive. The Planning Department will review a plot plan appli-

cation and recommend to the Planning Commission approval or denial, any proposed use of agricultural lands.

- (1) Farms for animal and fowl production, raising crops and processing food products.
- (2) Grazing animals, both commercial and noncommercial.
- (3) Farms or establishments for the selective or experimental breeding and raising of animals.
- (4) Processing, packaging and marketing of waste products.
- (5) Public utility facilities.
- (6) Waterworks facilities.
- (7) An additional one-family dwelling (including mobile homes), excluding the principal dwelling, shall be allowed.

(b) The following uses are permitted subject to the approval of a plot plan pursuant to the approval of the Tribal Planning Commission. The plot plan approval may include conditions requiring fencing to assure that the use is compatible with the surrounding area and use.

- (1) A permanent commercial outlet for the display and sale of agricultural produce.
- (2) Mechanical processing and packaging and marketing of waste poultry and animal products.
- (3) Storage and utilization of agriculturally related chemicals, including pesticides, herbicides, solvents, etc.

Section 6-1302. Development Standards.

(a) Lot frontage and area, front side, and rear yards will be determined on a case-by-case basis by the Tribal Planning Commission.

(b) Setback requirements for residential development on the A-R Zone shall conform with those of R-L Zone.

CHAPTER 14. GENERAL PROVISIONS**Section 6-1401. Conflicting Regulations.**

If any section of this title is in conflict with any other section thereof, then the Tribal Planning Commission will rule on the issue or regulation.

Section 6-1402. Scope of Regulations.

All land, buildings and structures to be located upon tribal lands shall be used as hereinafter provided.

(1) *Private projects:*

- a. No land, building or structure shall be used, constructed, altered or maintained except in conformance with the provisions of this title.
- b. All building permits must be issued by the Planning Commission and approval received in advance before construction of any project.
- c. The Tribal Planning Commission reserves the right to rule on any regulation and project, and may change the terms and conditions of a project, thereby allowing a variance from these regulations. (See Section 6-1420.)
- d. The term "project" shall include any private or tribal project for developing tribal lands.

(2) *Public projects:*

- a. All federal, state, county or city governmental project shall be subject to the provisions of this title, including such projects operated by any combination of these agencies or by a private person for the benefit of the Tribe, with the Planning Commission's approval.
- b. Reserved.

Section 6-1403. Tribe To Be Held Harmless.

Any person who obtains, or files an application to obtain a permit or approval of any kind under the provisions of this title shall hold the Tribe harmless for any liability or claim of liability, including any claims of the applicant, arising out of the issuance

of the permit or approval, or the denial thereof, or arising out of any action by any person seeking to have a granted permit or approval held void by a court of law.

Section 6-1404. Special Studies Zones; Geologic Report Requirements.

In addition to the requirements of this title, applicants who are proposing a construction project/development shall provide a geologic report on the property involved in the project.

Section 6-1405. Standards for Planned Residential Developments.

Planned residential developments shall be constructed in accordance with the herein listed requirements.

- (1) A subdivision map (sublease division) will be prepared by the developer and submitted to the Tribal Planning Commission and Planning Department.
- (2) For regulations in regard to density, open areas, height limitations, yard setbacks, streets, residential structures, recreational buildings, maintenance of common areas, trash areas, screening, walkways, access and parking, the Tribal Planning Commission and Planning Department will make a determination as to whether each specific developer and project meets tribal approval. Development standards for the zone in which the proposed project occurs shall apply.
- (3) For senior citizen planned residential developments, the overall project is to be designed for ease of use by persons of advanced age, and additional requirements may apply.

Section 6-1406. Nonconforming Structures and Uses.

The following provisions shall apply to all nonconforming structures and uses:

- (1) Any nonconforming structure or use may be continued and maintained if the Tribal Planning Commission approves the use. The discontinuance of a nonconforming use for a period of one (1) year shall preclude the reestablishment of

the nonconforming use without the approval of the Planning Commission.

(2) Reserved.

Section 6-1407. Parcel Determination.

The Tribal Planning Commission and Planning Department will assist in determining which site is suitable for a project in cooperation with the potential developer.

Section 6-1408. Location and Size of Dwellings.

The Tribal Planning Commission and Planning Department will analyze the developers plot plan and decide if the location and size of the dwelling units are acceptable. Generally, the following standards shall apply:

- (1) Single-family dwellings shall provide a minimum of eight hundred (800) square feet of living area.
- (2) Multifamily dwellings with one (1) or more bedrooms shall provide a minimum of six hundred (600) square feet of living area. Studio units shall provide a minimum of four hundred (400) square feet of living area.

Section 6-1409. Off-Street Vehicle Parking.

The location of off-street parking, development standards, and the number of required parking spaces are to be determined by the Tribal Planning Commission and Planning Department in cooperation with the developer. Parking requirements shall substantially conform with Chapter 17, "Landscaping and Parking," of this title.

Section 6-1410. Loading Space.

On the same lot with every building, or part thereof used for manufacturing, warehousing, market, hotel, or other uses similarly involving the receipt or distribution by vehicles of materials or merchandise, there shall be provided and maintained adequate loading space for standing and for loading and unloading service

of such size and so located and designed as to avoid undue interference with the public use of parking areas, streets and alleys.

Section 6-1411. Yard Requirements.

Only those yard requirements listed under each zoning category apply to each specific type of project or zone. The Planning Commission may apply more restrictive yard requirements at its discretion.

Section 6-1412. Location of Detached Accessory Buildings.

The provisions of this section do not apply to agricultural structures.

- (1) A detached accessory building may occupy not more than one-half ($\frac{1}{2}$) of the required rear yard.
- (2) No detached accessory building shall be within five (5) feet of the front half of an adjacent lot. For the purpose of this regulation, a depth of not more than seventy-five (75) feet shall be deemed to be such front half of such adjacent lot.
- (3) In the case of an interior lot, no detached accessory building shall be erected so as to encroach upon the front half of the lot; provided, however, such accessory building need not be more than seventy-five (75) feet for the street line.
- (4) In the case of a corner lot abutting upon more than two (2) streets, no accessory building shall be nearer any street line than one-fifth ($\frac{1}{5}$) of the width or length of the lot, whichever is greater.
- (5) In the case of through lots, no accessory building shall encroach upon the required front yard on either street.
- (6) No detached accessory building shall be nearer than ten (10) feet to the main building.
- (7) Where a lot is in a zone permitting mobile homes for residential purposes, the trailer shall be deemed to be a main building. Trailers shall not be permitted as permanent residences.

Section 6-1413. Yard Encroachments.

Where yards are required by this title, they shall be open and unobstructed from the ground to the sky, except as follows:

- (1) Outside stairways or landing places, if unroofed and unenclosed, may extend into a required side yard for a distance of not to exceed three (3) feet and/or into the required rear yard a distance of not to exceed five (5) feet.
- (2) Cornices, canopies, and other similar architectural features not providing additional floor space within the building may extend into a required yard not to exceed one (1) foot. Eaves may extend three (3) feet into a required yard. One (1) pergola or one (1) covered but unenclosed passenger landing may extend into either side yard, provided it does not reduce the side yard below five (5) feet and its depth does not exceed twenty (20) feet.

Section 6-1414. Height Exceptions.

(a) Public or quasi-public buildings may be erected to a height not exceeding four (4) stories or sixty (60) feet when the required yards are increased by an additional two (2) feet for each foot by which the height exceeds thirty-five (35) feet.

(b) Structures necessary for the maintenance and operation of a building, and flagpoles, wireless masts, chimneys, communication towers or similar structures may exceed the prescribed height limits where such structures do not provide additional floor space. Approval for such structures exceeding prescribed height limits must be secured through a combined plot plan/variance application.

Section 6-1415. Through Lots.

(a) On through lots, either lot line separating such lot from a street may be designated as the front lot line. In such cases the minimum rear yard shall be not less than a required front yard in the zone in which such lot is located.

(b) Through lots one hundred fifty (150) feet or more in depth may be improved as two (2) separate lots with the dividing line midway between the street frontages, and each such resulting half shall be subject to the same regulations applying to the street upon which each such half fronts.

Section 6-1416. Lots Allocated.

It is generally assumed that tribal and/or allotted lands will not be sold, but lands can be leased or allocated to a developer under a contractual lease agreement stipulating the specific dimensions, location and use of the property.

Section 6-1417. Waterworks Facilities.

Waterworks facilities intended primarily for the production and distribution of water for irrigation or domestic water purposes shall not be subject to any of the provisions of this title, and may be permitted as determined appropriate by the Tribal Planning Commission, on a case-by-case basis.

Section 6-1418. Swimming Pools.

Swimming pools may be constructed as follows:

- (1) Private swimming pools for the use of the occupants of the premises and their nonpaying guests shall be located not nearer than five (5) feet to any property line or dwelling.
- (2) All other swimming pools shall be located not nearer than ten (10) feet from any property line or building.
- (3) A swimming pool may be constructed contrary to subsections (1) and (2) above, as it regards location in relation to dwellings, when it lies partially within and partially without a dwelling which conforms with all other provisions of this ordinance.

Section 6-1419. Permit Applications.

The following procedures shall apply to all applications for approval of variances, conditional use permits, public use permits, and other permits that may be requested by a developer or project

proponent, and which require the approval of the Planning Commission.

- (1) *Applications.* Permit applications shall be filed with the Tribal Planning Commission and the Planning Department on forms provided by the Tribal Planning Department.
- (2) *Setting hearing.* A hearing before the Tribal Planning Commission and Planning Department is required and set when:
 - a. The Planning Director has determined that the submitted application has provided application materials and fees which comply with the land use ordinance requirements; and,
 - b. All procedures required by the National Environmental Policy Act to review and certify anticipated environmental impacts have been completed.
- (3) *Notice of hearing.* Notice of time, date and place of the hearing shall be given to the applicant at least ten (10) days prior to the hearing date set before the Tribal Planning Commission.

Section 6-1420. Variances.

(a) *Basis for variance.* Variances from the terms of this title may be granted when, because of special circumstances applicable to a parcel of property and the nature of the project, including size, shape, topography, location or surroundings, the strict application of this title deprives such property of privileges enjoyed by other properties in the vicinity that are under the same zoning classification.

(b) *Application:*

- (1) Application for a variance shall be made in writing to the Planning Director on the forms provided by the Tribal Planning Department. If the use for which the variance is sought also requires approval of a conditional or public use, or other permit application, the two (2) applications shall be filed concurrently.

- (2) Applications for a variance that do not require an approval of a conditional or public use permit approval shall supply the following information:
- a. Name and address of the applicant.
 - b. A statement of the specific provisions of the ordinance for which the variance is requested and the variance that is requested.
 - c. A plot plan and elevations, if necessary, drawn in sufficient detail to clearly describe the following:
 1. Physical dimensions of property and structures.
 2. Location of existing and proposed structures.
 3. Setbacks.
 4. Circulation plan.
 5. Ingress and egress.
 6. Utilization of property under the requested permit.
 7. Such additional information as shall be required by the application form.

(c) *Tribal Planning Commission hearing.* The Tribal Planning Commission shall request the attendance of the developer and his representative(s) at a hearing to present their case for a variance. The Tribal Planning Department will also present staff's analysis and provide technical assistance to the Commission.

(d) *Conditions.* Any variance granted shall be subject to such conditions as are necessary to assure that the adjustment is consistent with the limitations upon other properties in the vicinity and zone in which the property is situated, and which are necessary to protect the health, safety and general welfare of the community.

(e) *Use of variance.* Any variance that is granted shall be used within one (1) year from the effective date thereof, or within such additional time as may be set in the conditions of approval, which shall not exceed a total of three (3) years, otherwise the variance shall be null and void. An extension of time may be granted by the Tribal Planning Commission prior to expiration.

(f) *Revocation of variance/appeal of revocation.* Any variance granted may be revoked upon the finding that inadequate or false information was provided to establish the rationale of the vari-

ance. A final determination is made by the Tribal Planning Commission based upon the facts. For a detailed description of revocation procedures reference Section 6-1423, "Findings and Procedures for Revocation of Variances and Permits."

Section 6-1421. Conditional Use and Public Use Permits.

Whenever any section of this title requires that a conditional or public use permit be granted prior to the establishment of a use, the following provisions shall take effect:

- (1) *Applications.* Every application for a conditional or public use permit shall be made in writing to the Planning Director on the forms provided by the Tribal Planning Department, and shall include prescribed fees and the following information:
 - a. Name and address of the applicant.
 - b. A plot plan drawn to scale in sufficient detail and clearly describing the following:
 1. Physical dimension of property and structures.
 2. Location of existing and proposed structures.
 3. Setbacks.
 4. Methods of circulation.
 5. Ingress and egress.
 6. Utilization of property under the requested permit.
 7. When the application is for a conditional use permit to establish a mobile home park, travel trailer park or recreational trailer park, adequate provision for water and sewer services need to be satisfactorily addressed.
 8. Such additional information as shall be required by the application form including, but not limited to, building elevations, street profiles and special studies.
- (2) *Tribal Planning Commission hearing.* Upon submittal of a developer's request for a conditional use permit, a hearing will be held by the Tribal Planning Commission to determine the validity and use of the specific site and a final

determination will be made. Approval, conditional approval or denial by the Planning Commission shall be final.

- (3) *Conditions.* Any conditional use permit shall specify conditions applied by planning staff, or the Planning Commission, as are necessary so that the proposed development is not detrimental to other properties in the vicinity and zone in which the property is situated, and which are necessary to protect the health, safety and general welfare of the community.
- (4) *Use of permit.* Any conditional or public use permit that is granted shall be used within one (1) year from the effective date thereof, or within such additional time as may be set in the conditions of approval, which shall not exceed a total of three (3) years; otherwise, the permit shall be null and void.
- (5) *Revocation of conditional use permit/appeal of revocation.* Any variance granted may be revoked upon the finding that inadequate or false information was provided to establish the rationale of the variance. A final determination is made by the Tribal Planning Commission based upon the facts. For a detailed description of revocation procedures reference Section 6-1423, "Findings and Procedures for Revocation of Variances and Permits."

Section 6-1422. Plot Plans.

The following procedures shall apply to all applications for approval of a plot plan that is required by any section of this title:

- (1) *Classification of plot plans.* Plot plans are classified as follows:
 - a. Plot plans that are not subject to the National Environmental Policy Act, and the requirements of the 30 BIAM Supplement 1-NEPA Handbook are transmitted to the Tribal Planning Department, which may forward some plans to the Bureau of Indian Affairs for review and comment.
 - b. Plot plans that are not subject to the National Environmental Policy Act and are transmitted to one (1) or

more governmental agencies other than the U.S. Bureau of Indian Affairs.

- c. Plot plans that are subject to the National Environmental Policy Act, and the 30 BIAM Supplement 1-NEPA Handbook.

(2) *Applications:*

- a. *Filing.* Applications for consideration of a plot plan shall be made to the Planning Director on the forms provided by the Tribal Planning Department, and shall include such information and documents as may be required by the Planning Director and Planning Commission in addition to the following:

1. Name and address of the applicant and all persons who own the development company.
2. Location or address, and legal description of subject property.
3. A plot plan, drawn to scale, that shows the following:
 - i. Boundary and dimensions of property.
 - ii. Topography of the property.
 - iii. Location of adjacent streets, drainage structures, utilities, buildings, signs, and other features that may affect the use of the property.
 - iv. Proposed development, including planned buildings and structures, access, drainage, yards, drives, parking areas, landscaping, signs and walls or fences.

- b. *Environmental review.* For approval of a development project, each developer must present an environmental document which satisfies the requirements of the National Environmental Policy Act, and the 30 BIAM Supplement 1-NEPA Handbook. In addition, the Bureau of Indian Affairs and the Planning Commission of the Cabazon Band of Mission Indians may also impose certain criteria.

(3) *Requirements for approval.* No plot shall be approved unless it complies with the following standards:

- a. The proposed use must conform to all the requirements of the general plan of the Cabazon Band of Mis-

sion Indians with all applicable requirements of federal law.

- b. The overall development of the land shall be designed for the protection of the public health, safety and general welfare; to conform to the logical development of the land and to be compatible with the present and future logical development of the surrounding property. The plan shall consider the location and need for dedication and improvement of necessary streets and sidewalks, including the avoidance of traffic congestion; and shall take into account topographical and drainage conditions, including the need for dedication and improvements of necessary structures as a part thereof.
- c. The application shall conform with all the development standards set forth in the zone in which the development is proposed.

(4) *Action on plot plans:*

- a. *Plot plans not heard before the Tribal Planning Commission.* The Tribal Planning Director and Tribal Administrator will evaluate a submitted project and review it for conformance to tribal general plan and zoning ordinance requirements. If it is found to conform with the requirements of this title, the application will be set for hearing before the Tribal Planning Commission. If the Planning Director finds the project unsatisfactory, the project will be returned to the prospective developer with a letter explaining the deficiencies.
- b. *Plot plans heard before the Tribal Planning Commission.* After the above requirements are satisfactorily followed by the developer, and the Tribal Planning Department and Tribal Planning Commission have agreed that the project is in the best interest of the Tribe, the Tribal Planning Commission will convene and vote on the development project. If the vote is favorable, the relevant permits will be issued by the Tribal Planning Department. If the project is not ap-

proved, the developer will be given a specific time period to prepare a revised proposal for reconsideration.

- (5) *Appeals.* An applicant may not appeal the decision of the Tribal Planning Commission.
- (6) *Approval period.* The approval of a plot plan shall be valid for a period of one (1) year from its effective date, within which time the authorized construction must be substantially begun, otherwise, approval shall be null and void.

Section 6-1423. Findings and Procedure for Revocation of Variances and Permits.

(a) Any variance granted may be revoked upon a finding that inadequate or false information was provided to establish the rationale of the variance. A final determination shall be made by the Tribal Planning Commission based upon the facts. A variance may be revoked by the Planning Commission under the following conditions:

- (1) The use is detrimental to the public health, safety or general welfare, or is a public nuisance, and that inadequate information was available at the time of the hearing to make this determination.
- (2) That the permit was obtained by fraud or perjured testimony.
- (3) That the use is being conducted in violation of the terms and conditions of the permit.
- (4) That the use for which the permit was granted has ceased or has been suspended for one (1) year or more.

(b) Upon determination by the Planning Commission that grounds for revocation exist, the following procedure shall take effect:

- (i) *Notice of revocation.* Notice of revocation and a copy of the findings of the Planning Commission shall be mailed by the Planning Director by certified mail to the developer to which the permit or variance has been granted or is in

process. The decision of the Director of Planning shall be final unless a notice of appeal is filed in a timely manner.

- (2) *Notice of appeal.* Within ten (10) days following the mailing of the notice of revocation, the developer of the property subject to the permit or variance may file a notice of appeal to the decision of the Director of Planning and the Tribal Planning Commission.
- (3) *Setting hearing.* Upon receipt of the developer's notice of appeal, the Planning Director shall set the matter for a hearing before the Tribal Planning Commission within thirty (30) days.
- (4) *Testimony under oath.* All testimony at the hearing shall be taken under oath.
- (5) *Notice of decision by Planning Commission.* All appeals will go to the Planning Commission. Upon the recommendations of the Tribal Planning Department, the Planning Commission will make the final determination.

Section 6-1424. Time Limit.

If a time limit is requested by the developer or tribal authorities for the performance of a development project, it is permitted that a time period be extended or renewed with both parties' approval.

Section 6-1425. Setback Adjustments and Temporary Use of Land.

(a) Notwithstanding any other provisions of this title, the following matters may, without notice or hearing, be approved, conditionally approved or denied by the Planning Director in accordance with the following procedure:

- (1) *Setback adjustments.* Modifications of the front, rear or side yard minimum setback requirements of the various zone classifications in this title.
- (2) *Temporary uses.* The temporary use of land in any zone classification, when such temporary use is in conjunction with the repair or construction of streets, highways or public

utilities, for a period of time not to exceed six (6) months, can be renewed by the Tribal Planning Commission. Also included are shortterm events, of only a few days' duration: garage sales, animal vaccination clinics, sidewalk sales, etc.

(b) Applications containing all required information shall be filed with the Tribal Planning Director, upon the forms provided by the Planning Department and with the appropriate fee, as set forth in Section 6-1427. The Planning Director shall provide a decision, which may be appealed to the Planning Commission.

(c) Conditions of approval may be required, as are determined necessary, to assure that the approval will not be detrimental to the health, safety and general welfare of the community, or be detrimental to property in the vicinity of the parcel for which the request is made, including the following conditions:

- (1) Regulation of points of vehicle ingress and egress to the property.
- (2) Requirements regarding landscaping, fencing, walls, and other landscape architectural items.
- (3) Requirements regarding the restoration of the property to a natural appearance, including, but not limited to filling, grading and leveling.
- (4) Establish a time limit within which the approval is to be used and required conditions are to be completed.

Section 6-1426. Structure Height.

When any zoning classification provides that an application for a greater height limit may be made pursuant to this section, the following alternative procedure may be used to determine if the request shall be granted:

The Tribal Planning Director and Tribal Planning Commission can decide on extending the height limit in any zoning area if they determine that the extension will not create a significant environmental impact or a health and safety concern.

Section 6-1427. Fees.

The Tribal Planning Commission shall establish a fee schedule for actions sought to be taken under this title. A copy of the schedule shall be available in the office of the Tribal Planning Department.

Section 6-1428. Refund of Fees.

(a) *Matters requiring tribal hearing.* Whenever an application for a change of zone, or for a permit or variance that requires a tribal hearing, is terminated for any reason, upon request of the applicant a refund of fees paid may be made by the Planning Department in accordance with the following schedule. If any portion of the application fee has been paid out by the Planning Department to another jurisdiction or agency for services to be rendered in connection with the application, no refund of that portion of the fee shall be made by the Planning Department to the applicant.

	<i>% of Refund</i>
(1) Application accepted and fee received by planning department, but no processing begun	100%
(2) Application processed, but tribal hearing not advertised or noticed	50%
(3) Tribal hearing held by Planning Commission	0%
(b) <i>Reserved.</i>	

CHAPTER 15. ADVERTISING*

Section 6-1501. For Sale, Lease or Rent Signs.

For sale, lease or rent signs shall be permitted to be placed in all zone classifications subject to the following regulations:

- (1) For one- and two-family residential uses: One (1) sign not exceeding four (4) square feet in surface area and not more than four (4) feet in height.

*Cross reference—Distribution of handbills, § 8-801 et seq.

- (2) For multiple-family residential uses: One (1) sign for each separate frontage on a street, each sign not to exceed sixteen (16) square feet in surface area and not more than eight (8) feet in height.
- (3) For commercial uses: One (1) sign for each separate frontage on a street, each sign not to exceed twenty-four (24) square feet in surface area and not more than eight (8) feet in height.
- (4) For industrial uses: One (1) sign for each separate frontage on a street, each sign not to exceed fifty (50) square feet in surface area and not more than fifteen (15) feet in height.
- (5) For agricultural uses: One (1) sign for each separate frontage on a street, each sign not to exceed twenty (20) square feet in surface area and not more than ten (10) feet in height.

Section 6-1502. Subdivision Signs.

(a) On-site subdivision signs advertising the original sale of a subdivision (subdivided master lease) are permitted within the boundaries of a subdivision, upon approval of a plot plan pursuant to this title and subject to the following minimum standards:

- (1) No sign shall exceed one hundred fifty (150) square feet in area.
- (2) No sign shall be within one hundred (100) feet of any existing residence that is outside of the subdivision boundaries.
- (3) No more than two (2) such signs shall be permitted for each subdivision.
- (4) No sign shall be artificially lighted.

(b) Off-site subdivision signs advertising the original sale of a subdivision shall be permitted in all zone classifications, provided a conditional use permit is granted pursuant to the provisions of this title, and subject to the following minimum standards:

- (1) No sign shall exceed one hundred fifty (150) square feet in area.

- (2) No sign shall be within one hundred (100) feet of any existing residence.
- (3) No more than two (2) such signs shall be permitted for each subdivision.
- (4) The maximum period of time a sign may remain in place shall be two (2) years.
- (5) No sign shall be artificially lighted.

Section 6-1503. Temporary Political Signs.

(a) For the purposes of this title, a temporary political sign shall mean a sign, not otherwise permitted by this title, which encourages a particular vote in a scheduled election.

(b) No sign is to be put on tribal lands that does not have the approval of the Tribal Planning Director. A fee may be levied for the placement and/or removal of said signs.

CHAPTER 16. TEMPORARY OUTDOOR EVENTS

Section 6-1601. Purpose.

The purpose of this article is to provide for the regulation and control of temporary outdoor events that may be conducted on tribal lands. This section is designed to ensure the public's health and safety while attending the events.

Section 6-1602. Definition.

An "outdoor event" means an event to which the public is invited, with or without charge, which is held out of doors on a temporary basis, including but not limited to music festivals, stage or theatrical shows, sports events, fairs, carnivals, automobile or animal races and tent revival meetings.

Section 6-1603. Evidence of Sufficient Facilities; Approval or Disapproval.

(a) All outdoor events shall provide, at the cost of the promoter and backers of the event, sufficient facilities to accommodate the number of people expected to attend the event. Documentation must be provided to the Tribal Planning Director in advance as to how the logistics of the event are to be handled.

(b) Once the Tribal Planning Department is confident that all the basic needs of the public are being planned and attended to, the Tribal Planning Director shall determine if the project is either approved or disapproved.

(c) A permit must be issued by the Tribal Planning Department before an event is to be allowed on tribal property. No private party may attempt to use tribal lands unlawfully for an outdoor event without having first received a use permit.

Section 6-1604. Permits.

(a) *Applications.* Applications for permits for outdoor events shall be made to the Tribal Planning Director in accordance with the procedural provisions of this title.

(b) *Special transmittal provisions.* Upon receipt of a complete application, the Tribal Planning Director will inform the applicant that the following local and state agencies may be notified at the applicant's expense to review plans and logistical capabilities. Each of the following agencies generally review outdoor event plans and provide written comments and recommendations as to providing for the public's health and safety.

- 1) California Highway Patrol.
- 2) Tribal Engineer.
- 3) Department of Public Health.
- 4) Road departments.
- 5) Local fire departments.
- 6) Tribal Building and Code Enforcement Division.

- (7) Other agencies or tribal consultants as determined appropriate.

(c) *Requirements for approval.* No application for a permit for an outdoor event shall be approved by the Tribal Planning Director or Tribal Planning Commission unless the applicant affirmatively demonstrates that the holding of the event will not be detrimental to the health, safety and general welfare of the community in the area of the proposed event and that:

- (1) There is adequate area to conduct the event and to accommodate the anticipated attendance.
- (2) Sufficient automobile parking will be provided for the anticipated attendance.
- (3) Food service operations, medical facilities, solid waste facilities, sewerage disposal methods and portable water service are certified by the Tribal Health Officer.
- (4) Fire protection plans and facilities are certified by the appropriate fire department.
- (5) Security operations plans are certified by the Tribal Code Enforcement Officer.
- (6) The site will be cleaned and restored to its original condition or better at the conclusion of the event.
- (7) Public roadways providing access to the event are capable of accommodating the anticipated traffic volumes in a reasonable and safe manner with minimal disruption to local traffic circulation.

Section 6-1605. Bond.

As part of the approval of a tribal permit, the permittee may be required to execute an agreement with the Planning Commission secured by a cash bond in the amount considered necessary to restore the site to its original condition.

Section 6-1606. Revocation.

An issued permit may be revoked by the Tribal Planning Director at any time if the permittee does not fulfill all of the conditions of approval.

CHAPTER 17. PARKING AND LANDSCAPING**Section 6-1701. Parking, Generally.**

The number of required automobile storage spaces shall be determined by this title at the time of the approval of the project; however, notwithstanding any provision in this title to the contrary, a twenty (20) percent reduction in the total number of required vehicle parking spaces for residential purposes may be allowed if appropriate, and an additional five (5) percent reduction may be allowed if the applicant proposes alternative senior citizen transportation programs; however, in no case shall the reduction of parking spaces exceed twenty-five (25) percent of the total spaces required by this title. Public street parking and tandem parking shall not be counted in this requirement. All required parking spaces shall be located entirely within the development, accessible to the units which they serve, and no parking space shall be located more than one hundred fifty (150) feet from the unit it is designed to serve. Parking requirements for other facilities within the development shall be subject to the provisions of this chapter of this title and may not be reduced.

(1) *Off-street vehicle parking:*

- a. The purpose of this section is to provide sufficient off-street parking and loading spaces for all land uses on tribal lands, and to assure the provision and maintenance of safe, adequate and well-designed off-street parking facilities. It is the intent of this section that the number of parking spaces shall be in proportion to the need created by the particular type of use. The standards for parking facilities are intended to reduce street congestion and traffic hazards, promote vehicular and pedestrian safety and efficient land use.

- b. Off-street vehicle parking shall be provided in accordance with this section when the building or structure is constructed or the use is established. Additional off-street parking shall be provided in accordance with this section if an existing building is altered or dwelling units, apartments or guest rooms are added, or a use is intensified by the addition of floor space or seating capacity, or there is a change of use, at the time of such alteration, addition, intensification or change of use.
- (2) *Location of off-street parking facilities.* Off-street parking shall be located in a manner which provides for the effective use of the parking facility relative to the use to be served.
- a. *Residential uses.* Required parking shall be located on the same parcel of land as the residential building which the parking is to serve, and on that portion of the parcel where the erection of garages or carports is permitted. Parking shall be conveniently distributed throughout a residential project.
 - b. *All other uses.* Required parking shall be located on the same parcel of land as the use for which the off-street parking is to serve or on an adjoining parcel of land; except that it may be located on a parcel across an alley if the nearest boundary of the parking facility is not more than three hundred (300) feet from the use it is to serve and the parcel is in a commercial zone.
- (3) *Development standards for off-street parking facilities.* The following standards shall apply to the development of all parking facilities, whether the space is required or optional:
- a. *Surfacing.* All parking areas and driveways used for access thereto shall be surfaced as follows:
 1. *One- and two-family residences.* Where the residences are located on parcels less than ten thousand (10,000) square feet in area, all parking areas and driveways shall be paved with concrete, asphaltic concrete, brick, or equal surfacing. If the

parcel is ten thousand (10,000) square feet, or larger, all parking areas and driveways shall be improved with at least three (3) inches of decomposed granite, or a comparable material.

2. *All other uses.* Where twenty-five (25) percent or more of the primary street frontage within six hundred sixty (660) feet in each direction from the subject property, including road rights-of-way, is in residential or industrial use, all parking areas and driveways shall be paved with:

- i. Concrete surfacing with a minimum thickness of three and one half (3½) inches and shall include expansion joints, or gallon per square yard of penetration coat oil, followed within six (6) months by application of one-quarter (¼) gallon per square yard of seal coat oil, placed on a base of decomposed granite, or comparable compacted to a minimum thickness of three (3) inches.
- ii. Asphaltic concrete paving compacted to a minimum thickness of three (3) inches on four (4) inches of Class 2 base. The base thickness can be varied, based on the recommendations of a preliminary soil report. The structural section may be modified based upon the recommendation of a Registered Civil Engineer.
- iii. Multifamily driveways: Where an interior driveway leading to a parking area in a multifamily or apartment complex is constructed with an inverted section, that section shall be constructed with a concrete ribbon gutter.

3. *Marking of paved or oiled parking areas:*

- i. If five (5) or more parking spaces are provided, each space shall be clearly marked with white paint or other easily distinguishable material.
- ii. If ten (10) or more parking spaces are provided, and one-way aisles are used, directional

signs or arrows painted on the surface shall be used to properly direct traffic.

- b. *Grading.* All parking areas and driveways shall be graded to prevent ponding and to minimize drainage run-off from entering adjoining property without the permission of the owner of the adjoining property.
- c. *Lighting.* Parking area lighting is not required; however, if parking areas are lighted, such lighting facilities shall be located, the hoods provided and adjusted, so as to preclude the lights from shining directly onto adjoining property or streets. Outdoor lighting shall be of an energy efficient type, such as high-pressure sodium.
- d. *Walls.* All paved parking areas, other than those required for single-family residential uses, which adjoin property zoned residential shall have a six-foot solid masonry wall installed in such a manner as to preclude a view of the parking area from such adjoining property, except that any walls within ten (10) feet of any street or alley shall be thirty (30) inches high.

Section 6-1702. Landscaping; General Provisions.

(a) A landscaping, irrigation and shading plan shall be required for all plot plans, conditional use permits, public use permits, surface mining permits, subdivisions, and any other permit when the Planning Director deems it necessary. All plans shall be submitted and acted upon concurrently with any application. All parking lot plans must include a shading plan.

(b) No less than three (3) copies of the grading and irrigation plans shall be submitted for approval by the Planning Director. All plans shall show the following information:

- (1) The name and address of the project, sheet numbers, numbers of sheets, and a title sheet.
- (2) The required technical data, including scale of drawing, north arrow, date drawn, and dates of revisions. If applicable, all property lines and project limits if other than property limits, all easements, fences, walls, curbs, roads,

walks, structures, mounds, swales, manholes, banks, and all plant and landscaping materials, grading, irrigation and other exterior elements proposed. A legend shall also be included for each symbol used.

- (3) The grading plans shall show the drainage of all planting areas and the heights of mounds. Mounds shall not exceed a three to one (3:1) slope, and no mound over thirty (30) inches high shall be placed within ten (10) feet of any street and/or alley intersection.
- (4) All landscaping plans shall show the following:
 - a. The locations of all existing landscaping material, and where proposed landscaping material is to be placed. Existing trees shall be preserved whenever it is practical to do so and shall be shown on the landscaping plan. Existing trees to be removed shall also be shown on the landscaping plan.
 - b. All trees and shrubs shall be drawn to reflect the average specimen size at fifteen (15) years of age. Trees shall be drawn to size.
 - c. Soil surface of all planters shall be shown planted or covered with suitable material.
 - d. The quantities and sizes of all trees, shrubs and ground-cover shall be indicated. Trees shall be a minimum fifteen-gallon size. Shrubs shall be a minimum five-gallon size; however, the use of smaller plants may be approved for areas where color or growth habits make it suitable.
 - e. All plants shall be listed by correct botanical name and common name.
 - f. Lawns shall be indicated by common name of species and method of installation (seeding, hydromulching or sodding).
 - g. Planters in parking lots shall be protected by a curb six (6) inches wide and six (6) inches high.
 - h. No trees shall be planted within ten (10) feet of drive-ways, alleys and/or street intersections.

Section 6-1703. Number of Parking Spaces Required.

The number of off-street parking spaces shall be no less than as set forth in the following schedule. For the purpose of this section, "floor area" shall mean gross floor area.

<i>Use</i>	<i>Parking Spaces Required</i>
(1) Automobile and machinery sales and service garage area	1 for each 450 square feet of floor area
(2) Banks	1 for each 250 square feet of floor area
(3) Business and professional offices	1 for each 250 square feet of floor area or 2 for each 1 employee, whichever is greater
(4) Bowling alleys	3 for each alley
(5) Churches, theaters, clubs, lodges, social halls, assembly halls, dance halls, and auditoriums	1 for each 3.5 fixed seats or 1 for every 50 square feet of floor area, whichever is greater
(6) Day care centers and similar facilities	1 for each staff member plus 1 for each classroom, or 1 for each 500 square feet of net floor area, whichever is greater
(7) Furniture and appliance stores, household equipment or furniture repair shops	1 for each 800 square feet of floor area
(8) Hotels and motor hotels	1 for each living or sleeping unit, plus 1 per 300 square feet of usable public area for common uses, plus 1 per 60 square feet of public serving area for restaurants, plus 25% of above total in addition for employee parking

<i>Use</i>	<i>Parking Spaces Required</i>
(9) Industrial uses:	
a. Wholesale establishments, warehouses and industrial uses	1 for each 2 employees, or 1 for each 500 square feet of floor area, whichever is greater
b. Outdoor uses	1 for each 2,500 square feet of ground area
(10) Medical and/or dental clinics	5 for each doctor or dentist, or 1 for each 150 square feet of floor area, whichever is greater
(11) Open air commercial uses, such as nurseries, used car lots	1 for each 1,000 square feet of lot area devoted to sales and display
(12) Residential uses:	
a. Single-family	2 per dwelling unit, both to be in an enclosed garage
b. Multiple-family:	
1. 0 to 1 bedroom	1 per dwelling unit, to be covered or in a garage
2. 2 or more bedrooms	1.5 per dwelling unit, at least 1 to be covered or in a garage
(13) Restaurants, cafes, cafeterias, bars, cocktail lounges, nightclubs, etc.	1 for each 5 seats, or 1 for each 45 square feet of serving area, whichever is greater
(14) Retail establishments and service businesses not otherwise enumerated in this section, such as drugstores, department stores, repair stores, animal hospital, business schools, dance studios	1 for each 250 square feet of floor area up to 10,000 square feet or 40 spaces, whichever is greater; thereafter, 1 for each 300 square feet of floor area, exclusive of area used for air conditioning or other utility equipment

<i>Use</i>	<i>Parking Spaces Required</i>
(15) Speculative buildings	1 per 300 square feet of floor area

CHAPTER 18. DEFINITIONS

Section 6-1801. Words and Terms Defined.

For the purpose of this title, certain words and terms used herein are herewith defined. The word "shall" is always mandatory and not merely directory. The word "may" is permissive.

Accessory building. A subordinate building or a part of the main building on the same lot or building site, the use of which is incidental to that of the main building, and which is used exclusively by the occupants of the main building. No accessory building shall be erected unless a main building exists.

Accessory use. A use customarily incidental and accessory to the principal use of a lot or a building located upon the same lot or building site.

Alley. A public or private thoroughfare or way, permanently reserved and having a width of not more than twenty (20) feet, which affords only a secondary means of access to abutting property.

Allottee. A designated tribal member who has specific rights to a parcel of allotted land.

Apartment. A room or suite of two (2) or more rooms in a multiple dwelling, occupied or suitable for occupancy as a residence for one (1) family.

Apartment house. A building or portion thereof designed for or occupied by two (2) or more families living independently of each other.

Auction. The sale of new and used merchandise offered to bidders by an auctioneer for money or other consideration.

Automobile storage space. A permanently maintained space on the same lot or building site as the use it is designed to serve, having an area of not less than two hundred (200) square feet, with a minimum width of nine (9) feet for each stall, and so located and arranged as to permit the storage of, and be readily accessible to, a passenger automobile under its own power.

Boarding, rooming or lodging house. A building where lodging and meals are provided for compensation for six (6) but not more than fifteen (15) persons, not including rest homes.

Building. A structure having a roof supported by columns or walls.

Building height. The vertical distance measured from the average level of the highest and lowest points of that portion of the lot covered by the building to the uppermost portion of the building.

Building site. The ground area of a building or buildings together with all open spaces adjacent thereto, as required by this title.

Building setback line. The distance between the proposed building line and the roadway right-of-way line or permanent access located on the same lot.

Building, main. A building in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwelling shall be deemed to be the main building on the lot on which the same is situated.

Clinic. A place used for the care, diagnosis and treatment of sick, ailing, infirm and injured persons, and those who are in need of medical or surgical attention, but who are not provided with board or room, nor kept overnight on the premises.

Commission. The Tribal Planning Commission of the Cabazon Band of Mission Indians.

Compensation. The word "compensation" means anything of value.

County, City of Coachella, City of Indio. The County of Riverside, Cities of Coachella and Indio, also referred to herein as "adjoining municipalities."

Dune buggy park. An open area used by dune buggies or other all-terrain vehicles, for purposes such as, but not limited to hill climbing, trial riding, scrambling, racing and riding exhibitions.

Disposal service operations. Areas for the storage and maintenance of vehicles and equipment used in the collection, transportation and removal of garbage and rubbish, not including storage or dumping of garbage or rubbish.

Dwelling. A building or portion thereof designed for or occupied exclusively for residential purposes, including one-family and multiple-family dwellings but not including hotels, auto courts, boarding or lodging houses.

Dwelling unit. A building or portion thereof used by one (1) family and containing but one (1) kitchen.

Dwelling unit, factory-built. A factory-built dwelling unit means a dwelling unit constructed in accordance with the Uniform Building Code and manufactured in such a manner that all concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly, damage or destruction of the part. A factory-built dwelling unit does not include a mobile home, a mobile accessory building or structure, a recreational vehicle or a commercial coach.

Dwelling unit, manufactured. A manufactured dwelling unit means a residential structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation when connected to the required utilities. A manufactured dwelling unit does not include a factory-built dwelling unit, a mobile accessory building or structure, a recreational vehicle or a commercial coach.

Dwelling, one-family. A building or structure, including a mobile home or manufactured home, containing one (1) kitchen and used to house not more than one (1) family, including domestic employees.

Dwelling, multiple-family. A building or portion thereof used to house two (2) or more families, including domestic employees of each such family, living independently of each other, and doing their own cooking.

Dwelling, resort. A building used exclusively for residential purposes, containing not more than two (2) kitchens, with permanent interior means of access between all parts of the building, and located on a lot in a subdivision (subdivided master lease) with an average lot area of ten thousand (10,000) square feet or more. No such dwelling shall be erected unless, as a part of the purchase price of the property (dwelling), the purchaser receives the privilege of use of recreational facilities such as golf courses, polo fields, etc., which facilities are adjacent to and a part of the residential development.

Erected. The word "erected" includes built, built upon, added to, altered, constructed, reconstructed, moved upon, or any physical operations on the land, required for a building.

Farm. A parcel of land devoted to agricultural uses where the principal use is the propagation, care and maintenance of viable plant and animal products for commercial purposes.

Garage, private. An accessory building or a main building or portion thereof, used for the shelter or storage of self-propelled vehicles, owned or operated by the occupants of a main building and wherein there is no service or storage for compensation.

Hotel. A building designed for or occupied as the more or less temporary living place of individuals who are lodged with or without meals, in which there are six (6) or more guest rooms, and in which no provision is made for cooking in any individual room.

Hotel, resort. A hotel, including all accessory buildings as defined in this title and having a building site or hotel grounds containing not less than fifty thousand (50,000) square feet. Such hotel may have accessory commercial uses operated primarily for the convenience of the guests thereof, provided there is no street entrance directly to such commercial uses, and further provided such commercial uses shall not occupy more than twenty (20) percent of the ground floor area of such hotel building.

Kitchen. Any room in a building or dwelling unit which is used for cooking or preparation of food.

Lease. An agreement between the tribal authorities and a developer which secures a longterm land lease from the Tribe so that a development may be built on tribal lands.

Leasehold. That property interest possessed by a lessee, as defined by the terms of a lease, including such matters as rights, obligations, length of lease, renewal options and termination conditions.

Lot area. The total horizontal area within the lot lines of a lot.

Lot, corner. A lot located at the junction of two (2) or more intersecting streets having an angle of intersection of not more than one hundred thirty-five (135) degrees, with a boundary line thereof bordering on two (2) of the streets.

Lot lines. The boundary lines of lots are: front lot line, the line dividing a lot from the street, or from a permanent access easement located on the same lot. On a corner lot only one (1) street line shall be considered as a front line, and such front lot line shall be determined by the Planning Commission.

- (1) *Rear lot line.* The line opposite the front lot line.
- (2) *Side lot lines.* Any lot lines other than the front lot line or the rear lot line.

Lot, through. An interior lot having frontage on two (2) parallel or approximately parallel streets.

Mining operation. Any process by which one (1) or more substances which are classified geologically as minerals are extracted from the earth or stockpiled, including the reworking of mineral dumps which have been artificially created by mining operations.

Mobile home park. A mobile home park is any area or tract of land where one (1) or more mobile home lots are rented or leased, or held out for rent or lease to accommodate mobile homes used for human habitation. The rental paid for any such mobile home shall be deemed to include rental for the lot it occupies.

Nonconforming building. A building which was legal when established, but which, because of the adoption or amendment of this title, conflicts with the provisions of this title applicable to the area in which such building is situated.

Nonconforming use. The use of a building or land which was legal when established, but which, because of the adoption or

amendment of this title, conflicts with the provisions of this title applicable to the district in which such use is located.

Occupancy, change of. A discontinuance of an existing use and substitution thereof of a use of a different kind or class.

Person. The word "person" includes association, company, firm, corporation, partnership, copartnership or joint venture.

Planned commercial development. A development that may be permitted to have reduced width, depth and building setback requirements, and have common access and common parking, provided a development application is approved by the Planning Commission and under the provisions of this title.

Planned industrial development. A development that may be permitted to have reduced lot area, width, depth and building setback requirements, and have common access and common parking, provided a planned development industrial project is approved by the Planning Commission under the provisions of this title.

Planned residential development. A residential development including, but not limited to, statutory and nonstatutory condominiums, cluster housing, townhouses, community apartment projects and mobile home developments, that are permitted reduced lot area, width and depth requirements and building setback requirements by integrating into the overall development open space and outdoor recreational facilities, which may include recreational and public buildings intended primarily for the use of the residents of the project, within the development.

Recreational trailer park. Any area or tract of land, within an area zoned for recreational use, where one (1) or more lots are rented or leased or held out for rent or lease to owners or users of recreational vehicles or tents and which is occupied for temporary purposes. A recreational trailer park may have a membership organization that provides for the use of lots in a park by members; however, members shall not be granted title to, or allowed exclusive occupancy of, any lot within a park, or occupy a lot within a park for more than one hundred thirty (130) consecutive days at any one (1) time, or more than one hundred eighty (180) days in any calendar year.

Story. The portion of a building included between the surface of any floor and the finished ceiling above it or the finished under-surface of the roof directly over that particular floor.

Street. A public or an approved private thoroughfare or road easement which affords the principal means of access to abutting property, but not including an alley.

Structure. Anything constructed or erected and the use of which requires more or less permanent location on the ground, or attachment to something having a permanent location on the ground, but not including walls and fences six (6) feet or less in height.

Structural alterations. Any change in the supporting members of a building or structure, such as bearing walls, columns, beams, girders, floor joists or roof joists.

Swap meets. The use, rental or lease of stalls or areas outside of an enclosed building by vendors offering goods or materials for sale or exchange, not including public fairs or art exhibits.

Travel trailer park. Travel trailer park is any area or tract of land or a separate section within a mobile home park where one (1) or more lots are rented or leased, or held out for rent or lease to owners or users of recreational vehicles used for travel or recreational purposes.

Use. The purpose for which land or a building is arranged, designed, or intended, or for which either is or may be occupied or maintained.

Yard. An open and unoccupied space on a lot on which a building is situated and, except where otherwise provided in this title, open and unobstructed from the ground to the sky.

Yard, front. A yard extending across the full width of the lot between the side lot lines and between the front lot line and either the nearest line of the main building or the nearest line of any enclosed or covered porch. The front lot line shall be deemed to be the existing nearest right-of-way line of the abutting street, road or highway, unless a different right-of-way line for future use shall have been precisely fixed by ordinance, or by formal action by the Tribal Planning Commission, in which event the

front lot line shall be deemed to be such different right-of-way line.

Yard, rear. A yard extending across the full width of the lot between the side lot lines and measured between the rear lot line and the nearest rear line of the main building or the nearest line of any enclosed or covered porch. Where a rear yard abuts a street, it shall meet front yard requirements of the district.

Yard, side. A yard extending from the front yard to the rear yard between the side lot line and the nearest line of the main building, or of any accessory attached thereto.

CHAPTER 19. ENFORCEMENT, LEGAL PROCEDURE AND PENALTIES

Section 6-1901. Enforcement.

The Tribal Planning Commission and Planning Department are charged with the issuance of licenses and permits, and the Planning Department shall enforce the provisions of this title using the legal authorities open to it, including federal, state and local authorities as needed. Subsequent to completion, and in the course of development, the Code Enforcement Office of the Cazon Band shall also provide an overview of the project's conformance with tribal codes and conditions of approval.

Section 6-1902. Building Permit Not To Be Issued.

No building permit shall be issued for the erection or use of any structure or part thereof, or for the use of any land which is not in accordance with the provisions of this title. Any permit issued contrary to the provisions of this title shall be void and of no effect.

Cross reference—Construction and development standards, Title 7.

Section 6-1903. Legal Procedure.

Any building or structure erected or maintained, or any use of property contrary to the provisions of this title shall be, and the same is hereby declared to be, unlawful and a public nuisance. The Tribal Attorneys are authorized to immediately commence

action or actions, proceeding or proceedings for the abatement, removal and injunction thereof, in the manner provided by law; and shall take such other steps, and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such building, structure or use and restrain and enjoin any person from setting up, erecting or maintaining such building or structure, or using any property contrary to the provisions of this title. It shall be the right and duty of the Tribal Planning Commission to enforce the provisions of this title.

Section 6-1904. Remedies.

All remedies provided for herein shall be cumulative, not exclusive. The conviction and punishment of any person hereunder shall not relieve such person from the responsibility of correcting prohibited conditions or removing prohibited buildings, structures or improvements, nor prevent the enforced correction or removal thereof.

CHAPTER 20. VALIDITY

Section 6-2001. Severability.

This title and the various parts, sections and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or otherwise invalid, the remainder of this title shall not be affected thereby. The General Council of the Cabazon Band of Mission Indians hereby declares that it would have passed this title and each part thereof, regardless of the fact that one or more parts thereof are declared unconstitutional or invalid.

Best Practices

Land Use and Planning

Gila River Land Use Code

The Gila River Indian Community in Arizona is small and it has a limited land base. It chose to adopt a specific land use code for homesites to focus upon land use development for housing. The code is extensive, and it deals with many aspects of a process for homesite permits with land use restrictions.

The code is designed to deal with the assignment of individual lots within subdivisions, homesite leases outside subdivisions, the actual use of homesites, the revocation of assignments, the transfer of assignments, and penalties for violations of the land use code.

The code deals with administration and enforcement in the very beginning. There are two administrative entities to administer the code. The first is the "Subdivision Administrator," who is generally responsible for the Land Use Planning and Zoning Program. The Administrator receives applications for homesites, reviews applications to submit to the Planning and Zoning Commission, periodically inspects homesites for compliance with the code, keeps public records, and generally administers the homesite program. The Planning and Zoning Commission makes the actual assignment of homesites within subdivisions or on unsubdivided land, revokes homesite assignments, transfers them, gives permission for a second home, and it handles appeals and the imposition of penalties.

There are detailed provisions for the process of assigning homesites, within or without subdivisions, and conditions for homesite purposes. There are also provisions for revocation, transfers and inheritance.

Any person who is dissatisfied with a decision of the Subdivision Director or the Planning and Zoning Commission can take an appeal to the Legislative Standing Committee. If the Subdivision Administrator finds that there is a violation of the code by any person, or the terms and conditions of a homesite, the Subdivision Administrator can institute proceedings in the Community Court to ask for injunctive relief, seizure and forfeiture (of what, the code does not say), the enforcement of civil penalties, or correction of the violation. A violation of the code also carries a fine of "no less" than \$50 and up to \$500 and jailing for up to 20 days.

There are separate provisions for community members and for the Gila River Housing Authority to receive a homesite assignment.

The code has detailed rules for the "utilization of homesite assignments," including provisions for easements, single-family detached homes and outbuildings, and other provisions for use of the land. There are restrictions on building placements and the assignment of interests in the homesite. There are provisions for financing a house by the Gila River Housing Authority or U.S. Government programs. (There will need to be provisions for private financing schemes.)

The code provides for subdivisions and platting. This is an excellent approach to land use, because where subdivisions are provided for in accordance with good surface use, landscaping, housing, etc. restrictions, that puts things in place for planning specific projects. Chapter 2 of the code is its "subdivision regulations," and they give detailed guidance on the creation of subdivisions and platting (i.e. recording their location and use on public records).

The subdivision regulations are administered by the plat officer (who is responsible for processing requests for subdivisions), a tribal surveyor, a land use planner (who provides the Commission with information on the proposed subdivision and prepares sketch plans), the Planning and Zoning Commission (which approves plans and plats), the Natural Resources Committee (which reviews plats in accordance with its oversight responsibilities), and the Tribal Council (which gives final approval for signature by the Governor or Lt. Governor on the recommendation of the Natural Resources Committee). This provides a process for a careful and thorough review of subdivision plans in accordance with the subdivision regulations.

There are also detailed specifications for plats and plans that deal with land descriptions, titles, infrastructure, and other requirements. There are also design standards for streets, blocks, lots, and easements.

Finally, the code deals with signs, where they may be located, their maintenance and all other aspects of signs.

This is a good code to consider if your land use planning goal is to put things in place to link members desires for a homesite lease with preplanned land use. The code clearly sets out the requirements for individuals to obtain a homesite lease either within or outside a planned subdivision. The subdivision requirements are strict, and they anticipate most requirements for orderly housing areas that comply with health and public safety standards. At the same time, the code provides some flexibility for homesite leases outside subdivision areas.

Gila River is a rural community that is near Phoenix. It needs to mix plans for organized subdivisions and housing communities with the desires of community members to build in rural scattered sites. This kind of ordinance gives a good overview of the housing organizational infrastructure that must be put in place to administer a code. That is, it assigns responsibilities for various aspects of the homesite permit process, from who will process homesite requests and the procedure for processing, to comprehensive restrictions for the approval of subdivisions or a lease outside a subdivision.

There are two aspects to a code such as this. On the one hand, it should be simple enough for enforcement officials to apply the code to individual uses. One of the shortcomings of the code is that it is not very "reader friendly" for individual homesite leaseholders. A code such as this would have to be backed up with simple-to-understand brochures or rules that a lessee can understand and which is capable of enforcement. On the other hand, this is a code for planners, engineers, and developers (whether such may be a private developer creating subdivisions in a special relationship with the Gila River Community or the Gila River Housing Authority). It is a code that would be familiar to housing professionals, and it incorporates features and standards that are familiar to most urban developers.

The problem with this code, as it is with other codes, is that it is an attempt to take a comprehensive look at housing development. It is a good code for building subdivisions. Is it a good code to deal with rural scattered site housing and the simple process of granting leases to community members?

There is another aspect of codes such as this, and that is the "tone" of your community. That is, members of communities should "buy into" efforts to make a community more livable. Are there

gang problems? Is there graffiti? Are there problems with stray dogs? Are there residents who are selling alcohol or drugs or engaging in other illegal activity? One modern strategy is to encourage the formation of homebuyer organizations to address the social aspects of subdivisions.

Any planner or tribal official considering this code should ask if it suits your purposes. Is it what you want? Do you want planned subdivisions that will be laid out well and comply with standard urban or suburban subdivision requirements? If so, this code is your model. However, the administration of a code such as this requires a great deal of expertise. Expertise is required at the "front end," where planners are considering whether or not to approve a subdivision plat and plan. Expertise is also required at the "back end," and that is where social planning is needed. That is, those who have a homesite lease need to know their responsibilities. There will need to be enforcement effort. Does the Subdivision Administrator have assistants to carry out his enforcement duties in addition to his planning ones?

Despite the fact that technical codes such as this are necessary, and there need to be the people with the expertise to implement them, tribal council members need a way to review the implementation of a code such as this to make certain that their dream for their community comes true. This requires a strong relationship among the Council, the Planning and Zoning Commission, responsible Council committees, the Subdivision Administrator and those who are building in accordance with subdivision regulations.

At end, there should be a place for the lessees. This code makes little mention of their participation in the overall process. This is where the Subdivision Administrator and the Planning and Zoning Commission can play a leadership role. There should be town meetings, focus group sessions, or other means of getting public input into subdivision approval. There should be similar meetings of lessees to address their issues.

This is a balance of political considerations with technical land use techniques. That is, aside from a good technical code such as this, there needs to be good political oversight and lessee participation to make a good technical code work the way it should.

Best Practices:

Land Use and Planning

Code #3: Gila River Land Use Code

LAND USE

NILL No. 007532/1988

TITLE 21

CHAPTER 1. HOMESITES21.101 AUTHORITY

This Chapter is adopted pursuant to Section (a) (9), (13), (19), and Section 4 of Article XV and Section 2 of Article XVI of the Constitution and Bylaws of the Gila River Indian Community, approved March 17, 1960.

21.102 INTENT AND PURPOSE

It is the intent and purpose of this Chapter is to formalize and establish uniform regulations and procedures for:

1. The assignment of individual lots within Tribal subdivisions to eligible Community members for homesite purposes.
2. The development and assignment of homesite leases on Tribal land not within Tribal subdivisions to eligible Community members.
3. The utilization of Tribal homesites.
4. The revocation of homesite assignments.
5. The transfer of homesite assignments.
6. Penalties for the violation of this Chapter.

21.103 ADMINISTRATION AND ENFORCEMENTA. Administrative Responsibilities1. Primary Administrative Responsibility

The primary responsibilities of administering and enforcing the provisions of this Chapter shall be vested in the following two entities of the Tribal government:

- a. Subdivision Administrator.
- b. Planning and Zoning Commission.

2. Other Administrative Responsibilities:

In addition to the previously mentioned administrative offices, other officials, appointees or employees of the Gila River Indian Community will be required to perform functions as specified in this Chapter.

- B. Subdivision Administrator. The Subdivision Administrator and such other employees of the Land Use Planning and Zoning Program that shall be duly appointed shall perform the following duties under this Chapter:
1. Receive applications and application fees for homesite requests and provide assistance to Community members in preparing a complete and accurate application.
 2. Provide each applicant with a copy of this Chapter. Post applications for homesites in accordance with Sections 21.103(E)(5) and 21.103(F)(5).
 3. Maintain the schedule of fees for making applications under this Chapter and for work performed by the Tribal Surveying in relation to this Chapter and provide this schedule to all persons making applications.
 4. Review all facts and background information on each application; after certifying that the application is complete and accurate, placing the application on the agenda of the Planning and Zoning Commission.
 5. Conduct periodic inspections of all Tribal homesites, no less than four times a year to check for compliance with the terms of this Chapter.
 6. In accordance with the provisions of Section 21.103(J), notify the Law Office of any violation of this Chapter and take necessary action to enforce the provisions of this Chapter.
 7. Maintain accurate and current records of all homesite assignments and available homesites for public inspection.
 8. Review at intervals not to exceed two years, all provisions of this Chapter and make reports of any recommendations to the Planning and Zoning Commission, Legislative Committee and Tribal Council.
 9. Attend all meetings of the Planning and Zoning Commission, District Housing Committees, Districts, Tribal Council, Standing Committees, or any other Tribal group where this Chapter is discussed, provide information on the Chapter as required.
 10. Notify all applicants, assignees or other parties of actions taken under this Chapter, as required by this Chapter.
 11. Work closely with District Housing Committees on issues of mutual concern.
 12. Perform all other duties assigned by this Chapter.

- C. Planning and Zoning Commission. The Planning and Zoning Commission of the Gila River Indian Community as established by the enactment of GR-479-68, is hereby authorized to perform the following duties:
1. Receive applications and make or deny homesite assignments in accordance with the provisions of Sections 21.103(E) and 21.103(F).
 2. Receive and review reports from the Subdivision Administrator on this Chapter, recommend any necessary changes or amendments to the Legislative Standing Committee.
 3. Performs all other duties assigned by this Chapter.
- D. Administrative Functions. The principal administrative functions of this Chapter are:
1. Assignment of Homesites within Tribal Subdivisions.
 2. The lease of unsubdivided Tribal land for homesite purposes.
 3. Revocation of homesite assignments.
 4. Transfer of homesite assignments.
 5. Permission for a second home and a Tribal homesite assignment or lease.
 6. Appeals.
 7. Penalties.
- E. Assignments of Homesites within Tribal Subdivisions:
1. The Subdivision Administrator shall prepare and maintain an inventory of all available homesite lots within Tribal Subdivisions. The Subdivision Administrator shall certify that each lot maintained on the inventory is a "buildable lot" (see definitions, Section 21.106).
 2. An application for a homesite assignment shall be made to the Subdivision Administrator. A filing fee, as established by the Planning and Zoning Commission shall be paid by each applicant at the time of application. The Subdivision Administrator shall verify that all necessary information is recorded on the application. The application shall be prepared in quadruplicate, dated, and signed by the applicant. Copies shall be given to the Tribal Council Secretary, the Applicant(s), the Realty Branch, Pima Agency (BIA), and one copy maintained on file by the Subdivision Administrator.

3. The Subdivision Administrator shall place the application on the agenda of the Planning and Zoning Commission and notify the Planning and Zoning Commission member from that District of the application.

Each Planning and Zoning Commission member shall be responsible for consulting, advising, and seeking recommendations from their District Housing Committees on homesite applications within their District.

4. The Subdivision Administrator shall notify the applicant of the time and place of the Planning and Zoning Commission meeting. All meetings of the Planning and Zoning Commission shall be open to the public.
5. The Subdivision Administrator shall post a public notice of the proposed application and the time and place of the Planning and Zoning Commission meeting where the application will be considered in the District where the subject homesite is located. Such notice shall be posted at least fifteen (15) days prior to the meeting.
6. Any member of the Community may question the qualifications of an applicant by writing to the Subdivision Administrator stating his objections. He may also appear at the scheduled hearing for the applicant to present evidence to the Community regarding his objection.
7. The Planning and Zoning Commission shall hear all testimony and make the final determination on the application.
8. After the decision on the application has been made, the Subdivision Administrator shall promptly notify the applicant of the decision. If the decision is negative, the Subdivision Administrator shall inform the applicant in writing of the reasons for denial.
9. The applicant may appeal the decision subject to the provisions of Section 21.103(I).

F. The Lease of Unsubdivided Tribal Land for Homesite Purposes:

1. An eligible applicant may request a Homesite lease on unsubdivided Tribal land subject to the conditions of Section 21.103(F)(10).
2. An application shall be made with the Subdivision Administrator, who shall assist the applicant in completing the application and insure that the conditions of 21.103(F)(10) on the following page are met.
3. The applicant shall make arrangements including the payment of the required fee with the Tribal Surveyor or other Registered Land Surveyor of the State of Arizona to have a survey done of the proposed homesite lot.

4. The Subdivision Administrator shall place the application on the agenda of the Planning and Zoning Commission and notify the Planning and Zoning Commission member from that District of the application.

Each Planning and Zoning Commission member shall be responsible for consulting, advising, and seeking recommendations from their District Housing Committees on homesite applications within their District.

5. The applicant shall prepare a standard lease developed by the Law Office. The Subdivision Administrator shall post a public notice of the proposed application and the time and place of the Planning and Zoning Commission meeting where the application will be considered in the District where the subject homesite is located. Such notice shall be posted at least fifteen (15) days prior to the meeting.
6. Any member of the Community may question the qualifications of an applicant by writing to the Subdivision Administrator stating his objections. He may also appear at the scheduled hearing for the applicant to present evidence to the Commission regarding his objection.
7. The application, homesite survey, and lease shall be reviewed by the Planning and Zoning Commission, who shall make a recommendation and forward such recommendation to the Natural Resources Committee.
8. The Natural Resources Committee shall review the application, establish any necessary terms of the lease and place the application and supporting information on the Tribal Council agenda.
9. The Tribal Council shall review and decide the disposition of the request.
10. Conditions for the use of Unsubdivided Tribal Land for Homesite Purposes:

The utilization of unsubdivided Tribal land for homesite purposes shall be in accordance with the following provisions:

- a. The Homesite shall not exceed 1.25 acres in area.
- b. The land is held free and clear of any encumbrance by the Tribe as documented by a Title Status Report from the Southwest Title Plant of the BIA.
- c. The land in question has not been planned, zoned or designated for another use by the Tribal Council.
- d. The homesite would meet the criteria for a "buildable lot" of this Chapter.

- e. The Subdivision Administrator shall ascertain that there is no known archaeological site on the requested lot by checking with Tribal records and conducting a personal investigation. The Archaeological Licensing Officer, or any Tribal staff member with expertise in archaeology shall assist the Subdivision Administrator.
 - f. The Planning and Zoning Commission may recommend against the granting of any request that the Commission believes would adversely affect the potential development of surrounding lands, the local environment, or in general would not be in the best interests of the Community.
- G. Revocation of Homesite Assignments. An assignee shall have one year from the date of assignment in which to utilize the homesite. Utilization shall mean the construction of a home, the placement of a mobile home or the substantial improvement of the lot. Minor improvements or other alterations of a lot shall not be considered a substantial improvement.
1. If an assignee has not utilized a homesite assignment within the first ten (10) months of his assignment, the Subdivision Administrator shall at least thirty (30) days prior to the end of the assignee's first year, notify the assignee in writing at their address of record, of the impending revocation of their homesite. If the assignee has not utilized the assignment, nor requested an extension of their assignment, the homesite assignment shall be revoked after the one year has expired and returned to the inventory of eligible lots.
 2. An assignee who has not been able to utilize their homesite due to some hardship, may request an extension of one year of their assignment, which when requested will be granted by the Subdivision Administrator.
 3. If the homesite has not been utilized during the second year, the Subdivision Administrator shall at least thirty (30) days prior to the end of the second year, notify the assignee in writing of the impending revocation of the homesite.
 4. When an assignee can prove to the Subdivision Administrator that firm arrangements for home construction have been made through a government program or financing arranged through a financial institution, but that due to delays beyond the control of the assignee, the Subdivision Administrator can grant an extension. The extension shall be good until the home is constructed, or until the applicant loses eligibility for the program or the program is eliminated. In no event such an extension exceed three years, or five years total from the initial granting of the homesite.

5. Discontinuance of Use - When utilization of a homesite is discontinued for six (6) consecutive months for any reason, the Subdivision Administrator shall notify the assignee in writing that his homesite will be revoked unless the assignee can prove to the Subdivision Administrator that arrangements in accordance with Subparagraph 4 above has been made.
6. Tribal Council Revocation of Homesite Assignment - The Tribal Council may in extreme cases where the best interests of the Community are involved, revoke a homesite assignment when necessary to preserve the health, safety or welfare of the Community.
7. Relinquishment of Enrollment - Any assignee who relinquishes their enrollment as a member of the Gila River Indian Community shall automatically relinquish their homesite assignment or beneficiary status. The Subdivision Administrator shall advise any assignee whose beneficiary has relinquished enrollment that a new beneficiary must be named. In reassignment of such homesites or lease, the Planning and Zoning Commission shall give preference to the occupant of such lot or to members of the immediate family.
8. Voluntary Forfeiture of Homesite Assignments - Any assignee may at any time forfeit their homesite by signing a "Relinquishment of Homesite Form" with the Subdivision Administrator, provided such lot is in a condition to be reassigned.
9. Multiple Homesite Assignments - Any assignee who through inheritance or other means becomes the assignee of more than one homesite shall relinquish any additional homesites. The Subdivision Administrator shall notify the assignee of more than one homesite in writing of this fact and inform such assignee they have thirty (30) days in which to relinquish additional homesites. If this is not done within thirty (30) days, the Subdivision Administrator shall have the power to revoke additional homesites and shall notify the assignee of his determination.
10. Removal of Personal Property - An assignee or other occupant of a homesite or home on Tribal land shall have ninety (90) days from the date of the revocation to remove all personal property.

H. Transfer of homesite assignments:

1. Sub-Assignment or Leasing - An assignee may sub-assign his assignment and lease or rent any personal property located on the assignment if extenuating circumstances exist and the Planning and Zoning Commission approves the sub-assignment or rental agreement lease, provided such sub-assignee or lessee meets the criteria of Section 21.104(B) for qualified applicants.

2. Exchanges - Assignments may be exchanged with the approval of the Planning and Zoning Commission and in accordance with its terms and conditions.
3. Inheritance - It shall be the policy of the Planning and Zoning Commission that the assignee shall be entitled to the utmost feeling of security and priority rights in the homesite assignment, and that preoccupancy rights in the assignment shall be protected so long as there is compliance with the conditions set forth in this Chapter. No

homesite located on Tribal land shall be split, divided, or fractionated by inheritance.

- a. The initial assignee and each succeeding assignee or heir shall be required to prepare a formal designation of beneficiary naming an heir to the assignment and their personal property thereon. This designation shall be binding on the Planning and Zoning Commission and the Gila River Indian Community Council, subject to the following conditions:
- b. Such assignment shall designate as an heir or successor only a person who is a member of the assignee's family and who will live or is entitled to live with the assignee on the homesite, and who is a member of the Gila River Indian Community. When there are no other Community members in the household, a life tenancy may be granted to the surviving non-member spouse of the holder of the assignment.
- c. In the event the beneficiary inheriting a homesite is a minor child, an adult who has been appointed by the Court as legal guardian of the child may perform the obligations of the assignment. The exercise of the obligations by the guardian shall be subject to the approval of the Planning and Zoning Commission.
- d. If there is no named beneficiary eligible to inherit a homesite, the homesite shall be reassigned by the Planning and Zoning Commission. Members of the immediate family of the assignee and family members who were living with the assignee on the homesite shall be given a preference by the Planning and Zoning Commission in making the reassignment.
- e. The assignee shall be required to file a formal designation of the beneficiary, as stated herein, with the application for the assignment and the designation shall become a part of the record of the homesite assignment, provided however that the assignee may at any time and at his sole election change the beneficiary of record on an assignment by filing with the Subdivision Administrator the form designated for change of beneficiary.

- f. A record of all assignments, designation of beneficiary or change of beneficiary shall be submitted to the Superintendent, Pima Agency, for recording purposes.
 - g. The distribution and settlement of the personal property of the assignee on the homesite shall be determined by the Community Court.
- I. Appeals. The Legislative Standing Committee shall hear and decide appeals from any order, requirement, or determination made by the Subdivision Administrator or Planning and Zoning Commission.
1. An applicant or assignee may file an appeal if they contend that an error in any decision of the Subdivision Administrator or the Planning and Zoning Commission has been made. The appeal shall be filed with the Secretary of the Legislative Committee.
 2. The Secretary of the Legislative Committee shall place the item on the agenda of the Legislative Committee and notify the applicant or assignee of the time and place of the meeting.
 3. The Legislative Committee shall hear the appeal and issue a written decision within thirty (30) days and shall promptly forward a copy to all parties.
 4. The Legislative Committee may affirm or may reverse, wholly or in part, or modify the decision of the Subdivision Administrator or Planning and Zoning Commission.
 5. All decisions after a hearing by the Legislative Committee shall be the final administrative determinations.

J. Penalties:

1. If at any time it appears to the Subdivision Administrator that any person has violated or failed to comply with the provisions of this Chapter, or any of the rules and regulations of this Chapter, the Subdivision Administrator through the Community's Attorney, may institute proceedings in the Community Court for any appropriate remedy, including injunctive relief, seizure and forfeiture, enforcement of civil penalties, removal or correction of the violation and the posting of sureties to insure compliance.
2. Any person who violates any of the provisions of this Chapter shall be guilty of an offense and upon conviction, shall be punished for each offense by a fine no less than fifty (50) dollars, and no greater than five hundred (500) dollars, or by imprisonment for a period not to exceed twenty (20) days. Each day's failure to comply with an

applicable provision of this Chapter shall constitute a separate offense. A criminal prosecution under this subsection may be undertaken either as an alternative or in conjunction with any other remedy under this section.

3. The foregoing shall not be deemed to limit or restrict the Subdivision Administrator from taking other appropriate action, including issuance of cease and desist orders, if it appears any person has violated or failed to comply with this Chapter, nor shall it limit the right of a private person to privately enforce this Chapter in a civil court action.

21.104 GENERAL PROVISIONS

A. Interpretation

1. Minimum Requirements - in their interpretation and application the provisions of this Chapter shall be held to be the minimum requirements for the promotion and protection of the public health, safety, morals and welfare.
2. Conflicting Laws - where the conditions imposed by any provision of this Chapter are either more or less restrictive than comparable conditions imposed by other provisions of this or any other Tribal law, ordinance or regulation, the requirements which are more restrictive or which impose higher standards or requirements shall govern.
3. Existing Violations - no homesite assignment or utilization of Tribal land for homesite purposes not lawfully existing at the effective date of this Chapter shall become or made lawful solely by reason by the adoption of this Chapter, except where expressly indicated otherwise.
4. Severability - if any court of competent jurisdiction shall adjudge provisions of this Chapter invalid, such judgment shall not affect any other provision of this Chapter not specifically included in said judgment.

B. Qualifications to Receive Homesite Assignments:

1. Community Members - any enrolled member of the Gila River Indian Community as defined in Article III, Section 1 of the Constitution and Bylaws of the Gila River Indian Community; (1960) may receive a homesite assignment subject to the following conditions:
 - a. Must be 18 years of age or older.
 - b. Must agree to abide by the existing provisions of this Chapter and any amendments and by the provisions of the Constitution and Bylaws of the Gila River Indian Community regarding the utilization and occupancy of homesite assignments.

- c. Must satisfy any other qualifications as the Planning and Zoning Commission may establish.
 - d. Must declare his intent to use the assignment for the primary purpose of establishing a home conforming with any established minimum standards for dwellings.
 - e. Must be a head of household or a prospective head of household who will establish a separate household if assigned a homesite.
 - f. Must consent to a thorough investigation by the Planning and Zoning Commission and must furnish all information necessary for the investigation.
2. Gila River Housing Authority - the Gila River Housing Authority or one of its programs may receive homesite assignments subject to the following conditions:
- a. That the procedures of Sections 21.103(F) and (G) are followed where appropriate in this application and approval process.
 - b. That any subsequent assignment or reassignment of any homesite be approved by the Subdivision Administrator, who shall verify that the potential assignee does not have another homesite assignment, and that a complete homesite application has been filed.
 - c. The Housing Authority shall only receive those homesites that they would need for a specific project and that any homesite not utilized due to a cancellation or alteration of a particular program be returned to the inventory of eligible homesites.
 - d. That all other applicable portions of this Chapter have been adhered to.
 - e. When a recipient of a home under a Housing Authority program abandons or forfeits their unit or are evicted by the Community Court, the homesite that unit is on shall be revoked and revert to the control of the Housing Authority.
- C. Effect of the Chapter on Existing Homesite Assignments and Applications:
- 1. Existing Utilized Homesites - any homesite assignment made under any previous Homesite Ordinance or action of the Tribal Council lawfully existing on the effective date of this Chapter shall remain valid. The continued use of such homesite shall be subject to the provisions of this Chapter.
 - 2. Existing Homesites - Not Utilized - homesite assignments not utilized at the effective date of this Chapter shall be subject to the following conditions:

- a. For any existing non-utilized homesite that has been assigned for two or more years on or after the effective date of this Chapter, the Subdivision Administrator shall notify the assignee in writing that unless the homesite is utilized, or an extension granted under the provisions of Section 21.103(G)(4) within thirty (30) days the homesite shall be revoked and returned to the inventory of eligible homesites.
 - b. Any non-utilized homesite assignment made within two years prior to the effective date of this Chapter shall be subject to the provisions of Sections 21.103(G)(1-4) as if such assignment had been made under this Chapter.
3. Existing Homesites in Violation of Previous Ordinances or Unauthorized Use of Tribal Land for Homesite Purposes - Any homesite that was either in violation of the previous Homesite Ordinance or that is located on Tribal land without the authorization of the Tribal government shall be considered a "non-conforming homesite" and shall be subject to the provisions of Section 21.105, Non-Conforming Homesites.
- D. Utilization of Homesite Assignments: The utilization of homesites shall be subject to the following provisions:
1. Easements or rights-of-way for the construction of roads, utility facilities (telephone, electrical power, water, sewer, natural gas, or cable T.V.), canals, laterals, wells and other irrigation appurtenances shall be reserved by the Gila River Indian Community Tribal Council for each homesite. This means that the Governor can grant easements or rights-of-way for the construction of these facilities without first obtaining the permission of the assignee. The assignee shall not be entitled to any compensation except for any surface damage to the assignee's personal property resulting from the construction of the right-of-way.
 2. With the exception of provisions of 21.104(D)(3), only one single-family detached home and accessory buildings (see definitions, 21.106) shall be permitted on each homesite. Utilization of a homesite for any purpose other than for a residence shall require the specific approval of the Tribal Council, after review by the Planning and Zoning Commission.
 3. Second Home on Homesite Assignment or Lease - A homesite assignee or lessee may make an application with the Subdivision Administrator to construct a second home for an elderly or disabled member of their immediate family. The application shall be placed on the agenda of the Planning and Zoning Commission who shall review and decide the application. The construction of any second home permitted by the Planning and Zoning Commission shall be subject to the following conditions:

- a. The home is smaller than and clearly auxiliary to the principal home.
 - b. The home shall be the property of the homesite assignee or lessee.
4. All mineral and water rights on assigned land shall be retained by the Gila River Indian Community.
 5. The appropriation, excavation, alteration or destruction of any historic or prehistoric ruin or monument or removal of any object of antiquity situated on a homesite shall be subject to Archaeological Resources Protection Act of 1979, 93-Stat.721. P.L. 96-9J, of the United States Government and the Archaeological Licenses Ordinance (Title 15, Chapter 4) of the Gila River Indian Community.
 6. Buildings and other improvements placed on the assignment by the assignee shall be recognized as real property.
 7. Any building or structure shall comply with all relevant Tribal Ordinances.
 8. All water and sewage disposal facilities shall comply with Tribal standards or Indian Health Service standards, whichever is applicable.
- E. Building Setbacks - the following setbacks shall be provided and maintained in an open and unobstructed state unless otherwise designated by the Planning and Zoning Commission:

	<u>Width</u>
<u>Front Yard</u>	25 ft.
<u>Corner Side Yard</u>	25 ft.
<u>Interior Side Yard</u>	10 ft.
<u>Rear Yard</u>	15 ft.

- F. Subordination of Interest - the assignee may only subordinate his interest in a homesite assignment for the purpose of financing a house if he subordinates his interests to the Gila River Housing Authority or the Gila River Indian Community Tribal Council. The assignment in such cases will be subject to the jurisdiction of the Gila River Housing Authority and the Gila River Indian Community Tribal Council. The Tribal Council may permit the subordination of interest of a homesite assignment or lease for a U.S. Government program after the consideration of such a request.
- G. Length of Assignment or Lease - Homesite assignments or leases shall be for fifty (50) years from the initial date of assignment. Transfers, exchanges or inheritance shall be considered a continuation of the original assignment, not a new assignment.

1. Ninety (90) days prior to the expiration of a fifty (50) year lease or assignment, the Subdivision Administrator shall notify the assignee in writing of the impending expiration of their lease or assignment.
 2. The assignee shall have the first right to a reassignment or lease. Only if the assignee chooses not to reapply shall the homesite be returned to the inventory of available homesites.
- H. Schedule of Fees - a schedule of fees for making applications for homesite assignments or leases and for work performed by the Tribal Surveyor shall be maintained by the Subdivision Administrator and provided to all applicants. This schedule shall be subject to approval by the Natural Resources Committee, who may from time to time modify the fee schedule.

21.105 NON-CONFORMING HOMESITES

The purpose of this Section is to provide for the regulation of non-conforming homesites and to specify those circumstances under which those non-conforming homesites may continue.

A. Authority to Continue Use of a Non-Conforming Homesite:

1. a. Any Community member who is living in a residence on Tribal land in violation of the terms of this Chapter on the effective date of this Chapter shall have the right of continuous occupancy (see definitions Section 21.106) subject to the provisions of this Chapter.
- b. The Subdivision Administrator shall notify in writing all non-conforming users of their status under this Chapter and advise them that they may apply for a valid homesite assignment under the provisions of Sections 21.103(E) and (F).
2. a. Any Community member who has continuously maintained a non-conforming homesite or where records have been destroyed or lost on Tribal land for five (5) or more years shall automatically be granted a homesite by virtue of adoption of this Chapter. The Subdivision Administrator shall have such lots surveyed and platted by the Tribal Surveyor and formally record such homesite assignments. The Planning and Zoning Commission shall review all of such lots.
- b. In exceptional cases where the granting of a homesite will not resolve the situation, or will not satisfy the occupant, the Subdivision Administrator shall provide all information on the issue to the Planning and Zoning Commission who shall hear and decide the issue. The Subdivision Administrator shall notify the occupant of such meeting. The occupant or their representative shall be given the opportunity to present any evidence or testify on the issue.

- c. If such assignments involve the development of a subdivision the subdivision shall be prepared in accordance with Chapter 2 of this Title.
3. a. In the case of any homesite, or Tribal land used for residential purposes which is non-conforming due to its utilization by a non-Community member, the Subdivision Administrator shall notify the inhabitant in writing that they have sixty (60) days to vacate such homesite or Tribal land or to show the Subdivision Administrator good cause why they should be allowed to continue residence.
 - b. If the non-Community member inhabitant attempts to show good cause to the Subdivision Administrator, each such case shall be reviewed by the Planning and Zoning Commission. The Commission upon consideration of all facts shall render a decision. The Commission may establish a set period of time such inhabitant may continue residence, grant a right of continuous occupancy, grant a right of life tenancy, or may order the immediate vacation of the premises.
- B. Discontinuance of use of Non-Conforming Homesites. Whenever a non-conforming homesite is abandoned for a period of sixty (60) continuous days, any rights of occupancy of the previous inhabitant shall cease. The homesite or Tribal land and any remaining real property shall revert to the full control of the Tribe.

21.106 RULES AND DEFINITIONS

The rules and definitions contained in this Section shall be observed and applied in the interpretation of all other sections herein, except when the text clearly indicates otherwise.

A. Rules:

1. Words used in the present tense shall include the future tense. Words in the singular shall include the plural and words in the plural the singular.
2. The word "shall" is mandatory, not discretionary.
3. The word "may" is permissive.
4. The words "building and/or structure" shall include all non-living improvements upon the land.
5. The masculine gender shall include the feminine and neuter genders.

B. Definitions:

1. "Accessory Building" a garage, carport, shed, outhouse, va-tho, or other building used to complement a residence. Accessory buildings shall be subordinate to and smaller in size than the residence. No accessory building shall be used for non-residential purposes.
2. "Buildable Lot" any lot within an approved Tribal subdivision or individual homesite on Tribal land that meets the following criteria:
 - a. Has direct legal and contiguous access to an approved road right-of-way of the BIA, state of Arizona, Maricopa County or Pinal County.
 - b. Has a source of water suitable for domestic use, based on Indian Health Service criteria.
 - c. Has potential utility access by utilization of road right-of-way or by individual easements for electrical, telephone and sanitary sewer facilities.
 - d. Has a topography and soil quality suitable for home construction and for septic field use if necessary.
 - e. Has been certified as having met the above criteria by the Subdivision Administration and Planning and Zoning Commission.
3. "Building Setback" an area of a homesite maintained free of any buildings or structures. For the purposes of this Chapter the following definitions and requirements shall be adhered to:
 - a. "Front Yard" an area between the front lot line and a parallel line twenty-five (25) feet inside exterior boundaries of the homesite.
 - b. "Corner Side Yard" an area between a lot line abutting a road right-of-way, other than the front lot line and a parallel line twenty-five (25) feet inside the exterior boundaries of the homesite.
 - c. "Interior Side Yard" an area between any side lot line not abutting a road right-of-way and a parallel line ten (10) feet inside the exterior boundaries of the homesite.
 - d. "Rear Yard" an area between the rear lot line (that lot line opposite the front lot line) and a parallel line fifteen (15) feet inside the exterior boundary of the homesite.

SETBACKS, YARDS AND LOT LINES ILLUSTRATED

4. "Homesite" an approved homesite lot within a Tribal subdivision under the provisions of this Chapter or previous homesite ordinance or a valid lease of Tribal land for a single-family residence. Any residence that does not meet the above standards shall be considered a "non-conforming homesite."
5. "Life Tenancy" the right to utilize a homesite for the remainder of the life of the person receiving this right.
6. "Non-Conforming Homesite" a residence established and continued in violation of a previous Homesite ordinance or this Chapter or a valid Tribal homesite or residence occupied by person(s) other than the legitimate assignee or sub-assignee.
7. "Personal Property" any property located on a homesite assignment or lease which is not "real property".
8. "Real Property" any permanent improvements to a homesite assignment or lease including utilities, foundations, homes, garages, etc.
9. "Right of Continuous Occupancy" the right to continually occupy a non-conforming homesite until:
 - a. The occupants are directed to move by an order of the Community Court.
 - b. The occupants are directed to move by the Tribal Council.
 - c. The occupant vacates the residence.
10. "Subdivision Administrator" an employee of the Gila River Indian Community appointed by the Governor to perform the duties assigned by this Chapter.
11. "Tribal Subdivision" residential subdivisions approved by the Tribal Council and formally recorded and recognized by the Realty Office of the BIA.

Chapter 2. SUBDIVISION AND PLAT.

21.201 PURPOSE AND INTERPRETATION

- A. Purpose. This chapter has been adopted to serve the following purposes:
1. To promote the public health, safety and general welfare; to conserve, protect and enhance property; to secure the most efficient use of land; and to facilitate the adequate and economical provision of public improvements.

2. To provide for orderly growth and development; to afford adequate facilities for the safe, and efficient means of traffic circulation and to safeguard the community from flood damage.
 3. To prescribe reasonable rules and regulations governing the subdivision and platting of land; the preparation of plats; the location, width and course of streets and highways; the installation of utilities; and other essential improvements; and the provision of necessary public grounds for parks, playgrounds and other public open space, within residential neighborhoods.
 4. To establish procedures for the submission, approval and recording of plats; and to provide the means for enforcement.
- B. Short title. This chapter shall be known and may be cited as the "Subdivision Regulations of the Gila River Indian Community."
- C. Application and authority:
1. With the exception of the exemptions listed under item #2 of this subsection this chapter shall apply to subdivisions of land made within the boundaries of the Gila River Indian Community.
 2. Exemptions - Minor subdivisions, as defined in section 21.201 division of land ordered or approved by a court, a division of land solely for agricultural purposes, conveyance of land for use as rights-of-way for highway, railroad or other public utilities not involving any new streets or easements of access, the sale or exchange of parcels between owners of adjacent properties if additional lots are not thereby created, a conveyance made to correct errors in prior conveyances and the division of acreage in excess of five (5) acres.
- D. Interpretation. In interpreting and applying the provisions of this chapter, all standards shall be considered the minimum requirements for the promotion and effectuation of the purposes set forth in subsection A.

Nothing herein shall repeal, abrogate, annul or in any way interfere with, any provisions of law, or any rules or regulations other than subdivision regulations adopted or issued pursuant to law relating to subdivision or development of land. Where this chapter imposes greater restrictions or requirements than those imposed or required by other provisions of law, rules, regulations, covenants or agreements, the provisions of this chapter shall control, but nothing herein shall interfere with, abrogate, or annul any easement, covenants, deed restrictions or agreement between parties which impose restrictions greater than those imposed by this chapter.

A. Rules:

1. Words used in the present tense include the future tense; words in the singular include the plural and vice versa.
2. The word "shall" is always mandatory; the word "may" is permissive.
3. The word "person(s)" includes an association, firm, partnership or corporation as well as an individual.
4. Terms not herein defined shall have the meanings customarily assigned thereto.

B. Definitions:

1. "Alley" a public way providing secondary vehicular access and service to properties which also abut a street.
2. "Block" a piece or parcel of land, a group of lots, entirely surrounded by public right-of-way, water courses, railroads, parks, tribal or allotted lands or a combination thereof.
3. "Commission" the Gila River Indian Community Planning and Zoning Commission.
4. "Committee" the Natural Resources Committee.
5. "Community" the Gila River Indian Community.
6. "Council" the Gila River Indian Community Tribal Council.
7. "Crosswalk" a strip of land dedicated to public use, which is reserved across a block to provide pedestrian access to adjacent areas.
8. "Easement" a grant by the owner of the use of a strip of land by the public, a corporation, or persons for specific uses and purposes.
9. "Frontage" that portion of any lot or parcel that abuts a street right-of-way.
10. "Final Plat" a map of the subdivision prepared in accordance with Article IV Section C of this Ordinance.
11. "Improvements" all facilities constructed, erected or provided to facilitate the use of subdivided land.
12. "Irrigation Facilities" canals, laterals, ditches, conduits, gates, pumps and allied equipment necessary for the supply, delivery and drainage of irrigation water.

13. "Lot" a piece or parcel of land separated from other pieces or parcels by description, as in a subdivision or on a record survey map or by metes and bounds, for the purpose of lease, transfer of ownership or separate use. (See Appendix II for types of lots).
14. "Lot Area" the total area within the lot lines as measured in a horizontal plane.
15. "Lot Depth" the horizontal distance between the front and rear lot lines measured along the median between the side lot lines.
16. "Lot Line" a boundary line of a lot:
 - a. Front Lot Line - that lot line abutting with a street right-of-way line. When more than one lot line abut a street right-of-way line, a front line shall be designated on the subdivision plat.
 - b. Rear Lot Line - the lot line opposite and farthest from the front lot line. For a pointed or irregular lot, the rear lot line shall be an imaginary line, parallel to and farthest from the front lot line, not less than ten (10) feet long and wholly within the lot.
 - c. Side Lot Line - any line other than front or rear lot lines.
17. "Lot Width" the distance on a horizontal plane between the side lot lines of a lot, measured at right angles to the line establishing the lot depth at the established building setback line.
18. "Minor Subdivision" any subdivision containing not more than five (5) lots; and not adversely affecting the development of the remainder of the parcel or adjoining property; and not involving any new streets or construction or extension of a Community owned public utility and not in conflict with any other relevant Tribal regulation. Minor subdivisions are excluded from the provisions of this chapter.
19. "Parcel" the word "parcel" shall refer broadly to a lot, tract, or any other piece of land.
20. "Plat" a map of a subdivision
 - a. Preliminary Plat - a map, including supporting data prepared in accordance with Article IV Section B of this chapter.
 - b. Final Plat - a map of a subdivision prepared in accordance with Article IV Section C of this chapter.

21. "Plat Officer" the Subdivision Administrator of the Gila River Indian Community, unless otherwise designated by the Governor.
22. "Public Utilities" underground, above ground, or overhead facilities furnishing to the public under federal, state or community regulations, electricity, gas, steam, communications, water, drainage, flood control, irrigation, garbage disposal and sewage disposal; also, such person, firm, corporation, or governmental department or board as the context indicates.
23. "Re-Subdivision" the subdivision of an area that has been previously subdivided.
24. "Street" an area which primarily serves or is intended to serve as a vehicular and pedestrian access to abutting lands or other streets. The word "street" refers to the width of the street right-of-way or easement, whether public or private. Such as to include, but not limited to, that which is commonly referred to as street, avenue, road, land, boulevard, court, or way.
25. "Street Line" a line describing the boundaries of a street right-of-way.
26. "Street Right-of-Way" that area of land within the street lines designated and dedicated as such on the plat of subdivision. Street rights-of-way, also, serve as easements for public utilities.
27. "Street Width" the shortest distance between the property lines abutting both sides of a street right-of-way.
28. "Subdivision" the division of a parcel of land into two or more parts, any of which parts is less than five (5) acres for the purpose of lease, transfer of ownership or building or development. (See Article I, Section C, Item #2 for exemptions). - The term "subdivision" is not limited to the division of land for single family residential purposes and shall include within the limitations of the foregoing definitions, commercial and industrial subdivisions, and the division of cooperative and condominium multi-family residential properties.

21.203 ADMINISTRATION

- A. Organization. Six entities of the Gila River Indian Community are involved in the administration of this Ordinance. For the purposes of clarity, each entity and their pertinent responsibilities are listed below:
 1. Plat Officer:
 - a. Receives all requests for subdivision from the various District Councils, Community members and landowners.

- b. Handles the processing of all subdivisions in accordance with the procedures of Article III, Section B.
 - c. Maintains an inventory of all sketch plans, preliminary plats, final plats and other maps or documentation relating to subdivisions within the Gila River Indian Community.
 - d. Performs all other duties assigned by this Ordinance.
 2. Tribal Surveyor:
 - a. Performs all surveys required by the provisions of this Ordinance.
 - b. Prepares preliminary and final plats in accordance with the provisions of Article IV Sections B and C.
 - c. Performs all other duties as assigned by this Ordinance.
 3. Land Use Planner:
 - a. Prepares sketch plans in accordance with the provisions of Article IV, Section A.
 - b. Provides the Commission with the necessary planning information, pertaining to each proposed subdivision.
 4. Planning and Zoning Commission:
 - a. Review and make recommendations regarding all sketch plans and preliminary plats.
 - b. Approve final plats when all provisions of this Ordinance are met.
 - c. Determine all issues that are left to the discretion of the Commission by this chapter.
 5. Natural Resources Committee. Receives preliminary and final plats and recommendations from the Commission, reviews the plat and forwards the plat and recommendations to the Tribal Council.
 6. Tribal Council. Receives the preliminary and final plats and recommendations from the Natural Resources Committee and renders a decision. Council approval shall enable the Governor or Lt. Governor to sign the preliminary or final plat.
- Other Tribal departments or programs and the following non-Tribal organizations are also involved in the

subdivision process: Bureau of Indian Affairs, Pima Agency, Branches of Roads and Realty, BIA Phoenix Area Office, Mountain Bell, and various power or utility companies.

B. Procedure for the preparation, review and approval of subdivisions:

1. A request shall be made to the Plat Officer in such form as the Planning and Zoning Commission may prescribe.
2. Based on the request, the Land Use Planner in cooperation with the Plat Officer and Surveyor shall prepare a sketch plan in accordance with the provisions of Article IV, Section A.
3. The Plat Officer shall submit the sketch plan to the Planning and Zoning Commission and the District for review and comment.
4. Based on sketch plan and comments or recommendations of the District and Commission, the Tribal Surveyor will prepare a preliminary plat in accordance with the provisions of Article IV, Section B.
5. The preliminary plat shall be presented by the Plat Officer to the Planning and Zoning Commission and after the Commission has reviewed the plat and made its recommendations, present the plat to the Natural Resources Committee.
6. The Tribal Council receives the plat and the recommendations of the Natural Resources Committee and renders a final decision on the plat.
7. The Plat Officer shall submit a copy of the approved preliminary plat to the following organizations allowing thirty (30) days for review and comment:
 - a. Bureau of Indian Affairs, Pima Agency, Branch of Roads for inclusion into the BIA Road Improvement Planning Program.
 - b. The Bureau of Indian Affairs, Pima Agency Branch of Realty.
 - c. Mountain Bell.
 - d. The appropriate power or natural gas company.
 - e. The County or State Highway Department if direct access to County or State roads are involved.
 - f. The Water and Sanitation Program of the Gila River Indian Community or local service district where appropriate.

- g. San Carlos Project where appropriate.
 - h. Bureau of Indian Affairs Phoenix Office.
8. The Tribal Surveyor shall prepare a final plat in accordance with the preliminary plat and the provisions of Article IV, Section C. If no significant changes have been made, the final plat may be submitted to the Planning and Zoning Commission Chairman and Governor or Lt. Governor for their signature (after all other required signatures have been obtained).
 9. The Plat Officer shall maintain the official copy in his records. The original of the final plat shall be submitted to the BIA, Pima Agency, Branch of Realty for recordation with the Southwest Title Plant. Where necessary, a copy of the final plat shall be submitted to any of the organizations listed under item 7 of this section.

--If the proposed subdivision is on land leased from the Tribe or not owned by the Tribe, the responsibility for following steps 2 through 8 shall be lessee or landowners.

21.204 SPECIFICATIONS FOR PLANS AND PLATS

- A. Sketch plan. The following information shall be clearly indicated on a sheet of paper or plastic drafting film at a size and scale as established by the Land Use Planner. The Plat Officer may vary or waive any of the requirements that are clearly not necessary or impractical.
 1. Ownership, if other than the Tribe, the address shall also be included.
 2. Date, title, north arrow and notation stating "sketch plan".
 3. Any significant natural or man-made features.
 4. All street and lot lines and approximate dimensions.
 5. Existing public utilities within close proximity of the subdivision.
 6. Planned use of each lot, other than for a single-family home.
 7. Land use of adjacent properties.
 8. A sequential numbering of all lots.
 9. A legal description of land to be subdivided.

- B. Preliminary plat. The following information shall be clearly indicated on tracing cloth or plastic drafting film at a size and scale as established by the Tribal Surveyor. The Plat Officer may vary or waive any of the requirements that are clearly not necessary or impractical.
1. Name or title and notation "Preliminary Plat" (the title shall not duplicate any existing subdivision within the Gila River Indian Community).
 2. Ownership, if other than the Tribe, the address shall also be indicated.
 3. A legal description of the land to be subdivided.
 4. The recorded length and bearing of the exterior boundaries of the subdivision with reference to an established corner or corners.
 5. Ownership and use of all adjacent properties.
 6. A small scale location map or sketch showing the location of the subdivision within the general vicinity.
 7. Location, widths, type of construction, and names of all existing and platted streets, alleys or other known public ways and easements, railroad and utility rights-of-way, parks, cemeteries, water courses, irrigation facilities, drainage ditches, areas subject to flooding, bridges and other pertinent data as determined by the Plat Officer on the land proposed to be subdivided and within one hundred and fifty (150) feet of the proposed subdivision.
 8. Existing sewers, water mains, culverts and other underground structures within the street and immediately adjacent with pipe sizes and grades indicated.
 9. Layout and width of all new street rights-of-way, and easements.
 10. The signature and seal of the Tribal Surveyor or other surveyor licensed by the State of Arizona.
 11. Sequential numbering of each lot.
 12. Planned use, if other than single-family residential.
 13. Approximate dimensions and area of each lot.
 14. Proposed building setback line.
 15. Approximate radii of all curves and lengths of tangents.
 16. Any building on the site or within 150 feet of the boundary.
 17. Soil types. (Item 17 may be on a separate map.)

Where appropriate or where requested by the Plat Officer or Planning and Zoning Commission. The following information shall accompany the preliminary plan.

18. Contours at vertical intervals not more than two (2) feet.
 19. Plans for sewage disposal.
 20. Plans for water supply.
 21. Drainage plans.
 22. Copies of any easement, lease or protective covenant documents.
 23. Proposed layout and architectural rendering of structures, other than single-family homes.
 24. Improvement plans for street, sidewalk or irrigation facilities, construction.
- C. Final plat. The following information shall be clearly indicated with water-proof, non-fading black ink on tracing cloth or equal material at a size and scale as established by the Tribal Surveyor.
1. Date, North arrow.
 2. Ownership, if other than the Tribe the address shall also be shown.
 3. All monuments erected, corners and other points established in the field in their proper places.
 4. The exact length and bearing of all exterior boundary lines, public grounds, meander-lines and easements unless they parallel a noted boundary.
 5. The exact width of all easements, streets, and alleys.
 6. The dimensions of all lot lines.
 7. All lots consecutively numbered.
 8. The number of degrees and minutes of all lot angles or bearings of same other than 90 , except that when the line in any tier of lots are parallel, it shall be sufficient to mark only the outer lot. When any angle is between a curve and its tangent, the angle shown shall be that between the tangent and the main chord of the curve. When between curves of different radii, the angle between the main chords shall be shown.
 9. When a street is on a circular curve, the main chord of the center line shall be drawn as a dotted line in its proper

place; and either on it, or preferably in an adjoining table, shall be noted its bearing and length, the radius of the circle of which the curve is apart, and the central angle extended. The lot-lines on the street sides may be shown in the same manner, or by bearings and distances. When a circular curve of thirty (30) foot radius or less is used to round off the intersection between two straight lines, it shall be tangent to both straight lines; it shall be sufficient to show on the plat the radius of the curve and the tangent distances from the points of curvature to the point of intersection of the straight lines.

10. The name of all roads and streets within the subdivision or abutting the subdivision.
11. All water courses, irrigation or drainage facilities pertinent to the subdivision.
12. The seal and signature of the Tribal Surveyor or another surveyor licensed by the State of Arizona.
13. The certification form detailed in Appendix I shall be clearly printed on the plat.

21.205 DESIGN STANDARDS

The design standards listed in this Article shall be incorporated into each subdivision.

A. General:

1. All applicable tribal ordinances and resolutions and federal laws shall be adhered to.
2. Subdivisions shall be designed in a manner that will preserve significant natural, historical or cultural features of the land while minimizing environmental damage.

B. Streets:

1. General - all streets shall be designed in substantial relation to topographical and drainage considerations, public convenience, and safety and the proposed use of each street and the abutting land.
2. Names - streets that are extensions of, or obviously in alignment with existing streets shall bear the name of the existing street; however, no other streets shall bear names that duplicate or nearly duplicate so as to be confused with the names of existing streets, within the boundaries of the Gila River Indian Community.
3. Street Right-of-Way-Widths - unless otherwise indicated by the Planning and Zoning Commission, or Tribal Council, the following street right-of-ways shall be provided.

Type of Street

R.O.W. Width

arterial streets	100 ft.
section line roads, major	80 ft.
commercial or industrial streets	60 ft.
half-section line roads, collector, commercial and industrial streets, residential streets	50 ft.
alleys	16 ft.
cul-de-sacs	50 ft.
half-roads	25 ft.
temporary turn-around "tees"	60 ft.

4. Grades - the grade of any street shall not exceed six (6) percent unless necessitated by exceptional topographical considerations.
 5.
 - a. Intersection design - wherever possible, intersection angles should be at right angles and in no case less than seventy-five (75) degrees or more than one hundred thirty-five (135) degrees.
 - b. Property lines at street intersections should be rounded with a minimum radius of twenty-five (25) feet or of a quarter radius where necessary, to allow maintenance of sight distance; provided however, comparable cut-off chords may be used instead of rounded corners.
 - c. Street intersections having more than four legs and Y-type intersections should be avoided. Streets should follow half or quarter section line roads and local streets should follow the alignment of adjacent or nearby streets.
- C. Blocks. The length, width, and shapes of blocks shall be such as are appropriate for the locality and the type of development contemplated.
- D. Lots:
1. Width-to-Depth Ratio - lots should have depth ratio of between three to one and two to one.
 2. Access - lots should have direct access to a residential street.
 3. Setbacks - the following setbacks shall be the minimum standard unless otherwise designated by the Planning and Zoning Commission.

Street Line Parallel to:

Width

Front lot line or side lot lines that are paralleled to streets.	25 ft.
Side lot line	10 ft.
Rear lot line	15 ft.

An additional 20 ft. of setback shall be added to any lot line abutting an arterial road, irrigation structure, or ditch, railroad right-of-way, power transmission line or other significant feature as determined by the Commission

4. Access - wherever possible, each lot should have access to a residential street, direct access to state, county, or other arterial street is discouraged and prohibited wherever a lot has another viable point of ingress and egress.
- E. Easements. The following easements shall be provided when deemed necessary by the Plat Officer; all easements shall be granted in accordance with the provisions of 25 CFR Part 161.
1. Rear Lot Lines - a ten (10) ft. wide easement running parallel to the rear lot line.
 2. Side Lot Line - as established by the Plat Officer.
 3. Cul-de-sacs - a sixteen (16) ft. wide easement to prevent dead-end mains.
 4. Surface Drainage Courses - any significant surface drainage course not owned by the Tribe, or owned or leased by an appropriate governmental unit, or utility company, shall have an easement or dedication allowing expansion and protecting such drainage course from damage provided.

21.206 CIVIL PENALTY OR FINE

After a hearing pursuant to the civil procedures of the Gila River Indian Community and upon a finding that a person or property is in violation of this Ordinance, the Community Courty may issue such order as may provide relief, including but not limited to:

- A. Imposition of a fine not to exceed \$250 to \$1,000.
- B. An order directing the violator to cease and desist from further violation.
- C. An order directing the owner of the property in violation to remove or modify the property or take such other action so as to eliminate the violation.

CHAPTER 3. SIGNS

21.301 INTENT

The reasonable display of signs is necessary for conducting competitive commerce and industry as well as providing motorists and pedestrians with needed information. This chapter is intended to allow the reasonable display of signs without impairing public safety, maintaining freedom from visual obstructions and while preserving the character and quality of the Gila River Indian Community.

The intent of this Chapter is to complement and not interfere with the Highway Beautification Act of 1965, 79, Stat. 1028, 23 U.S.C. 131 et seq.

21.302 GENERAL REQUIREMENTS

- A. Flashing, moving, or blinking signs or flashing, moving, or blinking sign lights are prohibited and shall not be permitted under any circumstances with the following exception: signs that alternately display only the current time and temperature.
- B. Signs may be illuminated by fixed lights, either internal, or external, provided that the lighting must be controlled to preclude glare, or the beaming of light onto a street or residential building.
- C. No sign shall be permitted which in any way obstructs a clear view of any street intersection, traffic control signal or device, driveway, or walkway.
- D. All signs shall be securely anchored according to accepted commercial standards, so as not to endanger public safety.
- E. Any sign, awning, or marquee located within three (3) feet of a driveway or parking area shall have a bottom elevation not lower than twelve (12) feet above curb level.
- F. All signs shall be subject to inspection by the Sign Officer, who may condemn and order the removal of any sign which does not conform to this chapter, or which poses a threat to public safety.
- G. No sign shall be located in a road right-of-way or on other public property unless permission to do so has been granted by governmental unit which has jurisdiction over such road right-of-way or public property.
- H. Every sign shall be maintained in a safe, presentable, and structurally sound condition.

EXCEPTIONS

The provisions of this Chapter shall not apply to the following:

- A. Signs not visible beyond the boundaries of the lot or parcel upon which they are situated or from any public thoroughfare or right-of-way.
- B. Miscellaneous traffic and other official signs of any public or governmental agency, such as, but not limited to railroad crossing signs, signs indicating danger, speed limit, road conditions, etc.
- C. Any sign which is located completely within an enclosed building and which is not visible outside of such building.
- D. Tablets, grave markers, headstones, statuary, or remembrances of persons or events that are non-commercial in nature.
- E. Works of fine art when not displayed in conjunction with a commercial enterprise that may profit from such a display.
- F. Temporary decorations or displays celebrating the occasion of a traditionally accepted cultural, patriotic, or religious holiday provided such items are removed within fifteen (15) days of such occasion.
- G. All signs of a warning, directive, or instructional nature erected by a utility on a valid easement for right-of-way or lease provided such signs are deemed by the Sign Officer to be necessary for the successful operation of the utility.
- H. Signs on a truck, bus, trailer, or other motor vehicle while operated in the normal course of business which is not primarily the display of such signs.
- I. Religious symbols, monuments, icons, and name identification signs displayed by church, temple, chapel, mosque, or private school, provided such display is located on the private property of the religious group.

REQUIRED PERMIT

With the exception of those signs specifically exempted from the provisions of this Chapter and of the signs listed below under subsection B, any sign erected after the effective date of this Chapter shall be required to obtain a permit under the provisions of this Section.

- A. Processing. A sign permit issued by the Government and Management Committee shall be obtained prior to the erection of any sign. The following process shall be adhered to prior to the issuance of a sign permit under the provisions of this Section.

1. An application in such form as the Government and Management Committee may by rule require shall be filed with the Sign Officer. Included with the application shall be the following information:
 - (a) A map drawn to scale showing the exact location where the sign would be located.
 - (b) The type, height, and dimensions of the proposed sign.
 - (c) A rendering of what would be on the sign face(s).
 - (d) If the sign is to be on allotted or privately owned land, proof of consent of the owners of the property such sign would be located on.
 2. Upon receipt of the required application and information the Sign Officer will place the application on the agenda of the Government and Management Committee.
 3. Upon consideration of the application, the Government and Management Committee may grant or deny a sign permit. If the requested permit is for a new sign location, the Natural Resources Committee shall review the request prior to the Government and Management granting the permit. If a sign permit is issued, the following items shall be established by the Committee and included on the permit:
 - (a) The total size and surface area of the sign.
 - (b) The exact height and location of the sign.
 - (c) The content of the display.
 - (d) The time such permit is valid for.
 - (e) The fee for the permit.
 - (f) The rental fee for the use of the land, if such sign is located on Tribal land.
- B. Signs not Requiring a Permit. In addition to the signs exempted from the provisions of this chapter, in Section 21.303, the following signs although under jurisdiction of this chapter will not require a permit:
1. Temporary, non-illuminated signs erected in connection with new construction work when such signs do not exceed thirty-two (32) square feet in area, and are displayed during such period as the construction is in progress, provided such signs are located on the site where such construction is being done, and further provided that such signs only identify architects, engineers, contractors, and other firms engaged in such construction.

2. Residential and commercial nameplate identification signs or combination nameplate and street address signs provided such signs do not exceed four (4) square feet in area.
3. Tablets, such as memorials, cornerstones, name of a building, date of erection, use of a building, when built into the walls of the building.
4. Incidental signs, such as signs displayed through a window, mobile special event, or sale signs, parking, entrance, or exit signs.
5. Temporary signs for events of general public interest provided signs are removed within twenty-four (24) hours of the expiration of such event.
6. Political signs, provided the person or organization responsible for the erection or distribution of any such signs, or the owner, or his agent, of the property upon which such sign may be located, shall remove the sign within ten (10) days of the election.

21.305

PERMITTED SIGNS

For the purposes of this Chapter, there shall be three categories of permitted signs; 1) residential area signs, 2) commercial industrial, and agricultural area signs, and 3) billboards.

A. Residential Area Signs

1. Permitted Residential Area Signs - the following signs are permitted in residential areas in accordance with the regulations set forth herein.
 - a. Nameplate and address identification signs, one per residence, with a maximum surface area of four (4) square feet.
 - b. Identification signs for churches, schools, cemeteries, and other public facilities, with a maximum surface area of eighty-one (81) square feet.
2. Location and Maximum Height:
 - a. All signs shall be located on the same lot as the building such use is appurtenant to.
 - b. No sign shall exceed the height of the principal building on the lot such sign is located on or fifteen (15) feet whichever is less.

B. Commercial, Industrial, and Agricultural Area Signs

1. Permitted Commercial, Industrial, and Agricultural Area Signs - the following signs are permitted in commercial, industrial, and agricultural areas in accordance with the regulations set forth herein.
 - a. Wall Signs - signs on the exterior wall of a building.
 - b. Freestanding Signs - One freestanding sign with a maximum surface area of eighty-one (81) square feet for each commercial, industrial, or agricultural establishment. In the case of a shopping center, or where more than one establishment exists in a single building or on a single lot, an additional twenty (20) feet of surface area for each additional establishment may be added to the maximum permitted surface area. In no event shall the maximum surface area exceed one-hundred and sixty (160) square feet.
 - c. Incidental Signs - such as, but not limited to:
 - (1) Signs identifying parking areas or relating to the parking of vehicles.
 - (2) Signs denoting entrances, exits, secondary entrances, etc.
 - (3) Signs displayed on or through a window.
 - d. Sale and Rental Signs - one per lot, not to exceed twenty (20) square feet in surface area.
2. Location and Maximum Height
 - a. All commercial, industrial, and agricultural area signs shall be located on the lot of the principal use such sign is appurtenant to. No sign shall extend beyond the boundary of the lot it is located on.
 - b. No sign shall exceed the height of the principal building on the lot such sign is located on or twenty (20) feet whichever is less.

C. Billboards. Billboards may be permitted subject to the following provisions:

1. Billboards shall only be located adjacent to designated areas adjacent to a major thoroughfare. (See Appendix B.)
2. No billboard shall be closer than six hundred (600) feet to another billboard.

3. Billboard surface area shall not exceed six hundred (600) feet (one side).
4. No billboard shall be located within five hundred (500) feet of a residential area.
5. A minimum of six (6) feet of clearance shall be provided between ground level and the base of the sign.
6. No billboard shall exceed thirty (30) feet in height.

21.306 NON-CONFORMING SIGNS, PENALTIES, AND FEES

A. Non-Conforming Signs:

1. Signs which are not in compliance with the provisions of this Chapter on the effective date of this Chapter shall be subject to the terms of this Section.
2. No sign, illegally erected under the provisions of any previous ordinance shall be made legal by the adoption of this chapter.
3. Any lawfully erected sign or proposed sign approved by the appropriate tribal authority prior to the effective date of this chapter, which does not conform with the requirements of this chapter may continue for a maximum of five (5) years, subject to the conditions contained herein.
4. The sign officer shall make an inventory of all non-conforming signs existing on the effective date of this chapter.

B. Removal on Non-Conforming Signs:

1. The Sign Officer may remove any sign located on Tribal land that is not under a valid lease or easement for right-of-way.
2. The sign officer may order the removal of illegal or non-conforming sign on allotted, private, or leased land or on an easement for right-of-way under the following circumstances:
 - a. Five (5) years have elapsed from the effective date of this chapter.
 - b. The sign poses a threat to the health, safety, or general welfare of the Community.
 - c. The sign identifies or advertises a use no longer in existence.
 - d. The sign was erected in violation of the terms of this chapter after the effective date of this chapter.

Failure to comply with an order for removal by the Sign Officer as permitted in this Section shall be subject to the penalty section of this Section.

C. Penalties:

1. If at any time it appears to the Sign Officer that any person has violated or failed to comply with the provisions of this chapter, or any of the rules, regulations, orders, directives, or permits issued pursuant to this chapter, the Sign Officer through the Community's attorney, may institute proceedings in the Community Court for any appropriate remedy, including injunctive relief, seizure and forfeiture, enforcement of civil penalties, removal or correction of the violation, and the posting of sureties to insure compliance.
 2. Any person, firm, or corporation who shall violate any of the provisions of this chapter shall be guilty of an offense and upon conviction, shall be punished for each offense by a fine no less than fifty (50) dollars and no greater than two hundred and fifty (250) dollars or by imprisonment for a period not to exceed twenty (20) days. Each day's failure to comply with an applicable provision of this chapter shall constitute a separate offense. A criminal prosecution under this subsection may be undertaken, either as an alternative, or in conjunction with any other remedy under this section.
 3. The foregoing shall not be deemed to limit or restrict the Sign Officer from taking other appropriate action, including the issuance of cease and desist orders, if it appears any person has violated or failed to comply with this chapter, nor shall it limit the right of a private person to privately enforce this chapter in a civil court action.
- D. Fees. The Government and Management Committee shall establish a schedule of fees for sign permits and for the use of Tribal land. A fee for the sign permit will be charged when the sign is on allotted land. Any fee for the use of the land will be at the discretion of the allottee.

21.307 DEFINITIONS

- A. Billboard - a sign which directs attention to a business, commodity, service, or entertainment conducted, sold, or offered elsewhere than upon the premises where such sign is located or to which it is affixed. See illustrated Appendix A.
- B. Commercial, Industrial, and Agricultural Areas - those areas used for commercial, industrial, or agricultural uses and land in the immediate vicinity of such uses as defined by the Sign Officer or Natural Resources Committee.

- C. Freestanding Sign - any sign independently mounted or mounted on a building and extending more than one foot from the surface of the wall such sign is mounted on. A single free-standing sign may have separate component signs mounted from a common supporting structure. Temporary or mobile signs shall not be considered freestanding signs. See illustrated Appendix A.
- D. Identification Sign - a sign indicating the name and address of a building, the name of an occupant thereof, or the practice of an occupation herein. See illustrated Appendix A.
- E. Illegal Sign - any sign existing on the effective date of this Chapter that was in violation of the previous sign ordinance, other applicable Tribal ordinances, or relevant federal law or any sign erected after the effective date of this Chapter which is in violation of the provisions of this Chapter.
- F. Major Thoroughfare - a road, highway, or freeway designated as a major thoroughfare on the "Major Thoroughfare Map", Appendix B.

For the purposes of this chapter, a billboard may be located in a corridor five hundred (500) feet to either side of the center line of a major thoroughfare, excluding the right-of-way for the major thoroughfare.

- G. Non-Conforming Sign - a sign which lawfully existed on the effective date of this chapter or amendment thereto, which does not conform with the provisions of this chapter.
- H. Residential Area - a residential area shall be any Tribal Homesite Subdivision, Gila River Housing Authority Project, or area with two or more residences designated by the Sign Officer or Natural Resources Committee as a residential area.
- I. Sign - a name, identification, description, display or illustration which is affixed to or painted or represented directly or indirectly upon a building, structure, or piece of land and which directs attention to an object, product, place, activity, person, institution, organization, or business.
- J. Sign Officer - the Tribal official or employee designated by the Governor to discharge the duties specified in this chapter and to make and maintain all records pertaining to this chapter.
- K. Surface Area - the entire area within the perimeter enclosing the outer limits of a sign face(s). A permitted sign may have two faces arranged back to back or consisting of two sides of a single structure with each of the two such sign faces having the maximum permitted surface area.

Part Five

Tribal Zoning Codes

Introduction

Tribal zoning codes are laws that divide the tribe's territory into separate districts, prescribing the types of land use allowed in each district. Indian nations can employ zoning to control and direct the development of property within their borders in order to prevent environmentally harmful uses and preserve natural resources, to avoid congestion, to preserve the community's cultural identity, and to advance a broad range of values related to community safety and well-being. For example, zoning laws may be used to prohibit the location of factories or waste sites adjacent to housing, or they may be used to require a minimum lot size for any housing development. Zoning codes normally implement a tribe's preestablished land use plan. Thus, for zoning to be effective, an Indian nation should normally have adopted a comprehensive plan that indicates where growth and development are projected and where less intensive uses are favored.

When all of an Indian nation's territory is tribal land, other laws besides zoning may function to prevent undesirable uses. For example, in allocating leases or use permits to tribal members, the Indian nation may specify that land may be used only for a homesite, grazing, or some other designated use. Even in such a situation, however, zoning may prove valuable as a more comprehensive and enforceable mechanism for land use control, particularly in townsites or more densely settled areas. For Indian nations that have trust allotments, fee lands held by tribal members, or non-member-owned fee lands, zoning may prove the **only** means of regulating and directing the overall impact of reservation development, and hence is essential for that purpose.

In developing a zoning code, an Indian nation will want to pay attention to the following issues:

1. Jurisdiction, or power to apply the code to parcels characterized by different forms of ownership, and the possibility of intergovernmental agreements to alleviate jurisdictional issues;
2. Designation of types of zones, including special zones corresponding to tribal cultural needs, such as sacred areas or traditional hunting territories;
3. Different institutional arrangements for applying and enforcing zoning requirements, such as special agencies or tribal committees, and the role of judicial review in tribal courts.
4. Requirements of tribal law or of the Indian Civil Rights Act that may impose limits on the exercise of zoning power when individual rights are adversely affected.

Jurisdiction

As governments, Indian nations have inherent power to promote the health, safety, and welfare

of their communities. This power normally encompasses the authority to regulate or zone land use within the nation's borders. With respect to tribally owned lands (trust or non-trust), trust allotments, and fee land owned by tribal members, this description of the Tribe's authority stands unchallenged. In the case of reservation lands that are owned in fee by non-members, however, the Tribe's zoning power is less clearly established. In the case of Brendale v. Confederated Tribes and Bands of Yakima Indians, 492 U.S. 408 (1989), a divided United States Supreme Court held that in areas that the Tribe has opened to non-members, the state has exclusive zoning power over non-member-owned fee land. If the Tribe objects to the state's exercise of this zoning authority, claiming that a permitted land use will threaten the tribal community, the Tribe's sole remedies are to complain within the state zoning process or to bring a nuisance action in state court. In areas that the Tribe has closed to non-member entry, the Tribe's exclusive zoning power remains.

Brendale has made comprehensive zoning extremely difficult on reservations that have significant amounts of non-member-owned fee land in areas open for general entry. Effective zoning is designed to create contiguous areas of harmonious uses. If areas of land subject to tribal jurisdiction are interspersed or checkerboarded with areas of land subject to state jurisdiction, there is a serious risk of concurrent application of conflicting regulations. As a result, it may be impossible to create a coherent set of land uses through zoning. Also, tribal legal challenges to state zoning decisions may delay and hinder the regulatory process.

There are several ways Tribes may overcome this planning standoff. One is for tribes to enter into agreements or memoranda of understanding with relevant state, county, or municipal zoning authorities to establish a system of coordinated land use planning and regulatory activities for the reservation. The Swinomish Tribe in Washington State has made such an agreement with Skagit County, in which the governments resolve to set jurisdictional conflicts aside and create a joint comprehensive land use plan together with implementing ordinances and administrative procedures.

A second solution to the planning dilemma created by Brendale is for Tribes to invoke their environmental regulatory powers rather than their zoning powers to control land use. Whereas zoning identifies permitted uses on the land, environmental regulations specify the permissible environmental consequences of land use. But both may have the same effect. For example, if the location of a solid waste disposal site on a particular tract of land will pollute the local groundwater, then an environmental law that prohibits water pollution at that site will effectively preclude the location of the disposal site on that tract. Unlike the Tribe's zoning power under Brendale, tribal environmental authority normally extends to non-member-owned fee land. That is because federal environmental statutes, as implemented by the federal Environmental Protection Agency, designate Tribes as the proper regulatory authority over all reservation lands, regardless of ownership.

A third solution may be to work with on-reservation non-Indian communities to reduce the likelihood of a challenge to tribal zoning. For example, the Colville Tribe has provided for the appointment of two non-Indian residents of that Reservation to the seven-member Land Use Review Board that administers the Tribe's zoning ordinance. The Colville assert zoning jurisdiction over all lands within their Reservation, regardless of trust status or non-Indian ownership.

Designation of Types of Zones, Including Special Zones to Protect Tribal Culture

Tribes engaged in land use planning and zoning must determine the balance they wish to strike

between preserving the natural or rural quality of their reservations and facilitating economic development. The range and type of zones that the Indian nation identifies will dictate the types of uses that can take place in different parts of the reservation. Common types of zones are residential (single or multiple family), rural residential (with no public utilities service), industrial, commercial, mobile home, government or institutional, forestry, agricultural, planned unit development (for more diverse uses), conservancy or wilderness, floodplain, and quarry.

As Indian nations make choices among the different types of zones, they should be aware that zoning can be used to insure protection of important cultural uses (such as hunting, fishing, and gathering) and sacred sites. Zoning can designate districts for forestry, conservancy or no development at all, with special uses allowed for culturally related activities. In the Muckleshoot Zoning Ordinance, for example, one of the "Findings" is that "Preservation of the rural character of the Reservation and limitation of development to uses compatible with the natural physical and aesthetic nature of Reservation land is essential for the continued maintenance of Muckleshoot culture and identity." The recently enacted Menominee Tribal Zoning Ordinance establishes conservancy districts, in order to protect environmental values and "culturally sensitive areas," and designates some areas as "prohibited development overlay districts" in order to protect environmental and cultural resources. The forestry district created in the Colville Land Use Ordinance limits non-forestry uses to "uses by tribal members for culturally related activities such as hunting, fishing, and food gathering."

Within each zone, the zoning ordinance will normally identify permitted uses and structures, density and lot size requirements, and uses allowed with a conditional use permit. Conditional use permits typically authorize uses that may be deemed compatible with permitted uses, depending on the outcome of a careful, public, case-specific evaluation of influences upon neighboring uses, public facilities, and the environment. By enlarging the availability of conditional use permits, an Indian nation can introduce flexibility and public participation into the zoning process. Tribes should also be aware, however, that the approval process for conditional use permits could stimulate opposition by nearby occupants to uses that may have widespread public value.

Institutional Arrangements for Applying and Enforcing Zoning Laws

Zoning decisions can be politically sensitive and volatile within the tribal community, as they deeply affect the quality of reservation life and the ability of individuals to fulfill their desires regarding particular land uses. Thus, in designing a zoning ordinance, an Indian nation will need to consider which institutions should be involved in its administration and enforcement. Should they be politically accountable, and if so, to whom? Should they be insulated from the most vigorous political influences applied in individual cases? Should they possess planning expertise? Should they operate publicly or behind closed doors?

The institutions most often employed in tribal zoning administration and enforcement are:

- a planning department of the tribal government;
- a committee of the tribal legislature or council;
- a politically appointed zoning review board;
- the tribal legislature or council itself;
- tribal court.

The planning department consists of specialists in land use planning and the environment. It is normally responsible for public education and advice regarding the zoning laws, maintenance of records, factual investigations related to permits and violations, and sometimes, decisions in the

first instance regarding permits. A committee of the tribal council or a politically appointed zoning review board is typically available to insure review of planning department decisions in the name of consistency and fidelity to the broad public interest. Sometimes, these agencies assume responsibility for initial permitting decisions as well, providing public arenas where all interested individuals and groups can air their concerns. Because of the inherently political nature of zoning decisions, the tribal legislature or council is often available as an appeals process of last resort. Finally, a tribal court may be used to review political decisions for arbitrariness and to entertain enforcement or penalty actions when uses are commenced or continued in violation of the zoning laws.

Some Indian nations prefer to decentralize their zoning process, just as states typically delegate zoning authority to counties and municipalities. Thus, for example, the Navajo Nation Local Governance Act specifies that political subdivisions known as Chapters may establish community based land use plans, adopt their own zoning ordinances, and enforce those ordinances.

Limits on Tribal Zoning Powers

Zoning may run afoul of tribal constitutional requirements or the Indian Civil Rights Act of 1968 if it is undertaken arbitrarily; if it is carried out without adequate opportunities for affected landowners, lessees or permit holders to be heard; or if it accomplishes a "taking" of private property for a public use without just compensation. A zoning ordinance "takes" property only if the ordinance prevents the property owner, lessee, or permit holder from making an economically feasible use of that land.

Zoning ordinances can be designed to avoid these potential pitfalls. For example, provisions for review of permit denials (in the tribal council or the tribal court) can help prevent arbitrary decision-making. Likewise, the procedures for zoning board or tribal council hearings can be crafted to insure adequate opportunities to be heard. Finally, ordinances can include provisions for granting "variances," or departures from established zoning designations, under circumstances where the only permitted uses preclude any economically feasible use. For instance, the Colville Land Use Ordinance allows for the granting of a variance where "the strict enforcement of this [ordinance] would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of [this ordinance] will be observed, public safety and welfare secured, and substantial justice done."

When a regime of zoning is instituted, permitted uses may sometimes conflict with or impair traditional uses. An Indian nation may choose to allow for public compensation for loss of such uses, as the Navajo Nation has done.

Zoning Bibliography

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Navajo Nation Zoning Law

The Navajo Nation has recently abandoned its system of central responsibility for enacting and enforcing zoning ordinances. The new system, adopted in 1998, devolves zoning authority onto traditional political subdivisions, known as Chapters. The Nation sets minimum procedural, community participation, and substantive requirements for Chapters to establish comprehensive land use plans, and then defers to the Chapters with respect to adoption and enforcement of zoning requirements.

Both the expanse and the traditional governing system of the Navajo Nation justify the more decentralized system of zoning. The Navajo Nation has the largest land base of any Tribe in the United States, with 16,224,896 acres (26,897 square miles), including the main reservation, trust lands of the Eastern Navajo, and satellite reservations of Alamo, Canoncito, and Ramah. Nearly all of the reservation is tribally owned, with the remainder allotted. Some of the tribal and allotted lands are leased, for such purposes as mining, industrial parks, and commercial centers. The reservation population is approximately 160,000, most of whom are tribal members.

The Navajo Nation territory encompasses parts of three different states (Arizona, New Mexico, and Utah) and eleven different counties. The Hopi Reservation is also wholly encircled by the Navajo Reservation. The Navajo Nation territory is relatively remote from urban settlement, containing desert areas of spiritual significance and spectacular natural beauty. Because of this remoteness and the absence of non-Indian-owned land, the Navajos have been spared struggles with state and local governments over zoning on the reservation.

The Navajo Nation enacted its current zoning laws in April 1998, as part of the Nation's Local Governance Act. This Act was designed to decentralize much of Navajo governance, delegating considerable authority to the approximately 110 separate Chapters. In the traditional Navajo system of governance, the Chapters, not a centralized national government, exercised most governing authority. Hence, the Local Governance Act was intended to return the Nation to a more traditional form of organization.

According to the Local Governance Act, "Chapters may adopt ...[z]oning ordinances consistent with the Chapter's community based land use plan." (Section 102(E)(4)) Thus, before a Chapter may enact a zoning ordinance, it must first adopt a comprehensive community based land use plan. Under the Local Governance Act, the plan must be preceded by a process of educating the community about the "concepts, needs, and process for planning and implementing a land use plan." (Section 2004(B)(1)) Other procedural provisions in the Local Governance Act operate to insure that the Chapter's comprehensive plan reflects expert assessment of community resources and the Chapter members' goals, priorities, and vision for the future of the community. At a minimum, the comprehensive land use plan must include an open space plan, a plan showing areas to be used for residential, commercial, industrial, and public purposes, a thoroughfare plan, and a community facilities plan. Before it becomes effective, the Transportation and Community Development Committee of the Navajo Nation Council must approve the Chapter's plan.

The Local Governance Act does not dictate the substantive terms of any Chapter's zoning ordinances. It merely provides that if any permit that is granted destroys or diminishes the value of any land for its customary use by any tribal member, the Chapter must compensate the former Navajo user. Responsibility for enforcing the zoning ordinance rests with the Chapter.

To date, no Navajo Chapter has adopted a zoning ordinance. At least one Chapter, Kayenta, has its enactment process underway.

Chapter 7. Planning and Zoning

Subchapter 1. Navajo Planning and Development Board

SECTION

1001-1006. [Repealed]

Subchapter 3. Zoning

- 1051. Preparation of ordinances
- 1052. Approval and adoption
- 1053. Enforcement and information
- 1054. Amendments

Subchapter 5. Comprehensive Plan

- 1101. Origin and purpose
- 1102. Preparation of plan
- 1103. Presentation of plan
- 1104. Control by the Transportation and Community Development Committee
- 1105. Land use; variations
- 1106. Applications for land use

Subchapter 7. Damages

- 1151. Damages to improvements
- 1152. Damages to intangible interests

Subchapter 1. Navajo Planning and Development Board

§§1001-1006. [Repealed]

HISTORY

CAU-37-73, August 22, 1973.

By CAU-37-73 the Navajo Nation Council merged the duties of the Navajo Planning and Development Board with those given to the Economic Development and Planning Committee, a standing committee of the Navajo Nation Council. The functions of the Economic Development and Planning Committee were redelegated to the Community Development Committee (now the Transportation and Community Development Committee), the Economic Development Com-

mittee and the Resources Committee. See 2 NNC §§420, 721, and 691 respectively. CD-68-89, December 15, 1989.

Subchapter 3. Zoning

§ 1051. Preparation of ordinances

The Transportation and Community Development Committee is authorized to adopt zoning ordinances for communities having an adopted Comprehensive Community Plan where land for the community as defined therein has been withdrawn.

HISTORY

CS-76-65, September 1, 1965.

Revision note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Transportation and Community Development Committee has been delegated authority to review and approve comprehensive community land use plans and zoning ordinances pursuant to 2 NNC §423(C)(2).

§ 1052. Approval and adoption

The Planning and Zoning Officer, Navajo Nation, shall cause to be prepared proposed zoning ordinances for the communities. The proposed ordinances shall require approval by the Transportation and Community Development Committee before becoming effective.

HISTORY

CS-76-65, September 1, 1965.

Revision note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Transportation and Community Development Committee has been delegated authority to review and approve comprehensive community land use plans and zoning ordinances pursuant to 2 NNC §423(C)(2). The Navajo Community Planning Board was repealed by CAU-37-73, August 22, 1973.

§ 1053. Enforcement and information

The Planning and Zoning Officer shall be responsible for the enforcement of all zoning ordinances adopted by the Transportation and Community Development Committee. The Officer shall further provide and maintain a public information office relative to all matters arising from adopted zoning ordinances.

HISTORY

CS-76-65, September 1, 1965.

Revision note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Transportation and Community Development Committee has been delegated authority to review and approve comprehensive community land use plans and zoning ordinances pursuant to 2 NNC §423(C)(2).

§ 1054. Amendments

All proposed amendments to zoning ordinances shall first be reviewed by the Local Planning Board, and shall require approval by the Transportation and Community Development Committee before becoming effective.

HISTORY

CS-76-65, September 1, 1965.

Revision note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Transportation and Community Development Committee has been delegated authority to review and approve comprehensive community land use plans and zoning ordinances pursuant to 2 NNC §423(C)(2). The Navajo Community Planning Board was repealed by CAU-37-73, August 22, 1973.

Subchapter 5. Comprehensive Plan**§ 1101. Origin and purpose**

The Chapter, at a meeting called for that purpose, shall formally request of the Planning and Zoning Officer, Navajo Nation, the preparation of a Comprehensive Community Plan of the community. A Comprehensive Community Plan will provide a means for the Chapter, working with the Local Planning Board assisted by technical experts, to make an assessment of the resources of the community and to develop a plan and a program for providing the kind of environment needed for improvement, growth and development of the community. Such a plan shall include, but not be limited to, the following:

A. An Open Space Plan which preserves for the people certain areas to be retained in their natural state or developed for recreational purposes.

B. A Land Use Plan which projects future community land needs, showing by location and extent, areas to be used for residential, commercial, industrial, and public purposes.

C. A Thoroughfare Plan which provides a system of and design criteria for major streets, existing and proposed, distinguishing between limited access, primary, and secondary thoroughfares, and relating major thoroughfares to the road network and land use of the surrounding area.

D. A Community Facilities Plan which shows the location, type, capacity, and area served, of present and projected or required community facilities including, but not limited to, recreation areas, schools, libraries, and other public buildings. It will also show related public utilities and services and indicate how these services are associated with future land use.

HISTORY

CAU-72-65, August 31, 1965.

Note. The Transportation and Community Development Committee of the Navajo Nation Council is authorized to review and approve comprehensive community land use plans and zoning ordinances, including land withdrawals necessary for the implementation of such land use plans. See 2 NNC §423(C)(2). The Navajo Community Planning Board was repealed by CAU-37-73, August 22, 1973.

§ 1102. Preparation of plan

The Planning and Zoning Officer, Navajo Nation, shall prepare with the assistance of appropriate technical staff of the Navajo Nation, the Bureau of Indian Affairs, and the United States Public Health Service, a Comprehensive Community Plan. The Planning and Zoning Officer shall consult with the Chapter and the Local Planning Board during the preparation of this plan for advice. He shall consult with the Transportation and Community Development Committee for advice during the preparation of this plan and their written approval of the plan shall be required before the same may be submitted to the Chapter for final approval. The officer shall be responsible for the preparation of a proper Comprehensive Community Plan to fit the needs of the community.

HISTORY

CAU-72-65, August 31, 1965.

Note. The Transportation and Community Development Committee of the Navajo Nation Council is authorized to review and approve comprehensive community land use plans and zoning ordinances, including land withdrawals necessary for the implementation of such land use plans. See 2 NNC §423(C)(2).

§ 1103. Presentation of plan

The Comprehensive Community Plan so prepared for a community shall be presented to the Chapter at a duly called meeting for approval.

HISTORY

CAU-72-65, August 31, 1965.

Note. The Transportation and Community Development Committee of the Navajo Nation Council is authorized to review and approve comprehensive community land use plans and zoning ordinances, including land withdrawals necessary for the implementation of such land use plans. See 2 NNC §423(C)(2).

§ 1104. Control by the Transportation and Community Development Committee

The Comprehensive Community Plan, as approved by the local Chapter, shall be presented to the Transportation and Community Development Committee for adoption and withdrawal of the land for the community as defined in the plan. The Transportation and Community Development Committee shall have full control and complete

authority of land utilization of community withdrawn lands as defined by the adopted Comprehensive Community Plan. No person shall, after Transportation and Community Development Committee adoption of the plan and withdrawal of the land for the community, as defined in the plan, utilize any land therein without specific written approval of the Transportation and Community Development Committee; provided that easements and rights-of-way may be granted as provided by Navajo Nation law so long as same comply with the Comprehensive Community Plan.

HISTORY

CAU-72-65, August 31, 1965.

Revision note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Transportation and Community Development Committee has been delegated authority to review and approve comprehensive community land use plans and zoning ordinances pursuant to 2 NNC §423(C)(2).

§ 1105. Land use; variations

The utilization of all withdrawn lands of the community as defined by the adopted Comprehensive Community Plan shall be in accordance with the provisions of said plan; provided that variations thereunder shall be permitted when approved by the Transportation and Community Development Committee.

HISTORY

CAU-72-65, August 31, 1965.

Revision note. The Navajo Community Planning Board was repealed by CAU-37-73, August 22, 1973. See 2 NNC §423(C)(2) for the authority of the Transportation and Community Development Committee.

§ 1106. Applications for land use

All applications for Transportation and Community Development Committee consideration for utilization of lands within a community to be developed under a Transportation and Community Development Committee approved Comprehensive Community Plan and where lands for the community, as defined in the plan have been withdrawn by the Transportation and Community Development Committee shall be reviewed expeditiously first by:

- A. The Local Planning Board;
- B. The Planning and Zoning Officer, Navajo Nation;
- C. The Bureau of Indian Affairs;
- D. The United States Public Health Service;
- E. Department of Justice, Navajo Nation;
- F. The President, Navajo Nation;
- G. The Office of Legislative Counsel, Navajo Nation prior to being submitted to the Transportation and Community Development Com-

mittee, to insure conformance with the Comprehensive Community Plan.

HISTORY

CS-74-65, September 1, 1965.

Revision note. By CF-8-82 the Navajo Tribal Legal Office was abolished and the Department of Justice was established with the Attorney General given authority over administrative and operating policies and supervisory control over the Department. See 2 NNC §1961 *et seq.* The Navajo Tribal Legal Office was redesignated the Tribal Legal Department by the 1978 Budget pages IX-1 and IX-12 and was moved from 2 NNC §1101-1104 to 2 NNC §1991-1994. The Legislative Secretary no longer exists in Navajo Nation government. The Office of Legislative Counsel provides legal advice and legislative services to the Navajo Nation Council and its standing committees. See 2 NNC §§960 *et seq.*, 164(A)(5) specifically, and 164 *et seq.*

Subchapter 7. Damages

§ 1151. Damages to improvements

A. When in accomplishing the purpose of the Comprehensive Community Plan, the Navajo Nation disposes of land containing any improvement belonging to a person who will not donate the same whether the disposition is made by surface lease, permit, consent to grant of right-of-way or consent to commencement of construction on a proposed right-of-way, or in any other manner that gives the grantee or proposed grantee exclusive use of the surface of the land containing such improvement, or authorizes the grantee or proposed grantee to use the surface of the land in such manner that said improvement or improvements must be removed, damaged, or destroyed, the Navajo Nation will pay or require to be paid damages to the rightful claimant of such improvement or improvements.

1. As used herein "improvement" means houses, hogans, sunshades, stables, storage sheds and dugouts, and sweathouses; sheep and horse corrals, lamb pens, and fences lawfully maintained; irrigation ditches, dams, charcos, development work on springs, and other water supply developments; any and all structures used for lawful purposes and other things having economic value. Where any improvement of a person is readily removable and he has an opportunity to remove the same, damages payable on account of said improvement shall be limited to the reasonable cost of removal, if any, even though the claimant thereof may have failed to remove such improvement and it may have been destroyed or damaged in the authorized course of use of the land on which it is located.

2. No damages shall be paid to any person for any improvement, when such person at the time of building or acquiring said improve-

ment knew or with reasonable diligence ought to have known that the area in which it was located was proposed to be disposed of by the Navajo Nation adversely to such person's interest.

B. Upon adverse disposition by the Navajo Nation of a person's lawful interest, the President of the Navajo Nation shall cause to be prepared an appraisal of the improvements for which the person is entitled to compensation as hereinabove provided. The President of the Navajo Nation or his authorized representative shall negotiate with the person for settlement of his claim for payment of the value of the improvement or the reasonable cost of its removal. If a settlement satisfactory to the President of the Navajo Nation or his authorized representative and the person is reached, the proposed agreement shall be submitted to the Transportation and Community Development Committee for approval, and authorization to pay the claim if appropriate.

C. If a settlement satisfactory to the President of the Navajo Nation or his authorized representative and the person cannot be reached, the President of the Navajo Nation shall appoint a negotiating committee with representation from the following to make a settlement of the claim:

1. Local Planning Board
2. Resources Committee, Navajo Nation Council
3. Land Administration Department, Navajo Nation.

D. If a settlement satisfactory to the negotiating committee and the person cannot be reached, the claim will be referred to the Transportation and Community Development Committee for review and further directions in accordance with appropriate laws of the Navajo Nation.

HISTORY

CS-78-65, September 2, 1965.

Revision note. In subsection (B) the words "and the person" were added after "representative" for clarity. Land Administration Department was added in place of Land Investigation Department as that is the successor agency. The Navajo Community Planning Board was repealed by CAU-37-73, August 22, 1973. See 2 NNC §420 *et seq.* for the Transportation and Community Development Committee's authority.

§ 1152. Damages to intangible interests

When in accomplishing the purpose of the Comprehensive Community Plan, the Navajo Nation as a result of the granting of any lease or permit embracing Navajo Nation land, or of granting permission by the Navajo Nation for the use of Navajo Nation land, or as a result of the use of Navajo Nation land under such lease, permit or permission, the value of any part of such land for its customary use by a person formerly lawfully using the same is destroyed or diminished, the Navajo

Nation will compensate or cause to be compensated the former user in the manner hereinafter specified.

A. When the livelihood of the former Navajo Indian user is gravely affected by the new use, such user shall have first priority in resettling on other lands acquired by the Navajo Nation, except the area acquired pursuant to the Act of September 2, 1958 (72 Stat. 1686); and the Nation shall pay the expense of removing said person, his family, and property to any new land made available for his use, and such shall constitute full compensation to such Navajo.

B. 1. In all other cases involving damages under this paragraph, the amount thereof shall be fixed and determined in the manner specified in §1151(A)(1) of this subchapter.

2. If a settlement satisfactory to the President of the Navajo Nation or his authorized representative and the person cannot be reached, settlement will be made as specified under §1151(A)(2) and (B) of this subchapter.

C. Where, through reseeding, irrigation or otherwise, the remaining land in the customary use area of any individual damaged by adverse disposition of Navajo Nation land is within a reasonable time made able to provide the same economic return as his former entire customary use area, no damages shall be payable to such person, except for the period, if any, between adverse disposition of land in the customary use area and the time when the productivity of the remaining land achieves equality with the entire former customary use area.

D. Only lawful and authorized use shall be compensated under this section. Thus, no person shall be compensated for loss of use of land for grazing animals in excess of his permitted number, or without a permit.

E. Every person otherwise entitled to damages under subsection (B) of this section shall not be entitled to receive any payment thereof until he has surrendered for cancellation his grazing permit as to all animal units in excess of the carrying capacity of the land remaining in his customary use area. Persons so surrendering their grazing permits shall be entitled to an immediate appropriate lump sum payment for each sheep unit cancelled.

HISTORY

CS-78-65, September 2, 1965.

Title 6

Community Development

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Chapter 1. Community Activities and Development

Subchapter 1. Generally

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Subchapter 1. Generally

§ 1. Statement of policy

Political, social, educational, and recreational activities of the local community shall be centered in the chapter houses and community centers. A more direct relationship of the local community to the Navajo Nation Council shall be fostered as recommended in Resolution CJ-20-55. In order to achieve community development, chapter houses and community centers shall be used for a variety of purposes such as adult education, health clinics, recreation, social activities, laundry, bathing, sewing, and meetings.

HISTORY

ACJ-40-57, June 21, 1957.

CF-35-57, February 15, 1957.

CROSS REFERENCES

Community Centers, see 5 NNC §1201 *et seq.*

§ 2. Community participation

In order to develop a feeling of self-reliance, responsibility, and pride in each local community, a program of community organization and planning shall be conducted in each community to achieve the following objectives:

A. To explain the plan and aims for the Navajo Nation construction of community buildings and the role of the local community in relationship to the over-all program.

B. To allow each community to participate in developing a planned program for using the new facilities and to select the type of building and its location.

C. To develop a custodial responsibility in the community so that the building and its equipment will be properly maintained.

D. To encourage the community to contribute labor, materials, equipment or ideas in the construction of the building, and thereby to maximize the feeling of community ownership and responsibility for the chapter house or community center.

E. To develop an attitude of readiness in the community to utilize the facilities to achieve a more wholesome community life and to encourage continuing participation in programs of community development.

HISTORY

ACJ-40-57, June 21, 1957.

§ 3. Community development program and activities; conferences; assistance

A. The Division of Community Development is authorized to hold conferences in which chapter officers of different chapters get together to discuss community development program and chapter activities.

B. The President of the Navajo Nation and the Division of Community Development are authorized and directed to develop programs to assist chapters and community centers to operate, utilize, and maintain the facilities authorized herein.

HISTORY

ACJ-78-58, July 10, 1958.

CM-46-57, May 14, 1957.

Revision note. The words "Division of Community Development" replaces previous references to the "Community Development Department".

§ 4. Community planning

A. The Transportation and Community Development Committee of the Navajo Nation Council is declared to be the body responsible for developing, coordinating and approving comprehensive community improvement plans for the communities under the jurisdiction of the Navajo Nation.

B. Comprehensive community improvement plans shall include a land use plan, a major thoroughfare plan, a community facilities plan, zoning plans, subdivision regulations and public improvement programs.

C. The Transportation and Community Development Committee shall call upon all necessary and available technical assistance from Navajo Nation staff, the Bureau of Indian Affairs, the Public Health Service and other agencies to assist in the development of comprehensive community plans. The Navajo Nation President is authorized to appoint an employee of the Navajo Nation to coordinate the technical assistance.

D. No community plan shall be adopted unless it has been approved by a duly called meeting of the Chapter organization in which the community is located. Every effort will be made to involve persons living in the communities concerned to participate in the planning process.

E. The Navajo Nation President is authorized to sign on behalf of the Navajo Nation a workable program for community improvement, for submission to the Housing and Home Finance Agency.

HISTORY

ACMY 72-63, May 2, 1963.

Revision note: Previous references to the "Advisory Committee" have been replaced by the "Transportation and Community Development Committee". See 2 NNC, §420 *et seq.*

§ 5. Code review

A. The Transportation and Community Development Committee of the Navajo Nation Council is declared to be the body responsible for reviewing codes and recommending the same for adoption or amendment to the Navajo Nation Council.

B. Codes subject to review by the Transportation and Community Development Committee shall include building code, electrical code, plumbing code, housing code, sanitation code, zoning code.

HISTORY

C.N. 93-68, November 18, 1968.

C.S. 75-65, September 1, 1965.

AC.MY-72-63, May 2, 1963.

Revision note: Previous references to the "Advisory Committee" have been replaced by the "Transportation and Community Development Committee". See 2 NNC, §420 *et seq.*

Note: Regarding the compilation and codification of Navajo Nation laws, see the authority of the Office of Legislative Counsel (2 NNC, §96-01(B)) and the Ethics and Rules Committee of the Navajo Nation Council (2 NNC, §83-01(B)(3)).

§ 6. Code Advisory Committee

To assist the Transportation and Community Development Committee of the Navajo Nation Council in discharging its responsibility for code review, there is created a Code Advisory Committee consisting of a representative of the Navajo Nation appointed by the President of the Navajo Nation; the General Manager of the Navajo Tribal Utility Authority; the Head of the Design and Engineering Services Department, Navajo Nation; Chief Sanitary Engineer, Public Health Services; Maintenance Engineer, Bureau of Indian Affairs; and such other persons as the President of the Navajo Nation may from time to time designate.

HISTORY

AC.MY 72-63, May 2, 1963.

Revision note: Slightly reworded for purposes of statutory form.

Note: For the authority of the Transportation and Community Development Committee, see 2 NNC, §420 *et seq.* Regarding the compilation and codification of Navajo Nation laws, see the authority of the Office of Legislative Counsel (2 NNC, §96-01(B)) and the Ethics and Rules Committee of the Navajo Nation Council (2 NNC, §83-01(B)(3)).

§ 7. Participation under Economic Opportunity Act of 1964

A. The President of the Navajo Nation, the Navajo Nation Council and the Executive Staff are authorized and directed to assist in implementing programs under Titles I-VI of the Economic Opportunity Act of 1964, which are beneficial to the Navajo Nation and the Navajo People. The President of the Navajo Nation and the Navajo Nation Council are further authorized to execute on behalf of the Navajo Nation all necessary documents to accomplish the purposes of this section.

B. The appropriate committees of the Navajo Nation Council are authorized to approve general policies, plans of operation, and programs which are beneficial to the Navajo Nation and Navajo People under Titles I-VI of the Economic Opportunity Act of 1964.

C. The appropriate committees of the Navajo Nation Council, in conjunction with the Budget and Finance Committee of the Navajo Nation Council, shall make recommendations to the Navajo Nation Council for any appropriations of Navajo Nation funds which may be necessary to accomplish the purposes of this section.

HISTORY

CJA 6-65, January 11, 1965.

C.S. 53-64.

Note: Pursuant to 2 NNC, Subchapter 9, *et seq.*, various Standing Committees of the Navajo Nation Council have policy, oversight, and certain delegated authorities and duties related to plans of operation and programs of the Navajo Nation government. See generally CJA 68-89, December 15, 1989.

Subchapter 3. Chapter Houses

§ 41. Eligibility

Each Chapter organization officially recognized under the provisions of 2 NNC, §§4001 and 4006 shall be eligible for the construction or improvement of a community Chapter House to meet its requirements in accordance with the standards hereinafter set forth in this subchapter.

HISTORY

ACJN 90-65, June 21, 1965.

CJ 70-62, December 4, 1962.

AC.AP 76-61, May 12, 1961.

AC.AP 64-60, April 29, 1960.

C.N. 28-58.

C.N. 46-57.

AC 1-40-57.

§ 42. Location; final approval; standards for selection

A. Final approval for the location of each Chapter House shall be granted in its discretion by the Transportation and Community Development Committee of the Navajo Nation Council.

B. Each Chapter shall be guided by the following criteria in the selecting of the location of a new Chapter House:

1. The site shall be located so that it will conveniently serve the entire community.
2. The site shall be chosen giving consideration to the road network of the community.
3. The Chapter building shall be located near a developed source of water. The development of an adequate source of water must in all instances precede location of the building. In no instance shall water be piped in excess of 2,000 feet.
4. The Chapter building shall be near power, if available.
5. Wherever possible, the site shall be adjacent to a school, clinic, police substation or other service facility, in order that custodial attention may be provided by someone living nearby.

HISTORY

ACAP 61 60, April 29, 1960.
ACJ 4 57, January 8, 1957.
Revision note: Previous reference to the "Advisory Committee" has been replaced by the "Transportation and Community Development Committee." See 2 NNC §420 *et seq.*

§ 43. Plans

A. Each new Chapter House shall be built from architectural plans. The Chapter membership shall choose one of several basic plans previously approved by the Transportation and Community Development Committee of the Navajo Nation Council and such plan may be varied by the community only as to materials, appearance and utility equipment.

B. Renovation or improvement of existing Chapter Houses shall be done from architectural plans, or in relatively uncomplicated situations, from plans prepared by the Design and Engineering Services Department, as may be administratively determined feasible and economical.

HISTORY

ACTA 11 67, January 11, 1967.
ACD 206 66, October 19, 1966.
ACU 166 62, August 22, 1962.
ACD 193 60, October 27, 1960.
ACAP 61 60, April 29, 1960.
ACJ 10 57, June 21, 1957.

Ch. 1 COMMUNITY DEVELOPMENT T.6 § 46

Revision note: Previous reference to the "Advisory Committee" has been replaced by the "Transportation and Community Development Committee." See 2 NNC §420 *et seq.*

Note: By GSR CO-60-91 the Government Services Committee adopted a Plan of Operation for the Division of Community Development which includes a Design and Engineering Services department whose director provides architectural and engineering services to chapters.

§ 44. Applications—Generally

Applications for the construction or improvement of Chapter facilities shall be presented to the President of the Navajo Nation for review by the Executive Staff. The Executive Director, Division of Community Development or his representative shall present the applications to the Transportation and Community Development Committee of the Navajo Nation Council with comments and recommendations.

HISTORY

ACAP 61 60, April 29, 1960.
Revision note: Slightly reworded for purposes of statutory form. Previous reference to the "Public Services Division" has been replaced by the "Division of Community Development" and previous reference to the "Advisory Committee" has been replaced by the "Transportation and Community Development Committee." See 2 NNC §420 *et seq.*

§ 45. Form

Applications for community Chapter House construction or improvement shall be submitted on form "Application for Construction or Improvement of Chapter House." The applications shall be signed by the Navajo Nation Council delegate serving the Chapter area and president. Vice-President and secretary of the Chapter organization shall be further supported by individual signatures of not less than 100 adult members of the community to be served.

HISTORY

ACAP 61 60, April 29, 1960.

§ 46. Review by Transportation and Community Development Committee; decision

- A. The Transportation and Community Development Committee shall consider all applications for new Chapter Houses on the following basis:
1. Population and area to be served.
 2. Average meeting attendance records.
 3. Operating management and maintenance skills within the community.

- 4. General acculturation and educational level of the community.
 - 5. Actual need of the community for the facilities requested.
 - 6. Comparison of requested facilities with facilities granted other communities similarly situated.
 - 7. Kind, type and probable difficulty of operating and maintaining utility equipment.
 - 8. Reasonableness of request.
 - 9. Comparative costs as related to budgeted funds.
 - 10. Ability and plans of community to provide operating costs in full.
 - 11. Ability and plans of community to provide total maintenance or to pay one-half maintenance costs of a Navajo Nation mobile unit.
 - 12. Current financial status of requesting Chapter.
 - 13. Acceptance of agreement to operate and maintain building.
 - 14. Type of Chapter House selected and suitability to the community.
- B. After review of each request for construction of a Chapter House, the Transportation and Community Development Committee shall render its decision. If the decision is affirmative, the construction shall be authorized by appropriate resolution. If the decision is adverse the Director, Division of Community Development, shall immediately so inform the requesting Chapter organization with a full statement of the reasons for denial of the request and suggestions for remedial action.
- C. The Transportation and Community Development Committee shall consider all requests for renovation, remodeling and major repair of existing Chapter Houses on the basis of applicable items listed under subsection (A) of this section and shall render its decision under the terms of subsection (B) of this section.

HISTORY

ACAP 61 60, April 29, 1960.

Revision note: By CSC 648 91 the Government Services Committee of the Navajo Nation Council adopted a Plan of Operation for the Division of Community Development which plan states in pertinent part the Division has as a purpose "to administer, plan, manage and monitor resources for communities and their members which will foster and support housing infrastructure, public facilities." Previous references to the "Advisory Committee" have been replaced by the "Transportation and Community Development Committee". See 2 NMR, § 23 of 1961

§ 47. Force account; employment of workers

A. The construction, renovation, and improvement of Chapter Houses shall be done on force account by the Design and Engineering Services Department.

- B. Preferential employment of local qualified workers shall be provided for in the construction, renovation and improvement of Chapter Houses, however, in the absence thereof, the Design and Engineering Services Department in cooperation with the Employment and Personnel Department shall employ non-local qualified workers to the extent required to meet budgetary and time schedules.
- C. To achieve economical results, the Design and Engineering Services Department is instructed to disregard external and community interference or pressure to hire unqualified or unnecessary members or workers.
- D. Each Chapter House project shall be under the supervision of a foreman and one leadman.
- E. Local available labor shall be rotated on 10 work-day shifts.

HISTORY

ACAP 61 60, April 29, 1960.

Revision note: Previous references to the "Design and Construction Department" have been replaced by the "Design and Engineering Services Department". The wording of subsection (E) was slightly reworded and reorganized for form and clarity.

§ 48. Operation

- A. Responsibility for the operation of all Chapter Houses rests solely with the Chapter organization. This includes all operating costs, if any, for fuel, water, sewage disposal, power and caretaker service.
- B. The community is required to contribute or to earn through its program plan sufficient income to provide for operating costs of conducting its meetings, programs and Chapter building operation. This is a condition of the Navajo Nation grant for construction.
- C. The community is expected to fully provide for the cleanliness and orderliness of the building and adjacent premises.

HISTORY

ACAP 61 60, April 29, 1960.

§ 49. Maintenance

- A. The policy of the Navajo Nation Council in providing communities with chapter house facilities requires the chapters to maintain these buildings in operable condition and in good repair.
- B. Because many chapters are experiencing maintenance problems due to lack of trained local manpower and shortage of available funds, a skilled chapter house maintenance crew of two men and a mobile equipment and supply truck shall be made available to serve the chapter organizations.

C. Service of this mobile unit may be had by chapters on request. The Navajo Nation be shall pay one-half of the actual cost of personnel time, materials and travel and chapters will be billed for one-half the cost. Such maintenance bill shall be settled in full in each instance before the next request for service is honored.

D. Any required additional common labor shall be hired locally and the chapter shall be billed one-half the cost as provided in subsection (C) of this section.

HISTORY

A. AP 61 60, April 29, 1960.

§ 50. Program development

The President of the Navajo Nation and the Division of Community Development together with the several related standing committees of the Navajo Nation Council shall assist the chapters to develop programs to utilize, operate and maintain their chapter facilities.

HISTORY

A. AP 61 60, April 29, 1960.

Revision note: Slightly reworded for purposes of statutory form

Colville Land Use Ordinance

Enacted in 1996, the Colville Land Use Ordinance regulates a large land base of 1,400,000 acres in northeastern Washington, about 100 miles northwest of Spokane. Notwithstanding the General Allotment Act, the vast majority of the Colville Reservation is collectively owned, with a relatively small amount having been allotted to individual tribal members. The landscape is quite diverse, encompassing forestlands (nearly half the Reservation territory), range lands, farmlands, lakes, and streams. The Columbia and Okanogan Rivers border the reservation's east, south, and west sides; and Grand Coulee Dam, located on the reservation, creates a large artificial lake used for recreation. Tribal lumber mills, meatpacking plant, casino, and construction company, along with several retail/commercial centers, constitute the primary non-residential development. Thirteen different tribes have been brought together to form the Confederated Tribes of the Colville Reservation, and the total reservation population is approximately 7,000, most of whom are tribal members.

In a concise statement of purpose, the Colville Land Use Ordinance provides that the Tribes seek "to preserve and protect the political integrity, the economic survival, and the health and welfare of the present and future members of the Confederated Tribes of the Colville Reservation, to exercise the Tribes' powers of self-government and self determination over all lands of the Colville Indian Reservation; and, to implement the Tribes' Comprehensive Land Use Policy Guidelines." (Section 4-3-3(b)) Interestingly, there is no specific mention of natural resource conservation or cultural protection.

The Colville Land Use Ordinance asserts jurisdiction over "all lands of the Colville Indian Reservation notwithstanding the issuance of any patent," as well as over "all persons residing or found within the exterior boundaries of the Reservation, or having title or use or possessory interests to lands of the Reservation." (Section 4-3-3(c)) As the statement of purpose above suggests, affirming the Tribes' powers of self-determination and insuring the Tribes' political integrity was a primary objective of the Land Use Ordinance. Although two Washington counties overlap the Colville Reservation and there is some non-Indian-owned land, the Tribes have determined that the Supreme Court's Brendale decision does not preclude their broad jurisdictional claims. In 1998, for example, the Tribe initiated a proceeding in tribal court to halt a non-Indian landowner from proceeding with a subdivision that had received county approval.

The specification of districts and uses in the Colville Land Use Ordinance is at a mid-level of detail and rigidity. A system of special use permits, conditional use permits, and variances introduces flexibility under circumstances where the purposes of the zoning laws would not be thwarted or where special hardship exists. As in the Menominee Tribal Zoning ordinance, conditional uses are specified separately for each zone, as are dimensional requirements. But whereas the Menominee ordinance also lists the accessory uses permitted for each zone, the Colville ordinance merely indicates that "customary" accessory uses are allowed for each permitted use. Special uses (including mining and land fills) are not associated with any particular zone, and may be approved on a case-by-case basis for any district where they are not specifically prohibited.

The enumerated zones and permitted uses under the Colville Land Use Ordinance are as follows:

- Residential, where single family dwellings and mobile homes, multiple family dwellings, public parks, and playgrounds are the only permitted uses;
- Commercial, where retail, professional, service, religious, and recreational uses are permitted;

- Rural, where agricultural, grazing, home occupations, kennels, single family dwellings, public parks, playgrounds, planned residential developments, and truck gardening and stands are the only permitted uses;
- Forestry, where forestry, grazing, fish and game management, agriculture, greenhouses and nurseries, and single family dwellings associated with forest production are permitted;
- Game Reserve, where only grazing, harvesting of wild crops, selective timber production, recreation, hunting, fishing, and trapping by tribal members, and wildlife preserves are the only permitted uses;
- Industrial, where a variety of specified manufacturing, service, forestry, agriculture, and service facilities are permitted;
- Wilderness, where recreational and educational uses are the only ones permitted, and special, strict prohibitions on development, mining, forestry, and grazing apply;
- Special District, where all existing uses are frozen, and conditional use permits are required for any and all uses, because the areas have experienced the greatest development, have the greatest amount of inconsistent adjacent uses, and "are expected to have the largest amount of future growth."

Even though the Colville Land Use Ordinance does not emphasize natural resource and cultural protection in its statement of purposes, the particular districts identified in the ordinance, especially the Wilderness and Game Reserve Zones, provide considerable flexibility to achieve those objectives.

The Colville Land Use Ordinance relies on a Planning Department, its administrative head, the Planning Director, and a Land Use Review Board for most administration and enforcement. The Planning Director has authority to approve conditional use permits or to determine that a proposed use will have adverse impact on environmental or cultural resources and should be referred to the Land Use Review Board. This Board, appointed for three-year terms by the Colville Business Council, consists of seven reservation residents, two of whom must be non-Indians. Members may be excused from voting by a majority of the remaining members if they have a conflict of interest, as specified in the Ordinance. (Section 4-3-80(d)(3)) The responsibilities of the Land Use Review Board include resolving appeals from decisions of the Planning administrator, and deciding whether to grant applications for special-use permits, variances, and conditional uses. Public hearings are required before the Land Use Review Board renders its decisions, and permits may be denied on the basis that the proposed development will likely have adverse effects on environmental or cultural resources.

The Colville Business Council has power to revise the Zoning Map, resolve rezone applications, and approve or disapprove special-use permits. All special-use permit decisions by the Land Use Review Board must be submitted to the Business Council for final determination. Final decisions of the Land Use Review Board and of the Business Council are subject to review by the Colville Tribal Court.

No development, sale, or other transfer of property on the Colville Reservation may take place unless a proper zoning permit has been issued. Initial responsibility for investigating violations rests with the Planning Department staff. The Ordinance specifies civil penalties for violations of its requirements, as well as equitable actions.

- 10-1-48 Attachment
- 10-1-49 Irreparable Harm
- 10-1-50 Pre-Hearing Procedures
- 10-1-51 Conduct of the Hearing
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*Colville
Land Use
&
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1996?

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**CHAPTER 4-3 LAND USE AND DEVELOPMENT
GENERAL PROVISIONS**

4-3-1 TITLE

This Ordinance shall be known as and may be referred to as the "Colville Land Use and Development Chapter."

4-3-2 AUTHORITY

The Colville Land Use and Development Chapter is enacted by the Colville Business Council pursuant to its general duty and authority under Article V of the Constitution to exercise the governmental and proprietary powers of the Confederated Tribes of the Colville Reservation; to protect and preserve tribal property, wildlife, and natural resources; to cultivate and preserve Indian culture; and, to protect the health, welfare, and security of the Confederated Tribes of the Colville Reservation, its members, and the interests of all those individuals residing or owning property on the Colville Indian Reservation.

4-3-3 LEGISLATIVE INTENT

(a) The legislative intent of the Colville Business Council in adopting this Chapter is to preserve and protect the political integrity, the economic survival, and the health and welfare of the present and future members of the Confederated Tribes of the Colville Reservation, to exercise the Tribes' powers of self government and self determination over all lands of the Colville Indian Reservation; and, to implement the Tribes' Comprehensive Land Use Policy Guidelines.

(b) It is the intention of the Colville Business Council that this Chapter implement the planning policies adopted by the Council for the Confederated Tribes and the Colville Indian Reservation, as reflected in the land-use plan and other planning documents. While the Business Council affirms its commitment that this Chapter and any amendment to it be in conformity with adopted planning policies, the Council hereby expresses its intent that neither this Chapter nor any amendment to it may be challenged on the basis of any alleged non-conformity with any planning document.

© The Colville Land Use and Development Chapter shall apply to all lands of the Colville Indian Reservation notwithstanding the issuance of any patent. The provisions shall apply to and shall bind all persons residing or found within the exterior boundaries of the Reservation, or having title or use or possessory interests to lands of the Reservation.

4-3-4 NO USE OR SALE OF LAND OR BUILDINGS EXCEPT IN CONFORMITY WITH THIS TITLE ALLOWED.

(a) Subject to the Subchapter on Non-Conformities under this Chapter no person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his control except in accordance with all of the applicable provisions of this Chapter.

(b) For purpose of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on or in that building or land.

© Nothing herein shall prohibit the acquisition of land by the Colville Tribes pursuant to the tribal land acquisition policy.

4-3-5 FEES

(a) Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice, and similar matters may be charged to applicants for zoning, conditional-use or special-use permits, subdivision plat approval, zoning amendments, variances and other administrative relief. The amount of fees charged shall be as set forth by resolution of the Colville Business Council upon recommendation by the Planning Department.

(b) Fees established in accordance with section 4-3-5 shall be paid upon submission of a signed application or notice of appeal.

4-3-6 COMPUTATION OF TIME

(a) Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded. When the period of time is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded.

(b) Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served by mail, three days shall be added to the prescribed period.

4-3-7 MISCELLANEOUS

(a) Words used or defined in one tense or form in this Chapter shall include other tenses and derivative forms.

(b) Words used in the singular in this Chapter include the plural and words used in the plural include the singular.

© As used in this Chapter, words importing the masculine gender include the feminine and neuter.

(d) In case of any difference of meaning or implication between the text of this Chapter and any caption, illustration, or table, the text shall control.

4-3-8 ZONING MAPS

(a) A Zoning Map adopted by reference in section 4-3-8(b) or any amendment thereto shall be prepared by authority of the Colville Business Council. A certified print of the adopted map or subsequent map amendment shall be maintained without change in the Planning Department of the Confederated Tribes as long as this Chapter remains in effect.

(b) The boundary for each zone listed in this Chapter is indicated on the Colville Reservation Zoning Map of 1991 established by the Colville Business Council and is hereby adopted by reference.

4-3-9 SUPERIORITY OF CHAPTER

Whenever any laws enacted by any city, municipality, state government or any agencies thereof are found to be in conflict with the provisions of this Chapter, the provisions of this Chapter shall control and supersede all such laws. This Chapter shall supersede the Colville Interim Land Use and Development Ordinance adopted by the Business Council in 1978. Other tribal codes and ordinances not specifically repealed in this Chapter shall be construed consistent with the terms and purposes of this Chapter.

4-3-10 SEVERABILITY

The provisions of this Chapter are severable. Should any section or provision of this Chapter be declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such determination shall not affect the validity of the Chapter as a whole, or any part thereof, other than the specific part declared to be unconstitutional or invalid.

DEFINITIONS

Unless otherwise specifically provided or unless clearly required by the context, the following words and phrases as defined in this section shall have the meaning indicated when used in this Chapter and shall be noted with a shaded background:

Abutting:	Having a common border with, or being separated from such common border by, an alley or easement.
Access:	A means of vehicular approach or entry to or exit from property
Accessory Building or Use:	A building or use which: (1) is subordinate to and serves a principal building or principal use; (2) is subordinate in area, extent, or purpose to the principal building or principal use served; (3) contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use; and (4) is located on the same zoning lot as the principal building or principal use. Examples of accessory uses are private garages, storage sheds, play houses, and swimming pools.
Adjacent Property	Those parcels of property with a boundary line nearer than 300 feet to the subject property in the residential, rural, industrial and commercial zones, and 1,320 feet in game reserves, forestry and agricultural zones.
Agricultural Use:	Activities related to the growing and harvesting of food, feed, other crops, and animals.
Apartment:	A dwelling unit contained in a building comprising more than three (3) dwelling units, each of which has an entrance to a hallway or balcony in common with at least one (1) other dwelling unit.
Arterial/Collector Streets:	Roadways which primarily serve local neighborhood residences or businesses with through traffic to other neighborhoods or streets.
Buffer/Bufferyard:	An area established to protect one type of land use from the undesirable characteristics of another. Usually applied between industrial and residential zones with the requirement being that the industrial zone must provide a buffer strip between its boundaries and that of the residential zone. The purpose is to screen any potential objectionable features resulting from the more intensive utilization of land from neighboring, less-intensive use areas.
Building:	Any structure used or intended for supporting or sheltering any use or occupancy. Where independent units with separate entrances are divided by party walls, each unit is a building.
Building line/Setback:	A line on the lot, generally parallel to a lot line or right-of-way, located a sufficient distance therefrom to provide the minimum yards required by this Chapter.
Bureau of Indian Affairs:	That division of the United States Department of Interior charged with trust responsibility of the lands and resources of the Colville Confederated Tribes and the Colville Indian Reservation.
Camper:	A self-propelled vehicle designed for temporary human habitation or which provides

	accessory facilities for overnight camping; also known as a recreational vehicle.
Campgrounds:	Sites where tent or trailer camping is allowed but water and power are not provided.
Comprehensive Land Use Policy Guide:	A composite of the Land Use Policy Guide of the Confederated Tribes of the Colville Reservation, all accompanying maps, charts and explanatory material adopted by the Colville Business Council, and all amendments, thereto.
Conditional-Use Permit:	A permit issued by the Land Use Review Board that authorizes the recipient to make use of property in accordance with the requirements of this Chapter as well as any additional requirements imposed by the Review Board.
Council or Colville Business Council:	The governing body of the Colville Indian Reservation and Colville Confederated Tribes; and, the governmental body that approves, conditions or disapproves "special use" permits under this Chapter.
Dedication:	The transfer of property interest from private to public ownership for a public purpose.
Density:	The per capita ratio of persons or family residential units per fixed measure of property; e.g. four single family residences per acre.
Developer:	Any person including but not be limited to the legal or beneficial owner(s) of a lot or parcel of land (including the holder of an option or contract to purchase), who is responsible for any undertaking that requires a zoning permit, conditional-use permit or a sign permit.
Development:	The division of a parcel of land into two (2) or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any buildings; any use or change in use of any buildings or land; any extension of any use of land or any clearing, grading, or other movement of land, for which permission may be required pursuant to this Chapter.
District Boundaries:	Those divisions of property by which the various zoning classifications (residential, commercial, industrial, etc.) of land uses are defined. District boundaries shall be displayed on the official zoning map.
Dwelling:	Any building or portion thereof which is designated or used for residential purposes.
Dwelling Unit:	An enclosure containing sleeping, kitchen and bathroom facilities designed for and used or held ready for use as a permanent residence by one family.
Easement:	A right to use some part of the property of another for a particular purpose, such as for a driveway or for installing and maintaining a water line.
Exterior Storage:	Outdoor storage of fuel, raw materials, products, and equipment. In the case of lumberyards, exterior storage includes all impervious materials stored outdoors. In the case of truck terminals, exterior storage includes all trucks, truck beds, and truck trailers stored outdoors.
Family:	An individual or two or more persons related by blood, marriage, adoption, or guardianship, or not more than five (5) persons not so related, occupying a dwelling unit and living as a single housekeeping unit.
Floodplain:	Floodplains may be either riverine or inland depressional areas. Riverine floodplains are those areas contiguous with a lake, stream, or stream bed whose elevation is greater than the waterpool elevation but equal to or lower than the 100-year flood elevation. Inland depressional floodplains are floodplains not associated with a stream system but which are low points to which surrounding lands drain.
Floodway:	The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. As used in this Chapter, the term refers to that area designated as a floodway on the "Flood Boundary and Floodway Map" prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the Planning Department.
Forest Use:	Area containing mature woodlands, woodlands, and/or young woodlands. Activities related to the management and primary production of forest, fish and game resources.
Height of Building:	The vertical distance measured from the lowest ground elevation to the highest point on such structure. Does not apply to flagpoles, towers, and other similar non-building structures.
Home Occupation	Any occupation of a service character which is clearly secondary to the main use of the

	premises as a dwelling place and does not change the character thereof or have any exterior evidence of such secondary use. This occupation shall be carried on or conducted only by members of a family residing in the dwelling.
Impervious Surfaces:	Impervious Surfaces are those which do not absorb water. They consist of all buildings, parking areas, driveways, roads, sidewalks, and any areas of concrete or asphalt. In the case of lumberyards, areas of stored lumber constitute impervious surfaces.
Indian Health Service:	That division of the United States Public Health Service charged with the trust responsibility of protecting the health of members of the Confederated Tribes of the Colville Reservation and other Indians.
Industrial Use:	The adding of value, by processing raw or bulk materials, the end products of which are offered for use, or marketed for use at sites other than those at which the end products are produced.
Lakes and Ponds:	Natural or artificial bodies of water which retain water year around. A lake is a body of water of two (2) or more acres. A pond is a body of water less than two (2) acres. Artificial lakes and ponds may be created by dams or may result in excavation. The shoreline of such bodies of water shall be measured from the maximum condition rather than from the permanent pool in the event of any difference.
Land Use Review Board (Review Board):	The group of persons appointed under this Chapter when performing the functions delegated to it by this Chapter.
Lot:	A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or recorded map and which is recognized as a separate legal entity for purposes of transfer of title and which is occupied by or designated to be developed for one (1) building or principal use, including such open spaces and yards as are designed and arranged or required by this Chapter for such building, use, or development.
Lot Area/Size:	The total horizontal area within the boundary lines of a lot excluding public and private streets and shorelands.
Lot of Record	Any validly recorded lot which at the time of its recordation complied with all applicable laws, ordinances, and regulations.
Major Highways:	Roadways primarily designed to carry through traffic between communities or regions.
Marina:	A facility which, as a commercial use, provides moorage or wet or dry storage for watercraft and which may offer marine-related sales and services, a dock or basin providing secure moorings for motorboats, sailboats, and yachts, and offering supply, repair, and other facilities.
Mobile Home:	A transportable, single family dwelling intended for permanent occupancy which is more than thirty-two (32) feet in length and eight (8) feet in width, which by original design is capable of being moved on public streets and highways.
Mobile Home Parks:	A mobile home park is a tract of land developed and operated as a unit with individual sites and facilities to accommodate two or more mobile homes.
Motel and Hotel:	A building or group of buildings used, or intended to be used, for the lodging of more than ten(10) persons for compensation.
Nonconforming Use:	Any use of land or a structure or premises which was <u>lawfully</u> established or built and which has been <u>lawfully</u> continued, but which does not conform to the regulations of the zone in which it is located as established by this Chapter or amendments thereto.
Open Space:	Land used for outdoor recreation, resource protection, amenity, safety or buffer, including structures incidental to these open spaces uses, but excluding yards required by this Chapter and land occupied by dwellings or impervious surfaces not related to the open space.
Owner:	The person or persons having the right of legal title to, beneficial interest in, or a contractual right to purchase a lot or parcel of land.
Parcel:	The area within the boundary lines of a development.
Person:	The word "person" includes individuals, firms, organizations, corporations, associations and

	any other similar entity.
Planning Committee:	The term "Planning Committee" shall refer to the Planning Committee of the Colville Business Council when it is performing the functions delegated to it by this Chapter.
Planning Department:	The term "Planning Department" shall refer to the Planning Department of the Colville Confederated Tribes.
Plat:	A plan or map dividing a tract of land into lots or parcels considered to be units or property.
Public Improvement:	Any improvements, facility or service together with customary improvements and appurtenances thereto, necessary to provide for public needs such as: vehicular and pedestrian circulation systems, storm sewers, flood control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment, public utility and energy services.
Residential Use:	The primary purpose of a building on a lot to provide living accommodations for a person(s).
Recreational Vehicle:	A vehicle or unit that is mounted on or drawn by another vehicle primarily designed for temporary living which may be moved on public highways without any special permit for long, wide, or heavy loads. Recreational vehicles include travel trailers, camping trailers, truck campers, and motor homes.
Recreational Vehicle Park:	A tract of land developed as a unit with individual sites to accommodate, on a transient basis, two or more RVs.
Right-of way:	The legal right of passage over another person's ground, such as strips of land for roadways, railroads, transmissions lines.
Shoreline:	The line at which the surface of the body of water of any lake, stream, or river meets the land.
Sign:	A collection of letters, numbers, or symbols which call attention to a business, product, activity, person, or service.
Sign Permit:	A permit which authorizes the placement or alteration of a sign on a particular parcel of property or building.
Site Development Standards:	The standards required on a proposed building site such as, but not limited to, parking, yard area, landscaping, buffer devices, access of public right-of-way, etc.; these standards may vary from site to site.
Special-Use Permit:	A permit issued by the Land Use Review Board and approved by the Business Council that authorizes the recipient to make use of property in accordance with the requirements of this Chapter as well as any additional requirements imposed by the Business Council.
Structure:	Anything constructed or erected.
Subdivision:	Any subdivision or redivision of a sub-division, tract, parcel, or lot of land into two (2) or more parts by means of mapping, platting, conveyance, change or rearrangement of boundaries. All subdivisions are also developments.
Subdivision, Major:	Any subdivision other than a minor subdivision.
Subdivision, Minor:	A subdivision that does not include any of the following: (i) the creation of more than a total of three lots; (ii) the creation of any new public streets; or (iii) the extension of a public water or sewer system.
Trailer:	A dwelling designed for temporary human habitation which is thirty-two (32) feet or less in length and eight (8) feet or less in width and which by original design is capable of being moved on public streets and highways.
Tribal Members:	Persons who are listed in the official enrollment records of the Confederated Tribes of the Colville Reservation.
Use:	The purpose or activity for which land or any building thereon is designed, arranged or intended, or for which it is occupied or maintained.
Variance:	An exception from the application of a zoning regulation granted by proper authority to relieve against practical difficulties and unnecessary hardship.
Wrecking Yard:	A place where damaged, inoperable or obsolete machinery such as cars, trucks and trailers, or

	parts thereof, is stored, bought, sold, accumulated, exchanged, disassembled.
Yard:	The space between a lot line and a building line. Restrictions stipulate the minimum side or rear yard area, and the percentage of the area of the building lot that may be occupied by the building.
Zone:	A portion or portions of the Colville Reservation designated on zoning maps as one of more of the zoning districts listed and described in this Chapter. This Chapter creates structural and use restrictions to be imposed upon the owners of real estate within the prescribed zoning district.
Zoning Permit:	A permit issued by the Planning Department that authorizes the recipient to make use of property in accordance with the requirements of this Chapter.

ESTABLISHMENT OF ZONING DISTRICTS

4-3-40 ESTABLISHMENT OF ZONING DISTRICTS

The Colville Indian Reservation is hereby divided into zoning districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Chapter.

No changes of any nature shall be made in the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Chapter.

4-3-41 ZONING DISTRICTS

All land and water areas of the Colville Indian Reservation are hereby divided into zoning districts which shall be designated as follows:

<u>Name of Zone</u>	<u>Abbreviation</u>
Residential	R
Commercial	C
Rural/Agricultural	Ru
Forest	F
Game Preserve	GP
Wilderness	W
Special Requirement	SR
Industrial	I

The requirements set by this Subchapter within each District shall be minimum requirements and shall apply uniformly to each class or kind of structure or land except as provided by the procedures set forth in this Chapter. No building, structure, or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of the regulations herein specified for the District in which it is located.

4-3-42 INTERPRETATION OF DISTRICT BOUNDARIES

The following rules shall be used to determine the precise location of any zone boundary shown on the official Zoning Map of the Colville Indian Reservation.

- (a) Boundaries shown as following or approximately following section lines, half-section lines or quarter-section lines shall be construed as following such lines.
- (b) Boundaries shown as following or approximately following shorelines of any lake shall be construed to follow the mean high waterlines of such lakes and, in the event of change in the mean high waterline, shall be construed as moving with the actual mean high waterline.
- (c) Boundaries shown as following or approximately following the centerline of streams, rivers, or other continuously flowing water courses shall be construed as following the channel centerline of such water courses taken at mean low water and, in the event of a natural change in the location of such streams, rivers, or other water courses, the zone boundary shall be construed as moving with the channel centerline.
- (d) Boundaries shown as following or approximately following the limits of any municipal corporation shall be construed as following such limits.
- (e) Boundaries shown as following or approximately following streets shall be construed to follow the centerline of such streets.
- (f) Boundary lines which follow or approximately follow platted lot lines or other property lines as shown on the Bureau of Indian Affairs Realty Map shall be construed as following such lines.

(g) Boundary lines which divide a parcel of land, which is less than one (1) acre, under a single ownership at the time of passage of this Chapter, the least restrictive regulations may be extended to that portion lying in the more restrictive Use District for a distance not to exceed thirty-five (35) feet beyond the Use District boundary.

(h) Boundaries shown as separated from, and parallel or approximately parallel to, any of the features listed in paragraphs a through g above shall be construed to be parallel to such features and at such distances therefrom as are shown on the map. In the event there is a question on the actual location of a boundary, the Planning Committee shall rule on this matter.

4-3-43 STATEMENT OF PURPOSE, INTENT AND PERMITTED USES

The following sections specify the purpose, intent and permitted uses of the zoning districts established by this Chapter.

4-3-44 RESIDENTIAL DISTRICT

The Residential District is intended to provide and protect residential land, properly located for families who desire to live in an environment of single family dwellings who do not want, or have no need for larger lots.

(a) Permitted Uses

The following uses and their accessory uses are permitted upon the issuance of a zoning permit.

1. Single family dwellings and mobile homes
2. Two family dwellings
3. Multiple family dwellings and apartment house
4. Public parks and playgrounds
5. Accessory uses customarily incidental to the above uses are permitted only in conjunction with such uses

(b) Conditional Uses

The following uses may be permitted subject to the requirements of section 4-3-118 to 4-3-122 and upon the issuance of a zoning permit.

1. Churches
2. Home occupations
3. Fraternal organizations, lodges, grange halls, and clubs
4. Public and private schools
5. Mobile homes and/or travel trailers used as dwellings, not in a permitted mobile home park or trailer court.
6. Farming, gardening orchards and nurseries, provided that no retail or wholesale business office is maintained.
7. Where the side of a lot abuts on a Commercial or Industrial District, the following transitional uses are permitted provided they do not extend more than one-hundred (100) feet into the more restricted (residential) district.

- (A) Medical or dental offices and clinics

(B) Other uses of a transitional nature as determined by the Review Board. These transitional uses shall conform to all other requirements of this Chapter which shall apply.

(c) Density Provisions

1. Lot Size and Percentage of Coverage:

The minimum lot size for any structure hereafter erected upon any lot or plot shall have an area of seven-thousand-five-hundred (7,500) square feet. The building including its accessory building shall not cover more than fifty (50) percent of the total lot area.

2. Minimum Set-Back Requirements:

Front yard - 25 feet

Side yard - 15 feet

Rear yard - 25 feet (5 feet for garage)

3. Maximum Building Height - 35 feet or 2½ stories

(d) Other Regulations

Off street parking requirements - 2 per unit.

4-3-45 COMMERCIAL DISTRICT

The Commercial District is intended to provide for business establishments serving the needs of trade area residents, especially retail and service businesses. Permitted uses are intended to create a business district free from conflicting uses.

(a) Permitted Uses

The following uses and their accessory uses are permitted upon the issuance of a zoning permit.

1. Retail and wholesale sales
2. Professional offices, e.g., finance, insurance and real estate services
3. Business services including any warehousing and storage services
4. Eating and drinking establishments
5. Churches
6. Automobile filling stations and parking
7. Motels and hotels
8. Indoor and outdoor recreational uses

(b) Conditional Uses

1. Charitable institutions and orphanages
2. Fraternal organizations, lodges, grange halls and clubs
3. Hospitals, sanitariums, nursing homes and institutions for philanthropic and similar uses, other than correction

4. Light manufacturing clearly incidental to a retail business lawfully conducted on the premises and not prohibited in the Industrial District

(c) Density Provisions

1. Lot Size and Percentage of Coverage

The minimum lot size for any structure hereafter erected shall upon any lot or plot shall have an area of twenty-thousand (20,000) square feet. The building, including its accessory building, shall not cover more than sixty-five (65) percent of the total lot area.

2. Minimum Set-Back Requirements

Front yard - 40 feet

Side yard - 10 feet

Rear yard - None required

3. Maximum Building Height

No building shall exceed a height of forty-five (45) feet or three and one half (3½) stories, whichever is the lesser.

(d) Other Regulations

Off-Street Parking Requirements

One (1) off-street parking space per 200 square feet.

4-3-46 RURAL DISTRICT

The Rural District is intended to preserve those portions of the Reservation which contain prime agricultural soils for agricultural purposes and to also provide low density development in outlying areas or where physical constraints such as soil, availability of water or topography require larger lot sizes. A density of one dwelling per five (5) acres is allowable. The Agricultural District includes orchards, farming, and animal range management of lands and their related activities.

(a) Permitted Uses

The following uses and their accessory uses are permitted upon the issuance of a zoning permit.

1. Agricultural crops
2. Horticultural nurseries
3. Tree Farms
4. Fish farms
5. Pasture and grazing
6. The raising of livestock, poultry and small animals for private and commercial purposes
7. Home occupations
8. Private and commercial kennels
9. Single family dwellings

10. Public parks and playgrounds
11. Planned residential development
12. Truck gardening activities and stands

(b) Conditionally Permitted Uses

The following uses may be permitted subject to the requirements of sections 4-3-118 to 4-3-122 and upon issuance of a zoning permit.

1. Animal hospitals
2. Fraternal organizations, lodges, grange halls and clubs
3. Charitable institutions and orphanages
4. Public or private schools
5. Churches
6. Airport facilities
7. Private or public recreational facilities
8. Hospitals, sanitariums, nursing homes and institutions for philanthropic and similar uses, other than correction
9. Boat launchings
10. Golf courses
11. Professional buildings

(c) Density Provisions

1. Lot Size

The minimum lot size shall not be less than five (5) acres.

2. Minimum Set-Back Requirements

Front yard - 70 feet

Side yard - 15 feet

Rear yard - 25 feet

3. Maximum Building Height

Maximum building height shall not exceed forty-five (45) feet.

4-3-47 FORESTRY DISTRICT

The Forestry District is designed to provide for the development and use of forest land for the production of forest products as well as to allow forestry management and related activities, including uses by tribal members for culturally related activities such as hunting, fishing, and food gathering.

(a) Permitted Uses

The following uses and their accessory uses are permitted in the Forestry zone upon the issuance of a zoning permit.

1. The growing and harvesting of forest products and all operations associated with such uses; timber production.
2. Grazing
3. Fish and game management
4. The harvesting of wild crops
5. Watershed
6. Greenhouses and nurseries
7. Agriculture and husbandry pursuits
8. Single family dwellings associated with forest production

(b) Conditionally Permitted Uses

The following uses may be permitted subject to the requirements of sections 4-3-118 to 4-3-122 and upon issuance of a zoning permit.

1. Public and private camps or campgrounds
2. Sawmills

(c) Density Provisions

1. Lot Size

The minimum building site or lot size for residential uses shall be twenty-thousand (20,000) square feet.

2. Minimum Set-Back Requirements

Front yard - 70 feet

Side yard - 15 feet

Rear yard - 25 feet

3. Maximum Building Height

Building height in no case will exceed forty-five (45) feet.

(d) Other Regulations

Off street parking requirements

One (1) off street parking space per two-hundred (200) square feet.

4-3-48 GAME RESERVE DISTRICT

The Game Reserve District is designed to retain land for game management. This district is established to prevent uncontrolled development and protect natural environmental systems.

(a) Permitted Uses

The following uses and their accessory uses are permitted in the game reserve zone upon the issuance of a zoning permit.

1. Grazing or livestock
2. Harvesting wild crops
3. Selective timber production and salvage
4. Hiking and bridle trails
5. Day camp areas and picnic grounds
6. Cutting of tepee poles and fence posts
7. Hunting, fishing and trapping by Tribal members only
8. Wildlife preserves
9. Educational and recreational camps

(b) Conditionally Permitted Uses

The following uses may be permitted subject to the requirements of sections 4-3-118 to 4-3-122 and upon issuance of a zoning permit.

1. Single family dwellings associated with resource protection.
2. Recreational areas

(c) Density Provisions

1. Lot Size

The minimum building site or lot size shall be twenty thousand (20,000) square feet.

2. Minimum set back requirements

front 70 feet

side 15 feet

rear 25 feet

3. Maximum Building Height

The maximum height limit for all structures within this zone shall be one and one-half (1 ½) stories or fifteen (15) feet, whichever is less.

(d) Other Regulations

Off street parking requirements

One (1) off street parking space per two-hundred (200) square feet.

4-3-49 INDUSTRIAL DISTRICT

The Industrial District is intended to provide adequate and appropriately located land for the types of manufacturing and other industries which normally have characteristics objectionable to residential, commercial, and even to certain agricultural uses and, therefore, should be placed at locations remote from residential and certain other districts.

(a) Permitted uses

The following uses are permitted in the Industrial zone upon issuance of a zoning permit.

1. Forest and timber production
2. Agricultural supplies, machinery and equipment sales
3. Automobiles, mobile homes, boat, motor sales, and travel trailer sales and service agencies
4. Automobile service stations
5. Storage, grading, freight, and truck yard or terminals
6. Farming, gardening, orchards, vineyards and grazing
7. Feed, seed and garden supplies
8. Fuel distributor
9. Glass sales and installations
10. Nursery or greenhouses
11. Professional, executive and administrative offices
12. Veterinary clinic and/or kennels
13. Airports
14. Wholesale business, storage buildings and warehousing
15. The manufacturing, processing, compounding, packaging or treatment of such products as drugs, bakery goods, food, candy, beverage products, dairy products, cosmetics and toiletries
16. The manufacture, assembly, compounding or treatment of articles or merchandise from the following materials: bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, metal, paper, plastics, precious and semi-precious minerals, shell, textiles, tobacco, wood, yarns and paint
17. Uses customarily incidental to any of the above listed, including dwellings or shelters for the occupancy of guards, watchmen, or caretakers, or dwelling for the occupancy of the operators and employees necessary to the operation

(b) Conditionally Permitted Uses

Because of the consideration of odor, dust, smoke, noise, fumes, vibration or hazard, the following uses shall not be permitted in the Industrial District unless a special-use permit authorizing such use has been granted by the Land Use and Development Review Board and approved by the Business

Council; subject to the requirements of sections 4-3-118 to 4-3-122 and the Subchapter on Special Property Uses under this Chapter.

1. Acid Manufacturer
2. Asphalt manufacture, mixing or refining
3. Blast furnaces or coke ovens
4. Cement, lime, gypsum, or plaster of paris manufacture
5. Drop forge industries
6. Explosives, storage or manufacture
7. Reduction or disposal of garbage, offal or similar refuse
8. Oil refining
9. Rock crushers
10. Rubbish or refuse dumps
11. Rubber reclaiming
12. Smelting, reduction or refining of metallic ores or any other type of natural resources
13. Tanneries
14. Wineries
15. Manufacturing of industrial or household adhesive, glues, sizes, or cements, or component parts thereof, from vegetable, animal or synthetic plastic materials.

(c) Density Provisions

1. Lot size

There are no lot size or lot coverage requirements in this zone.

2. Set back requirements

(A) Front, side and rear: None required except as may be required by a special-use permit, conditional-use permit, or unless this property abuts a parcel of land located in a more restricted district. If an established building line exists a set-back shall be the same as the established building line as determined by the Colville Business Council or designee.

(B) If any use in this district abuts or faces any residential district, a minimum set-back of fifty (50) feet on the side abutting or facing the residential district shall be provided. This area shall be landscaped with lawn, trees, shrubs, hedges, etc., or other conditions necessary to buffer and to protect the character of the residential district. Such landscape plan must have the approval of the Land Use Review Board.

3. Maximum Building Height

The maximum height limit for all structures within this zone shall be three and one-half (3 1/2) stories or forty-five (45) feet, whichever is less.

(d) Other Regulations

1. Off street parking and loading requirements

(A) Parking: One (1) off street parking space per employee

(B) Loading: Loading space shall be provided at the following rates:

<u>Aggregate Gross Floor Area in Square Feet</u>	<u>Minimum No. Loading Space</u>
0 - 16,001	1
16,000 - 40,002	2
For Each 35,000	1 additional

Such spaces shall be inside of rear yards unless the developer provides evidence, satisfactory to the Review Board, of the need for other locations. A loading space shall not be less than forty (40) feet long, twelve (12) feet wide and fourteen feet six inches high. Loading space will be required in case of under ten thousand (10,000) square feet uses not involving routine truck delivery.

2. Right-of-way preservation

There shall be a minimum building set-back for all buildings or other structures from the centerline of right-of-way as follows:

<u>Right-of-Way. Public</u>	<u>Set-Back</u>
Major or secondary arterial	40 feet
Collector or access roads	30 feet
<u>Right-of-Way. Private</u>	<u>Set-Back</u>
Any road, lane, street or other access way in private ownership	30 feet
Any waterway, lake, stream or spring	100 feet

4-3-50 WILDERNESS DISTRICT

The purpose and function of this district is to assure that an increasing Reservation population does not occupy or modify all areas within the exterior boundaries of the Colville Indian Reservation. This district is protected and managed so as to preserve its natural conditions.

(a) Permitted Uses

The following uses are permitted in the wilderness zone upon issuance of a zoning permit.

1. Hiking and horseback riding
2. Hunting and fishing in accordance with Colville Tribal Fish and Wildlife regulations
3. Camping
4. Educational field trips
5. Historical and cultural field trips

(b) Conditionally Permitted Uses

The following uses may be permitted subject to the requirements of sections 4-3-118 to 4-3-122 and upon issuance of a zoning permit.

1. Scientific Research
2. Conservation Management
3. Selective timber harvesting where necessary to control attacks of insects or disease.
4. Similar recreational, educational and historical uses as determined by the Business Council or Land Use Review Board

(c) Prohibited Uses

The Wilderness District shall be protected against man-made developments such as commercial enterprise, structures or installations and roads. There shall be no temporary roads, no use of motor vehicles or motorized equipment, no other form of mechanical transport, and no structure or installation except as necessary to meet minimum requirements for the administration of the areas.

The Wilderness District shall be protected against mining, timber harvest and grazing. Resource surveys may be permitted if such activity is carried on in a manner compatible with the preservation of the wilderness environment. There shall be no cutting or otherwise damaging of any timber, tree or other forest products; removing, loading, or hauling of any timber, except as provided in section 4-3-50 (b)(3). There shall be no placing or allowing livestock to enter or be in the Wilderness District.

4-3-51 SPECIAL REQUIREMENT DISTRICT

The purpose and function of the Special Requirement District (SRD) is to freeze all existing uses and require a conditional-use permit for any and all uses, including any modifications, addition change or expansion of an existing use pending detailed study by the Colville Tribes to determine appropriate use designation.

The areas designated as the SRD have experienced the greatest build up and are expected to have the largest amount of future growth. The SRD also exhibits the widest range of disparate, inconsistent existing uses. Before any decision as to appropriate use designations can be made further study and planning must be done.

Until such intensive planning can be accomplished, any use shall be considered a conditional use subject to the requirements of sections 4-3-118 to 4-3-122.

ADMINISTRATIVE MECHANISMS

4-3-80 THE LAND USE REVIEW BOARD

(a) Establishment of the Review Board

1. There is hereby created the Land Use Review Board which shall consist of seven (7) voting members, all of whom shall be appointed, by the Colville Business Council. The members shall be selected without respect to political or tribal affiliation except as otherwise set forth herein and shall serve without compensation except for approved expenses.

PROVIDED, the Business Council shall appoint two non-Indian residents of the Reservation (one each from Ferry and Okanogan County) in consultation with the Commissioners of their respective county of residence.

2. All Review Board members must be residents of the Colville Indian Reservation for more than four (4) years. The Review Board shall consist of at least one resident from each of the Reservation districts.

3. Of the regular voting members, initially, two shall be appointed for a term of three years, two shall be appointed for two years, and three shall be appointed for one year. Thereafter, members

shall serve a period of three years. Vacancies shall be filled by appointments for the remainder of unexpired terms only.

4. The Review Board shall exercise all powers, duties and responsibilities delegated to it by this Chapter.

(b) Meetings

1. The Review Board shall establish a regular meeting schedule, and shall meet frequently enough so that it can take expeditious action and accommodate the business before it. Special meetings may be called by the chairperson, or requested by a majority of the members of the Board.

2. The Review Board should conduct its meetings in accordance with the quasi-judicial procedures set forth in the Subchapters on Permits and Final Plat Approval; Appeals, Variances, Interpretations; and Hearing Procedures for Appeals and Applications under this Chapter.

3. All meetings of the Review Board shall be open to the public, and whenever feasible, the agenda for each Board meeting shall be made available in advance of the meeting. Provided, the Chairperson, in his sole discretion may call a meeting into executive session when he determines it is in the interest of the Colville Confederated Tribes to do so.

(c) Quorum

1. A simple majority of the members of the Review Board, including the chairman, shall constitute a quorum. A quorum is necessary for the Board to take official action.

2. If a Board member excludes himself from participating in any decision, his presence shall count for purposes of determining whether a quorum is present.

(d) Voting

1. The concurring vote of 2/3 of the regular Board membership shall be necessary to reverse any order, requirement, decision, or determination of the Planning Director or administrator. All other actions of the Board shall be taken by majority vote, a quorum being present.

2. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with 4-3-80(d)(3) or has been allowed to withdraw from the meeting in accordance with 4-3-80(d)(4).

3. A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:

(A) If the member has a direct financial interest in the outcome of the matter or issue; or

(B) If the matter at issue involves the members own official conduct; or

(C) If participation in the matter might violate the letter or spirit of the member's code of professional responsibility, or

(D) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.

4. A member may be allowed to withdraw from the entire remainder of the meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

5. A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

6. A roll call vote shall be taken upon the request of any member.

(e) Review Board Officers

1. The Board shall elect its own Chairperson who shall preside over the committee meetings pursuant to this Chapter and create and elect such other officers as it may deem necessary.

2. The Chairperson, or any member temporarily acting as Chairperson, may administer oaths to witnesses coming before the Board.

3. The Chairperson and any other officer elected may take part in all deliberations and vote on all issues.

(f) Powers and Duties of the Review Board

1. The Review Board shall herein decide:

(A) Appeals from any order, decision, requirement, or interpretation made by the Planning Director or administrator, as provided in section 4-3-170.

(B) Applications for special-use permits, as provided in section 4-3-118 and the Subchapter on Special Property Uses under this Chapter.

(C) Applications for variances, as provided in section 4-3-171.

(D) Applications for conditional uses referred by the Planning Director pursuant to 4-3-118(b)4.

(Amended 5/2/96, Resolution of 1996-155)

(E) Questions involving interpretations of the zoning map, including disputed boundary lines and lot lines, as provided in section 4-3-41.

(F) Any other matter the Board is required to act upon by any other tribal ordinance.

2. The Review Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Chapter and tribal law.

3. The Review Board, in its sole discretion, may appoint a hearing officer to conduct the hearing(s) provided in section 4-3-118 on any conditional-use or special-use permit application then pending before the Board.

The hearing officer shall conduct the hearing in accordance with the provisions of this Chapter and submit specific findings of fact, conclusions and a proposed decision to the Board.

4. The Review Board in consultation with the Planning Director may recommend a fee schedule to be adopted by Colville Business Council as provided in section 4-3-5.

(Amended 5/8/96, Resolution 1996-155)

4-3-81 PLANNING DIRECTOR AND LAND USE ADMINISTRATOR

(a) Primary Responsibility For Administration And Enforcement

Except as otherwise specifically provided, primary responsibility for administering and enforcing this Chapter is with the Planning Director. The Planning Director may delegate this responsibility to one or more individuals. The person or persons to whom these functions are assigned shall be referred to in this Subchapter as the "land use administrator" or administrator. The term "staff" or "planning staff" is sometimes used interchangeably with the term "administrator".

(b) Power Of Planning Director

The Planning Director is the administrative head of the Planning Department. As provided in sections 4-3-134 and 4-3-135 the Planning Director is authorized to approve major and minor subdivision final plats. As provided in section 4-3-118(b), the planning Director is authorized to approve conditional use permits or upon a finding that the proposed development has the potential to significantly adversely affect the environment or cultural resources, to refer the conditional use permit application to the land Use Review Board. As the person primarily responsible for administering and enforcing this Chapter, he determines the completeness of applications and the adequacy of submissions based on the requirements of this Chapter. He makes requests for information and determines the applicability of environmental regulations and other tribal laws to a particular development.

(Amended 5/8/96, Resolution of 1996-155)

(c) Responsibility of Land Use Administrator

The Land Use Administrator shall have the following duties and responsibilities:

1. Receive and review all application for zoning permits required herein.
2. Process zoning permits and conditional-use permit applications for all permitted uses.
3. Receive applications for special use, variance or amendment and forward same to the Land Use Review Board.
4. Record and file all applications for zoning permits with accompanying plans and documents. All applications, plans and documents shall be a public record.

Further, if by amendment to this Chapter any zone boundary or any other matter shown on the Official Zoning Map is changed by action of the Colville Business, such change shall be promptly indicated on said map by the Administrator, together with the date of passage of the amendment and sufficient written description to give a precise understanding of the change. An up-to-date copy of the Official Zoning Map shall be available for public inspection in the Planning Department during its regular business hours.

4-3-82 COLVILLE BUSINESS COUNCIL

(a) Powers And Duties Of Colville Business Council

The Colville Business Council shall decide under this Chapter:

1. Zoning Map adoption or revision
2. Adoption and amendment of this Chapter and any regulations adopted pursuant to it
3. Rezone Applications
4. Special-use permit approval

(b) Quasi-Judicial Actions

In considering rezone permit applications, the Business Council acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in the Subchapters on Permits and Final Plat Approval; Appeals, Variances, Interpretations; and Hearing Procedures for Appeals and Applications under this Chapter.

(c) Legislative Actions

In considering proposed changes in the text of this Chapter, or in the zoning map, the Colville Business Council acts in its legislative capacity and shall proceed only after holding a public hearing after which it can deliberate on the facts and policy considerations involved in the proposed amendment.

(d) **General Council Rules Applicable**

Unless otherwise specifically provided in this Chapter, in acting upon rezone requests or in considering amendments to this Chapter or the zoning map, the Colville Business Council shall follow the regular, voting, and other requirements as set forth in other provisions of the Colville Tribal Code, the Colville Tribal Constitution, or general law.

PERMITS AND FINAL PLAT APPROVAL

4-3-110 PERMITS REQUIRED

(a) The use made of any property may not be substantially changed; substantial clearing, grading, or excavation may not be commenced; and, buildings and other substantial structures may not be constructed, erected, moved or substantially altered except in accordance with and pursuant to one of the following permits:

1. A zoning permit issued by the Administrator.
2. A conditional-use permit issued by the Review Board.
3. A special-use permit issued by the Review Board upon approval of the Colville Business Council.

(b) Zoning permits, conditional-use permits and special-use permits are issued under this Subchapter only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this Chapter if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as provided in section 4-3-127 all development shall occur strictly in accordance with such approved plans and applications.

(c) Physical improvements to lands to be subdivided may not be commenced except in accordance with a conditional-use permit issued by the Board for major subdivisions or after final plat approval by the Planning Director for minor subdivisions. (See section 4-3-135).

(d) A zoning permit, conditional-use permit, or special-use permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit-issuing authority.

4-3-111 NO OCCUPANCY, USE, OR SALE OF LOTS UNTIL REQUIREMENTS FULFILLED

Issuance of a conditional use, or zoning permit authorizes the recipient to commence the activity resulting in a change in use of the land or (subject to obtaining a building permit under Chapter 4-10) to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures or to make necessary improvements to a subdivision. However, except as provided in sections 4-3-117, 4-3-124, and 4-3-125, the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this Chapter and all additional requirements imposed pursuant to the issuance of a conditional-use or special-use permit have been complied with.

4-3-112 WHO MAY SUBMIT PERMIT APPLICATIONS

(a) Applications for zoning, conditional-use, or special-use permits, or minor subdivision plat approval will be accepted only from persons who have the legal authority to take action in accordance with the permit or the minor subdivision plat approval. By way of illustration, in general, this means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this Subchapter, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees).

(b) The Administrator may require an applicant to submit evidence of his authority to submit the applications in accordance with subsection (a) whenever there appears to be a reasonable basis for questioning this authority.

4-3-113 APPLICATIONS TO BE COMPLETE

(a) All applications for zoning, conditional-use, or special-use permits must be complete before the permit-issuing authority is required to consider the application.

(b) Subject to subsection (c), an application is complete when it contains all of the information that is necessary for the permit issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this Chapter.

(c) A presumption established by this Subchapter is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit-issuing authority may allow less information or require more information to be submitted according to the needs of a particular case. The Administrator shall determine whether more or less information than set forth in Appendix A should be submitted.

(d) The Administrator shall develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and types of information that must be submitted. In classes of cases where a minimal amount of information is necessary to enable the Administrator to determine compliance with this Chapter, such as applications for zoning permits to construct single family or two-family houses, the Administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

4-3-114 STAFF CONSULTATION BEFORE FORMAL APPLICATION

(a) To minimize development planning costs, avoid misunderstanding or misinterpretation and ensure compliance with the requirements of this Chapter, pre-application consultation between the developer and the planning staff is encouraged or required as provided in this section.

(b) Before submitting application for a conditional-use permit authorizing a development that consists of, or contains a major subdivision, the developer shall submit to the Administrator a sketched plan of such subdivision, drawn approximately to scale, (1" equals 100'). The sketch plan shall contain:

1. The name and address of the developer,
2. The proposed name and location of the subdivision,
3. The approximate total of acreage of the proposed subdivision,
4. The tentative street and lot arrangement,
5. Topographical lines and,
6. Any other information that the developer believes necessary to obtain the informal opinion of the Planning staff as to the proposed subdivision's compliance with this Chapter. The Administrator shall meet with the developer as soon as conveniently possible to review the sketched plan.

(c) Before submitting an application for any other permit, developers are strongly encouraged to consult with the Planning staff concerning the application of this Chapter to the proposed development.

4-3-115 STAFF CONSULTATION AFTER APPLICATION SUBMITTED

(a) Upon receipt of a formal application for a zoning, special-use, or a conditional-use permit, or minor plat approval, the Administrator shall review the application and confer with the applicant to insure that he understands the planning staff's interpretation of the applicable requirements of this Subchapter, that he has submitted all of the information that he intends to submit, and that the application represents precisely and completely what he proposes to do.

(b) If the application is for a special-use or conditional-use permit, the Administrator shall place the application on the agenda of the Land Use Review Board when the applicant indicates that the application is as complete as he intends to make it. However, as provided in sections 4-3-119(a) and 4-3-120(b), if the Administrator believes that the application is incomplete, he shall recommend to the Board that the application be denied on that basis.

4-3-116 ZONING PERMITS

(a) A completed application form for a zoning permit shall be submitted to the Administrator by filing a copy of the application with the Administrator at the Planning Department.

(b) The Administrator shall issue the zoning permit unless he finds after reviewing the application and consulting with the applicant as provided in section 4-3-114 that;

1. The requested permit is not within his authority to issue according to the table of permissible uses, or
2. The application is incomplete, or
3. If completed as proposed in the application, the development will not comply with one or more requirements of this Chapter.

(c) If the Administrator determines that development for which a zoning permit is requested will have, or may have, substantial impact on surrounding properties, he shall, at least ten days before taking final action on the permit request, send a written notice to those persons whose property is adjacent to the lot that is the subject of the application, informing them that:

1. An application has been filed for a permit authorizing the identified property to be used in a specified way,
2. All persons wishing to comment on the application should contact the Administrator by a certain date, and
3. Persons wishing to be informed of the outcome of the application should send a written request for such notification to the Administrator.

4-3-117 AUTHORIZING USE OR OCCUPANCY BEFORE COMPLETION OF DEVELOPMENT UNDER ZONING PERMIT

In cases when, because of weather conditions or other factors beyond the control of the zoning permit recipient (exclusive of financial hardship), it would be unreasonable to require the zoning permit recipient to comply with all of the requirements of this Chapter prior to commencing the intended use of the property or occupying any buildings, the Administrator may authorize the commencement of the intended use or occupying any building (insofar as the requirements of this Chapter are concerned), if the permit recipient provides a performance bond or other security satisfactory to the Administrator to ensure that all of the requirements of this Chapter will be fulfilled within a reasonable period (not to exceed 12 months) determined by the Administrator.

4-3-118 SPECIAL-USE PERMITS AND CONDITIONAL-USE PERMIT

(a) An application for a special-use permit under the Subchapter on Special Property Uses under this Chapter shall be submitted to the Review Board by filing a copy of the application the Administrator at the Planning Department.

(b) An application for a conditional-use permit under the Subchapter on Special Property Uses under this Chapter shall be submitted to the Planning Director by filing a copy with the Administrator at the Planning Department. The Planning Director shall issue the requested permit unless it concludes that:

1. The requested permit is not within his authority to issue according to the table of permissible uses, or
2. The application is incomplete, or
3. If completed as proposed in the application, the development will not comply with one or more requirements of this Title, or

4. The Planning Director makes a finding, based on information contained in the completed application, that the proposed development has the potential to: (A) significantly adversely affect the environment, or (B) significantly adversely affect cultural resources. After making such a finding, the Planning Director shall refer the application to the Land Use Review Board for processing.

(c) After receiving an application for a Special Use Permit or a Conditional Use Permit pursuant to 4-3-118(b)4, the Review Board shall conduct a hearing to determine whether the application complies with all other provisions of this Title. If, after hearing, the Review Board determines that the application is complete and the application complies with all other provisions of this title, the Review Board may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- (1) Will materially endanger the public health or safety, or
- (2) Will substantially injure the value of an adjoining or abutting property, or
- (3) Will not be in harmony with the area in which it is to be located, or
- (4) Will not be in general conformity with the land use plan, or other plan officially adopted by the Colville Business Council, or
- (5) Will significantly adversely affect the environment, or
- (6) Will significantly adversely affect cultural resources.

(Amended 5/8/96, Resolution of 1996-155)

4-3-119 REVIEW BOARD HEARINGS: BURDEN OF PRESENTING EVIDENCE: BURDEN OF PERSUASION

The following procedures shall apply to hearings on Special Use permits, and Conditional Use permits which have been referred to the Review Board by the Planning Director:

- (a) The burden of presenting a complete application (as described in section 4-3-113) to the Administrator shall be upon the applicant. However, unless the Review Board informs the applicant at the hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application (either at that meeting or at a continuation hearing), the application shall be presumed to be complete.
- (b) Once a completed application has been submitted, the burden of presenting evidence to the Review Board sufficient to lead it to conclude that the application should be denied for any reason stated in the sub-section 4-3-118(c), shall be upon the party or parties urging this position, unless the information presented by the applicant in his application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application.
- (c) Burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this Chapter remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any of the reasons set forth in sub-section 4-3-118(c) rests on the party or parties urging that the requested permit should be denied.

(Amended 5/8/96, Resolution 1996-155)

4-3-120 RECOMMENDATIONS BY THE ADMINISTRATOR ON SPECIAL-USE AND CONDITIONAL-USE PERMIT APPLICATIONS

- (a) When presented to the Review Board at the hearing, the application for conditional-use or special-use permit shall be accompanied by a report setting forth the planning staffs' proposed findings concerning the application's compliance with section 4-3-113 (application to be complete) and the other requirements of this Chapter, as well as any staff recommendations for additional requirements to be imposed by the Review Board.
- (b) If the Administrator proposes the finding or conclusion that the application fails to comply with section 4-3-113 or any other requirement of this Chapter, he shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusion.
- (c) The Review Board shall consider the application and the attached staff report in a timely fashion, and may, in its discretion, hear from the applicant or members of the public.
- (d) In response to the Administrator's recommendations, the applicant may modify his application prior to the submission to the Review Board. The Administrator may likewise revise his recommendations.

4-3-121 APPROVAL OF SPECIAL-USE AND CONDITIONAL-USE PERMITS

In considering whether to approve an application for a Special Use Permit, or a Conditional-Use Permit which has been referred to the Review Board by the Planning Director pursuant to 4-3-118(b)4, the Review Board shall proceed according to the following format:

- (a) The Administrator shall consider whether the application is complete. If the Administrator concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. The Administrator shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. The Administrator's decision is final unless the Applicant requests Board review under section 4-3-170.
- (b) The Review Board shall consider whether the application complies with all of the applicable requirements of this Chapter. If the Board finds that the application is not in compliance with one or more of the requirements of this Chapter, it shall specify the particular requirements the application fails to meet. As provided in sub-section 4-3-118(c), if the Board concludes that the application fails to meet one or more of the requirements of this Chapter, the application shall be denied.
- (c) If the Review Board concludes that all such requirements are met, it shall issue the permit unless it determines the application should be denied for one or more of the reasons set forth in sub-section 4-3-118(c). The Board shall prepare specific findings, based upon the evidence submitted, justifying such a conclusion.

(Ammended 5/8/96, Resolution 1996-155)

4-3-122 ADDITIONAL REQUIREMENTS ON SPECIAL-USE AND CONDITIONAL-USE PERMITS

- (a) Subject to sub-section (b), in granting a permit, the Planning Director or the Review Board in the case of Special Use permits or Conditional Use permits referred to the review board pursuant to 4-3-118(b)4, may attach to the permit such reasonable requirements in addition to those specified in this Chapter as will ensure that the development in its proposed location;
 - 1. Will not endanger the public health or safety,
 - 2. Will not injure the value of adjoining or abutting property,

3. Will be in harmony with the area in which it is located,
4. Will be in conformity with the land-use plan, comprehensive plan, or other plan officially adopted by the Business Council.
5. Will not significantly adversely affect the environment.
6. Will not significantly adversely affect cultural resources.

(b) The Review Board or the Planning Director may not attach additional conditions that modify or alter the specific requirements set forth in this Chapter unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

(c) Without limiting the foregoing, the Planning Director or the Review Board may attach to a permit a condition limiting the permit to a specified duration.

(d) All additional conditions or requirements shall be entered on the permit.

(e) All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this Chapter.

(f) A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in sub-sections 4-3-118(c).

(Amended 5/8/96, Resolution 1996-155)

COUNCIL REVIEW AND APPROVAL OF SPECIAL USE PERMIT

4-3-123 BUSINESS COUNCIL ACTION AFTER REVIEW BOARD DETERMINATION ON SPECIAL-USE PERMIT APPLICATION

(a) After its final determination to either grant or disapprove a special-use permit in accordance with sections 4-3-118 to 4-3-122 the Chairman of the Review Board shall place the case on the agenda of the next available council session and serve the Chairman of the Planning Committee with the record of the Board's decision.

(b) The Business Council shall review the record and the Review Board's determination and uphold, reverse, or modify the Board's decision or remand the case to it for further action.

(c) The Business Council may in its discretion allow the parties to submit written and oral arguments supporting or opposing the Review Board's determination to assist it in making a final decision.

4-3-124 AUTHORIZING USE, OCCUPANCY OR SALE BEFORE COMPLETION OF DEVELOPMENT UNDER SPECIAL-USE OR CONDITIONAL-USE PERMITS

(a) In cases when, because of weather conditions or other factors beyond the control of the special-use, or conditional-use permit recipient (exclusive of financial hardship) it would be unreasonable to require the permit recipient to comply with all of the requirements of this Chapter before commencing the intended use of the property or occupying the buildings or selling lots in a subdivision, the Planning Director may authorize the commencement of the intended use of the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this Chapter are concerned) if the permit recipient provides a performance bond or other security satisfactory to the body to insure that all of these requirements will be fulfilled within a reasonable period (not to exceed twelve months).

(b) When the Review Board imposes additional requirements on the permit recipient in accordance with section 4-3-122 or when the developer proposes in the plan submitted to install amenities beyond those required by this Chapter, the Planning Director may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if he specifies a date by which, or a schedule according to which such requirements must be met or each amenity installed and if he concludes that compliance will be ensured as a result of any one or more of the following:

1. A performance bond or other security satisfactory to the Board is furnished,
2. A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when the application for renewal is made,

3. The nature of the requirements or amenities are such that sufficient assurance of compliance is given by section 4-3-253 and section 4-3-254.

(c) With respect to subdivisions in which the developer is selling only undeveloped lots, the Business Council may authorize final plat approval and the sale of lots before the requirements of this Chapter are fulfilled if the subdivider provides a performance bond or other securities satisfactory to the Business Council to ensure that all these requirements will be fulfilled within not more than twelve months after final plat approval.

4-3-125 COMPLETING DEVELOPMENTS IN PHASES

(a) If a development is constructed in phases or stages in accordance with this section, then, subject to sub-section (c), the provisions of section 4-3-111 and section 4-3-124 shall apply to each phase as if it were the entire development.

(b) As a prerequisite to taking advantage of the provisions of sub-section (a), the developer shall submit plans that clearly show the phases or stages of the proposed development and the requirements of this Chapter that will be satisfied with respect to each phase or stage.

(c) If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or a tennis court in a residential development) then, as part of the application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit issuing authority, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit, provided that;

1. If the improvement is one required by this Chapter then the developer may utilize the provisions of sub-sections 4-3-124(a) or (c).

2. If the improvement is an amenity not required by this Chapter or is provided in response to a condition imposed by the Review Board or Business Council, then the developer may utilize the provisions of sub-section 4-3-124(b).

4-3-126 EXPIRATION OF PERMITS

(a) Zoning, conditional-use, and special-use permits shall expire automatically if, within one year after the issuance of such.

1. The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use or;

2. Less than 10% of the total cost of construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permit has been completed on the site.

With respect to phased development (section 4-3-125), this requirement shall apply only to the first phase.

(b) If, after some physical alterations to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of section 4-3-127.

(c) The Administrator may extend for a period up to six months, the date when a permit would otherwise expire pursuant to sub-sections (a) or (b), if he concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods of up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

(d) For purposes of this section, the conditional use permit is issued when the Review Board votes to approve the application and issue the permit and the special use permit is issued when the Business Council votes to approve the Board action. A permit within the jurisdiction of the Administrator is issued when the earlier of the following takes place:

1. A copy of the fully executed permit is delivered to the permit recipient and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant; or
2. The Administrator notifies the permit applicant that the application has been approved and all that remains before a fully executed permit can be delivered is for the applicant to take specified actions, such as having the permit executed by the property owner so it can be recorded.

4-3-127 EFFECT OF PERMIT ON SUCCESSORS AND ASSIGNS

(a) Zoning, conditional-use, and special-use permits authorize the permittee to make use of land and structures in a particular way. Permits are transferrable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

1. No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit, and
2. The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain an interest in the property had actual or record notice (as provided in subsection (b)) of the existence of the permit at the time they acquired their interest.

(b) Whenever a zoning, special-use, or conditional-use permit is issued to authorize development (other than single or two-family residences) on a tract of land in excess of one acre, nothing authorized by the permit may be done until the record owner of the property signs a written acknowledgement that the permit has been issued so that the permit may be recorded in the county in which the land is located if it is fee land or in the Office of Land and Titles, Portland Area Office if the land is in trust or restricted fee status and indexed under the record owners name as grantor.

4-3-128 AMENDMENTS TO AND MODIFICATIONS OF PERMITS

(a) Insignificant deviations from the permit (including approved plans) issued by the Review Board or the Administrator are permissible and the Administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on-site, on neighboring properties, the general public, or those intended to occupy or use the proposed development.

(b) Minor design modifications or changes in permits (including approved plans) are permissible with the approval of the Administrator. Such permission may be obtained without a formal application, public hearing, or payment of any additional fee. For purposes of this section, minor design modifications or changes are those that have no substantial impact on-site, on neighboring properties, the general public, or those intended to occupy or use the proposed development.

(c) All other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the Review Board, new conditions may be imposed in accordance with section 4-3-122 but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.

(d) The Administrator shall determine whether amendments and modifications of permits fall within the categories set forth above in subsections (a), (b), and (c).

(e) A developer requesting approval of changes shall submit a written request for such approval to the Administrator, and that request shall identify the changes. Approval of all changes must be given in writing.

4-3-129 RECONSIDERATION OF BOARD ACTION

(a) Whenever the Review Board disapproves a conditional-use permit application, an application for a special-use permit (unless remanded by the Business Council under section 4-3-123) or a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the Board at a later time unless the applicant clearly demonstrates that:

1. Circumstances affecting the property that is the subject of the application have substantially changed or;
2. New information is available that could not with reasonable diligence have been presented at the previous hearing. A request to be heard on this basis must be filed with the Administrator within twenty (20) days. However, such a request does not extend the period within which an appeal must be taken.

(b) Notwithstanding subsection (a), the Administrator or the Review Board may at any time consider a new application affecting the same property on an application previously denied. A new application is one that differs in some substantial way from the one previously considered.

4-3-130 APPLICATIONS TO BE PROCESSED EXPEDITIOUSLY

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the Colville Tribes shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to requirements of this Chapter.

4-3-131 MAINTENANCE OF COMMON AREAS, IMPROVEMENTS, AND FACILITIES

The recipient of any zoning, conditional-use, or special-use permit, or his successor shall be responsible for maintaining all common areas, improvements or facilities required by this Chapter or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

MAJOR AND MINOR SUBDIVISIONS

4-3-132 REGULATION OF SUBDIVISIONS

Major subdivisions are subject to a 2-step approval process. Physical improvements to the land to be subdivided are authorized by a conditional-use permit as provided in section 4-3-118, and sale of lots is permitted after final approval as provided in section 4-3-135. Minor subdivisions only require 1-step approval process; final plat approval in accordance with section 4-3-134.

4-3-133 NO SUBDIVISION WITHOUT PLAN APPROVAL

(a) No person may subdivide his land except in accordance with all of the provisions of this Subchapter. In particular, no person may subdivide his land unless and until a final plat of the subdivision has been approved in accordance with the provisions of 4-3-134 or 4-3-135 and recorded in the county in which the land is located if it is fee land, and (if the land is in trust or restricted fee status) with the Bureau of Indian Affairs, Portland Area Title Office as well.

(b) The applicable recording office may not record a plat of any subdivision within the Colville Tribes' planning jurisdiction unless the plat has been approved in accordance with the provisions of this Chapter.

4-3-134 MINOR SUBDIVISION APPROVAL

(a) The Planning Director shall approve or disapprove minor subdivision final plats in accordance with the provisions of this section.

(b) An applicant for minor subdivision plat approval, before complying with subsection (c), shall submit a sketch plan to the Planning Director for a determination of whether the approval process authorized by this section can be and should be utilized. The Planning Director may require the applicant to submit whatever information is necessary to make this determination, including, but not limited to, a copy of the tax map showing the land being subdivided and all lots previously subdivided from that tract of land within the previous five years.

(c) Applicants for minor subdivision approval shall submit to the Planning Director a copy of the plat conforming to the requirements in subsections 4-3-135(b) and (c) (as well as two prints of each plat), except that a minor subdivision plat shall contain the following certificates in lieu of those required in section 4-3-136.

1. Certificate of Ownership

I, hereby certify that I am the owner of the property described hereon, which property is within the subdivision regulation jurisdiction of the Confederated Tribes of the Colville Reservation, and I freely adopt this plan of subdivision.

_____, _____
Date, Owner

2. Certificate of Approval

I hereby certify that the minor subdivision shown on this plat does not involve the creation of new public streets or any change in any existing public streets. that the subdivision shown is in all respects in compliance with Chapter 4-3 of the Colville Tribal Code, and that therefore this plat has been approved by the Planning Director, subject to its being recorded as provided in subsection 4-3-133(a) within 60 days of the date below.

_____, _____
Date, Planning Director

3. A certificate of survey and accuracy, in the form stated in subsection 4-3-136(c).

(d) The Planning Director shall take expeditious action on an application for minor subdivision plat approval as provided in section 4-3-130. However, either the Planning Director or the applicant may at any time refer the application to the major subdivision approval process.

(e) Not more than a total of three lots may be created out of one tract using the minor subdivision plat approval process, regardless of whether the lots are created at one time or over an extended period of time.

(f) Subject to subsection (d), the Planning Director shall approve the subdivision unless the subdivision is not a minor subdivision as defined in the Subchapter on Definitions under this Chapter or the application or the proposed subdivision fails to comply with subsection (e) or any other applicable requirement of this Subchapter.

(g) If the subdivision is disapproved, the Planning Director shall promptly furnish the applicant with a written statement of the reasons for disapproval.

(h) Approval of any plat is contingent upon the plat being recorded within 60 days after the date the certificate of approval is signed by the Planning Director or his designee.

4-3-135 MAJOR SUBDIVISION APPROVAL PROCESS

(a) The Planning Director shall approve or disapprove major subdivision final plats in accordance with the provisions of this section.

(b) The applicant for major subdivision plat approval shall submit to the Administrator a final plat, drawn in waterproof ink on a sheet made of material that will be acceptable to the auditor's office of the county in which the property is located or the Portland Area BIA Title Office for recording purposes, and having the dimensions as follows:

Either 21" by 30", 12" by 18", or 18" by 24".

When more than one sheet is required to include the entire subdivision, all sheets shall be made of the same size and shall show appropriate match marks on each sheet and appropriate references to other sheets of the subdivision. The scale of the plat shall be at 1" equals not more than 100'. The applicant shall also submit two prints of the plant.

(c) In addition to the appropriate endorsements, as provided in section 4-3-136, the final plant shall contain the following information:

1. The name of the subdivision, which name shall not duplicate the name of any existing subdivision as recorded in the applicable recordation office,
2. The name of the subdivision owner or owners,
3. The township, county, and state where the subdivision is located, and its status as trust or fee land
4. The name of the surveyor and his/her registration number and the date of the survey,
5. The scale according to which the plat is drawn in feet per inch or scale ratio in words and figures in bar graph, and
6. All of the additional information required by regulations adopted by the Planning Department and approved by the Business Council.

- (d) The Planning Director shall approve the proposed plat unless he finds that the plat or the proposed subdivision fails to comply with one or more of the requirements of this Chapter or that the final plat differs substantially from the plans or specifications approved in conjunction with the conditional-use permit that authorized the development of the subdivision.
- (e) If the final plat is disapproved by the Planning Director the applicant shall be furnished with the written statement of the reasons for the disapproval.
- (f) Approval of final plat is contingent upon the plat being recorded within 60 days after the approval certificate is signed by the Director or his designee.

4-3-136 ENDORSEMENTS ON MAJOR SUBDIVISION PLATS

All major subdivision plats shall contain endorsements listed in subsections (a), (b), (c), and (d) herein.

(a) Certificate of Approval

I hereby certify that all streets shown on this plat are within the Confederated Tribes of the Colville Reservation planning jurisdiction, all streets and other improvements shown on this plat have been installed or completed or their installation or completion (within 12 months after the date below) has been assured by the posting of a performance bond or other sufficient surety, and that the subdivision shown on this plat is in all respects in compliance with Chapter 4-3 of the Colville Tribal Code, and therefore this plat has been approved by the planning director, subject to its being recorded in the County Auditor's office within 60 days of the date below.

_____, _____
Date, Planning Director

(b) Certificate of Ownership and Dedication

I hereby certify that I am the owner of the property described hereon, which property is located within the subdivision regulation jurisdiction of the Confederated Tribes of the Colville Reservation, that I hereby freely adopt this plan of subdivision and dedicate to public use all areas shown on this plat as streets, alleys, walks, parks, open space, and easements, except those specifically indicated as private, and that I will maintain all such areas until the offer of dedication is accepted by the appropriate public authority. All property shown on this plat as dedicated for a public use shall be deemed to be dedicated for any other public use authorized by law when such other use is approved by the Colville Business Council in the public interest.

_____, _____
Date, Owner

Notarized

(c) Certificate of Survey and Accuracy

I hereby certify that this map (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (a deed description recorded in Book _____, Page _____, Records of _____ (other)); that the error of closure as calculated by latitudes and departures is 1: _____; that the boundaries not surveyed are shown as broken lines plotted from information found in Book _____, Page _____, and that this map was prepared in accordance with [statutory citation]. Witness my original signature, registration number and seal this _____ day of _____, 19____.

Registered Land Surveyor
seal or stamp

Registration Number
(Notarized)

(d) Road Department Engineer Certificate

I hereby certify that the public streets shown on this plat have been completed, or that a performance bond or other sufficient surety has been posted to guarantee their completion, in accordance with at least the minimum specifications and standards of the BIA Roads Department for acceptance of subdivision streets on the BIA road/state highway system for maintenance.

Supervisory Highway Engineer

4-3-137 PLAT APPROVAL NOT ACCEPTANCE OF DEDICATION OFFERS

Approval of a plat does not constitute acceptance by the Colville Tribes of the offer of dedication of any streets, sidewalks, parks, or other public facilities shown on a plat. However, the Tribes may accept any such offer of dedication by resolution of the Business Council or by actually exercising control over and maintaining such facilities.

4-3-138 PROTECTION AGAINST DEFECTS

(a) Whenever occupancy, use or sale is allowed under section 4-3-124 before the completion of all facilities or improvements intended for dedication, then the performance bond or the surety that is required to be posted shall guarantee that any defects in such improvements or facilities that appear within one year after the dedication of such facilities or improvements is accepted shall be corrected by the developer.

(b) Whenever all public facilities or improvements intended for dedication are installed before occupancy, use or sale is authorized, then the developer shall post a performance bond or other sufficient surety to guarantee that he will correct all defects in such facilities or improvements that occur within one year after the offer of dedication of such facilities or improvements is accepted.

(c) An architect or engineer retained by the developer shall certify to the Tribes that all facilities and improvements to be dedicated have been constructed in accordance with the requirements of this Chapter. This certification shall be a condition precedent to acceptance by the Colville Tribes of the offer of dedication of such facilities or improvements.

(d) For purposes of this section, the term "defects" refers to any condition in publicly dedicated facilities or improvements that requires the Colville Tribes to make repairs in such facilities over and above the normal amount of maintenance that they would require. If such defects appear, the guaranty may be enforced regardless of whether the facilities or improvements were constructed in accordance with the requirements of this Chapter.

4-3-139 MAINTENANCE OF DEDICATED AREAS UNTIL ACCEPTANCE

As provided in section 4-3-131, all facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer is accepted by the appropriate public authority.

4-3-140 BUILDING, SEPTIC TANK, WATER, OR OTHER PERMITS NOT TO BE ISSUED FOR LAND DIVIDED IN VIOLATION OF THIS CHAPTER

No building permit under Chapter 4-10 septic tank permit under Chapter 4-5, water or other permit shall be issued for any lot, tract or parcel of land divided in violation of this Chapter. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers or transferees of property shall comply with the provisions of this Chapter and each purchaser or transferee may recover damages from any person, firm, corporation, or agent selling or transferring land in violation of this Chapter, including any amount reasonably spent to conform to the requirements of this Chapter as well as cost of investigation, suit, and reasonable attorney's fees occasioned thereby. Such purchaser or transferee may as an alternative to conforming his property to these requirements rescind the sale or transfer and recover costs of investigation, suit and reasonable attorney's fees occasioned thereby.

APPEALS, VARIANCES, INTERPRETATIONS

4-3-170 APPEALS

(a) An appeal from any final order or decision of the Administrator or the Planning Director may be taken to the Review Board by any person aggrieved. An appeal is taken by filing with the Administrator and the Review Board a written notice of appeal specifying the ground therefor. A notice of appeal shall be considered filed with the Administrator and the Review Board when delivered to the Planning Department, and the date and time of filing shall be entered on the notice by the planning staff.

(Amended 5/8/96, Resolution of 1996-155)

(b) An appeal must be taken within 30 days after the date of the decision or order appealed from.

(c) Whenever an appeal is filed, the Administrator shall forthwith transmit to the Review Board all the papers constituting the record relating to the action appealed from.

(d) An appeal stays all actions by the Administrator seeking enforcement of or compliance with the order or decision appealed from, unless the Administrator certifies to the Review Board that (because of the facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, the proceeding shall not be stayed except by order of the Review Board or the Tribal Court, issued on application of the party seeking the stay, on due cause shown, after notice to the Administrator.

(e) The Review Board may reverse or affirm (wholly or partly) or may modify the order, requirements or decision or determination appealed from and shall make any order, requirement, or decision or determination that in its opinion ought to be made in the case before it. To this end, the Review Board shall have all the powers of the officer from whom the appeal is taken.

4-3-171 VARIANCES

(a) An application for a variance shall be submitted to the Review Board by filing a copy of the application with the Administrator in the Planning Department. Application shall be handled in the same manner as applications for special-use permits, in conformity with the provisions of sections 4-3-112, 4-3-113, and, 4-3-120.

(Amended 5/8/96, Resolution 1996-155)

(b) A variance may be granted by the Review Board if it concludes that strict enforcement of this Chapter would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of this Chapter will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:

1. If the applicant complies strictly with the provisions of this Chapter, he/she can make no use of his property,
2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors, or the general public,
3. The hardship relates to the applicant's land, rather than personal circumstances,
4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties,
5. The hardship is not the result of the applicant's own actions,
6. The variance does not significantly adversely affect the environment,
7. The variance does not significantly adversely affect cultural resources,
8. The variance does not conflict with shorelines management regulations, and
9. The variance will neither result in the extension of a non-conformity in violation of the Subchapter on Non-Conformities under this Chapter nor authorize the initiation of a nonconforming use of land.

(c) In granting variances, the Review Board may impose such reasonable conditions that will ensure that the use of the property to which the variance applies will be as compatible as practical with the surrounding properties.

(d) A variance may be issued for an indefinite duration or for a specified duration only.

(e) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Chapter.

4-3-172 INTERPRETATIONS

(a) The Review Board is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Administrator, they shall be handled as provided in section 4-3-170.

(b) An application for a map interpretation shall be initiated by filing a copy of the application with the Administrator in the Planning Department. The application shall contain sufficient information to enable the Administrator to make the necessary interpretation.

4-3-173 REQUESTS TO BE HEARD EXPEDITIOUSLY

As provided in section 4-3-130, the Review Board shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with the Subchapter on Hearing Procedures for Appeals and Applications under this Chapter and obtain the necessary information to make sound decisions.

4-3-174 BURDEN OF PROOF IN APPEALS AND VARIANCES

(a) When an appeal is taken to the Review Board in accordance with section 4-3-170, the Administrator shall have the initial burden of presenting to the Review Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and arguments to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

(b) The burden of presenting evidence sufficient to allow the Review Board to reach the conclusions set forth in subsection 4-3-171(b), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

4-3-175 REVIEW BOARD ACTIONS ON APPEALS AND VARIANCES

(a) With respect to appeals, the Board's determination to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the Board's decision. If a motion to reverse or modify is not made, then a motion to uphold the decision appealed shall be in order.

(b) Before granting a variance, the Board must take a separate vote and vote affirmatively on each of the nine required findings stated in subsection 4-3-171(b). Insofar as practicable, when the Board makes an affirmative finding on each of the enumerated requirements it shall include a statement of the specific reasons or findings of facts supporting each such finding.

(c) The Board may deny a variance on the basis that any one or more of the nine criteria set forth in subsection 4-3-171(b) are not satisfied or that the application is incomplete. Insofar as practicable, such a denial shall include a statement of the specific reasons or findings of fact that support it.

HEARING PROCEDURES FOR APPEALS AND APPLICATIONS

4-3-210 HEARING REQUIRED ON APPEALS AND APPLICATION

(a) Before making a decision on an appeal or application for a variance, special-use permit or conditional-use permit, or a petition from the planning staff to revoke a special-use permit or conditional-use permit, the Review Board shall hold a hearing on the appeal or application. At least one member of the Review Board shall preside over the hearing, except that the Review Board may designate a hearing officer to conduct the hearing in lieu of a Board member.

(b) Subject to subsection (c), the hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

(c) The Review Board may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delays.

(d) The Review Board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point the final decision is made. No further notice of the continued hearing need be published unless a period of six weeks or more elapses between hearing dates.

4-3-211 NOTICE OF HEARING

The Administrator shall give notice of any hearing required by section 4-3-210 as follows:

1. Notice shall be given to the appellant or applicant and any other person who makes a written request for such notice by mailing to such person a written notice not later than ten days before the hearing.
2. Notice shall be given to adjacent property owners by mailing a written notice no later than ten days before the hearing to those persons whose property is adjacent (as that term is defined in the Subchapter on Definitions under this Chapter) to the lot that is the subject of the application or appeal. Notice shall also be given by prominently posting signs in the vicinity of the property

that is the subject of the proposed action. Such signs shall be posted not less than seven days prior to the hearing.

3. In the case of conditional-use or special-use permits, notice shall be given to other potential interested persons by publishing a notice one time in a newspaper having general circulation in the area not less than seven nor more than thirty days prior to the hearing.

4. The notice required by this section shall state the dates, time, and place of the hearing, reasonably identifying the property that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

4-3-212 EVIDENCE

(a) The provisions of this section apply to all hearings for which a notice is required by section 4-3-210.

(b) All persons who intend to present evidence to the Review Board, rather than arguments only, shall be sworn.

(c) All findings and conclusions necessary to the issuance or denial of the requested permits or appeal shall be based on reliable evidence. Evidence admissible in a court of law shall be preferred whenever reasonably available.

4-3-213 MODIFICATION OF APPLICATION AT HEARING

(a) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Review Board, the applicant may agree to modify his application including the plans and specifications submitted.

(b) Unless such modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Board may approve the application with the stipulation that the permit will not be issued until plans reflecting the modification are submitted to the planning staff.

4-3-214 RECORDS

(a) A tape recording shall be made of all hearings required by section 4-3-210, and such recording shall be kept for at least two years. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.

(b) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the Colville Tribes for at least two years.

4-3-215 WRITTEN DECISION

(a) Any decision made by the Review Board regarding an appeal or variance or issuance or revocation of a conditional-use permit or a special-use permit shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy.

(b) In addition to a statement of the Review Board's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the Board's findings and conclusion, as well as supporting reasons or facts, whenever this Chapter requires the same as a prerequisite to taking action.

ENFORCEMENT AND REVIEW

4-3-250 COMPLAINTS REGARDING VIOLATIONS

Whenever the Administrator receives a written, signed complaint alleging a violation of this Chapter, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

4-3-251 PERSONS RESPONSIBLE

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Chapter may be held responsible for the violation and be subject to the penalties and the remedies herein provided.

4-3-252 PROCEDURES UPON DISCOVERY OF VIOLATIONS

(a) If the Administrator finds that any provision of this Chapter is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Administrator's discretion.

(b) The final written notice (and the initial written notice may be the final notice) shall state what action the Administrator intends to take if the violation is not corrected and shall advise that the Administrator's decision or order may be appealed to the Review Board in accordance with section 4-3-170.

(c) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this Chapter or pose a danger to the public health, safety, or welfare, the Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in section 4-3-253

4-3-253 PENALTIES AND REMEDIES FOR VIOLATIONS

(a) Any act constituting a violation of the provisions of this Chapter or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances, conditional or special-use permits, shall subject the offender to a civil penalty of \$100.00 per day. If the offender fails to pay this penalty within 30 days after being cited for a violation, the penalty may be recovered by the Confederated Tribes of the Colville Reservation in a civil action in the nature of debt. The Reservation Attorney, upon request of the Planning Department, shall bring a civil action in the Colville Tribal Court to recover such debt. A civil penalty may not be appealed to the Review Board if the offender was sent a final notice of violation in accordance with section 4-3-252 and did not take an appeal to the Review Board as provided in section 4-3-170.

(b) This Chapter may also be enforced by any appropriate equitable action.

(c) Each day that any violation continues after notification by the Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.

(d) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this Chapter.

4-3-254 PERMIT REVOCATION

(a) A zoning, conditional-use or special-use permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Chapter, or any additional requirements lawfully imposed by the permit.

(b) Before a conditional-use or special-use permit may be revoked, all of the notice, hearing and other requirements of the Subchapter on Hearing Procedures for Appeals and Applications under this Chapter shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

1. The burden of presenting evidence sufficient to authorize the permit-issuing authority to conclude that a permit should be revoked for any of the reasons set forth in subsection (a) shall be upon the party advocating that position. The burden of persuasion shall also be on that party.

2. A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.

(c) Before a zoning permit may be revoked, the Administrator shall give the permit recipient ten (10) days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to an informal hearing on the allegations. If the permit is revoked, the Administrator shall provide the permittee a written statement of the decision and the reasons therefor.

(d) No person may continue to make use of land or buildings in the manner authorized by any zoning, special-use or conditional-use permit after such permit has been revoked in accordance with this section.

4-3-255 EXHAUSTION OF ADMINISTRATIVE REMEDIES

Any decision or order of the Planning Department that is reviewable by the Review Board under section 4-3-170 shall not be considered a final order or decision subject to judicial review. Exhaustion of all available administrative remedies including any administrative appellate review is a jurisdictional requirement to judicial review.

4-3-256 JUDICIAL REVIEW

Every decision of the Colville Business Council granting or denying a rezone application or special-use permit and every final order decision or action of the Review Board shall be subject to review by the Colville Tribal Court upon the filing of a timely petition for review pursuant to the procedures set forth in section 2-4-19 of the Colville Administrative Procedure Act.

The petition for review shall briefly set forth that portion of the decision appealed from; the statutory reference(s) relied upon to support the relief requested; and, which standard of review set forth in section 2-4-19(7) provides the basis for the petition.

NON-CONFORMITIES

4-3-290 PURPOSE

It is the purpose of this Subchapter to provide for the regulation of legally nonconforming structures, lots of record, uses, and to specify those circumstances and conditions under which such non-conformities shall be permitted to continue. It is necessary and consistent with the requirements prescribed by this Chapter that those non-conformities which adversely affect orderly development and the value of nearby property not be permitted to continue without restriction. Such non-conformities are declared to be incompatible with permitted uses in the zones in which they are located.

With limited exceptions, the regulations of this section permit such non-conformities to continue without specific limitation of time but are intended to restrict further investments which would make them more permanent.

The burden of establishing that any non-conformity is a legal non-conformity is upon the owner of such non-conformity and not upon the Colville Tribes.

4-3-291 DEFINITIONS

(a) A Legal Non-conformity is any land use, structure, lot of record, or sign legally established prior to the effective date of this Chapter or subsequent amendment to it which would not be permitted by or is not in full compliance with the requirements of this Chapter.

(b) A Nonconforming Use is an activity using land, buildings, signs, and/or structure for purposes which were legally established prior to the effective date of this Chapter or subsequent amendment to it and which would not be permitted to be established as a new use in a zone in which it is located by the regulations of this Chapter.

(c) A Nonconforming Structure is any building or structure, other than a sign, legally established prior to the effective date of this Chapter or subsequent amendment to it.

(d) A Nonconforming Lot of Record is any validly recorded lot which at the time it was recorded fully complied with all applicable laws and titles but which does not fully comply with the lot requirements of this Chapter concerning minimum area or minimum lot width.

4-3-292 NONCONFORMING LOTS OF RECORD

(a) Any parcel of land or portion thereof which is to be dedicated to a public or semi-public entity for a road, canal, railroad, utility or other public use shall be exempt from the minimum lot size requirements set forth by this Chapter.

(b) Any lot which is smaller than the minimum area required in any zone may be occupied by an allowed use in that zone provided that:

1. The lot was a lot in a duly platted and recorded subdivision on or before the date of this Chapter, or was a parcel created by an approved land partitioning prior to such date.
2. The use conforms to all other requirements of that zone.
3. If there is an area deficiency, residential use shall be limited to a single dwelling unit.
4. Approval of the Planning Department is obtained as applicable.

4-3-293 NONCONFORMING USES OF LAND

Where at the effective date of the adoption of this Chapter or amendment thereto, a lawful use of land exists that is made no longer permissible under the terms of this Chapter or amendments thereto, such use may continue so long as it remains lawful and subject to the following provisions:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land.
2. No such nonconformity shall be moved in whole or in part to any position of the lot or parcel occupied by such use at the time of adoption of this Chapter or amendment thereto.
3. If any such nonconforming use of land ceases for any reason for a period of more than 6 months any subsequent use of such land shall conform to the standards specified by the zone in which it is located.

4-3-294 NONCONFORMING STRUCTURES

Where a lawful structure or structures exist at the effective date of the adoption of this Chapter or amendment thereto, such structure or structures may be continued so long as it remains lawful and subject to the following provisions:

1. No structure or structures may be enlarged or altered in any way which increases its non-conformity.
2. Should any structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of its destruction, it shall not be reconstructed except in conformity with the provisions of this Chapter.
3. Should said structure be moved for any reasons for any distance whatever, it shall thereafter conform to the regulations of the zone in which it is located.

4-3-295 NONCONFORMING USES OF STRUCTURE AND LAND

If a lawful structure and land in combination that exists at the effective date of adoption or amendment of this Chapter could not be built under the terms of this Chapter, it may remain so long as it is otherwise lawful and subject to the following provisions:

1. A nonconforming use of land structures shall not be altered, enlarged, extended, constructed, reconstructed, moved or substantially altered in any way except to change use of the structure to a use permitted in zone in which it is located.
2. If no structural alterations are made, any nonconforming use of a structure may be changed to another nonconforming use provided that the Planning Department or the Review Board may by ruling or by finding in the specific case, that the proposed change is equally or more appropriate. In permitting such change the Board or Department may require appropriate conditions or safeguards in accordance with the provisions of this Chapter.
3. Any nonconforming use may be extended throughout any parts of a building which were arranged and designed for that use at the time of adoption of this Chapter however, the use shall not be allowed to extend to other neighboring properties.
4. All nonconforming uses shall be registered as such with the Administrator within six months of the effective date of this Chapter. Any nonconforming uses claimed after this period must show proof and obtain acknowledgement as such from the Review Board.

SPECIAL PROPERTY USES

4-3-320 NECESSITY FOR SPECIAL USE PERMIT

All of the following and all matters directly related thereto are declared to be uses possessing characteristics of such unique and special form as to make impractical their being included automatically in any class of use as set forth in the various use districts of this Chapter, and the authority for the location and operation thereof shall be subject to review and the issuance of a special-use permit by the Review Board in accordance with the requirements of sections 4-3-118 to 4-3-122. Provided, that special-use permits may not be granted for a use in a district from which it is specifically excluded. Provided further, that a special-use permit shall not be issued without the review and approval of the Business Council in accordance with section 4-3-123.

4-3-321 SPECIAL USES DESIGNATED

(a) Automobile dismantling, wrecking or junk yards: Provided that such uses shall be specifically excluded from all but the Ag and I Districts.

(b) Cemeteries: Provided that such uses shall be specifically excluded from the W, GP, C and I Districts, and further provided that the following requirements are met:

1. External boundaries of a cemetery shall be devoted to the planting of sight-obscuring trees and shrubs;
2. No plot within a cemetery shall lie closer than ten (10) feet to any lot line;

(c) Crematories, Columbaria and Mausoleums: Provided such use shall be specifically excluded from the GP and W Districts; and the R and F Districts as well unless inside of a permitted cemetery in that District.

(d) Fertilizer Manufacturing Plants: Provided that these uses shall be specifically excluded from all districts except the Ag and I Districts.

(e) Livestock Feeding or Sales Yards: Provided that such uses shall be excluded from all but the A and I Districts.

(f) Mining, Including Quarrying, Mineral Extraction, Exploration, etc.: Provided that these uses shall be specifically excluded from all districts except the A, Ru and F Districts.

(g) Mobile Home Parks: Provided that the following minimum requirements are met:

1. Lot size of ten (10) acres with a maximum density of ten (10) spaces per gross acre;

2. No spaces may be occupied until a minimum of fifty (50) spaces have been completed for occupancy, together with the requisite facilities therefor;

3. A greenbelt planting strip, not less than twenty (20) feet in width, shall be located along all lot lines of the park not bordering a street. Such greenbelt shall be composed of one (1) row of deciduous and/or evergreen trees, spaced not more than forty (40) feet apart and not less than three (3) rows of shrubs, spaced not more than eight (8) feet apart and which grow to a height of five (5) feet or more after one (1) full growing seasons and which shrubs will eventually grow to a height of not less than twelve (12) feet.

(h) Public Buildings: Including police stations, fire stations, art galleries, museums and libraries.

(i) Public utilities or utilities operated by mutual agencies consisting of water wells, electrical substations, gas metering stations, power booster or conversion plants and the necessary buildings, apparatus or appurtenances thereto, but not including distribution mains.

(j) Radio and Television Broadcasting Stations and Transmitters: Provided that such be specifically excluded from the W and R Districts.

(k) Rendering of Animal Fat, Bones, Meat Scraps, Slaughter Houses or Meat Packing Plants: Provided that these uses shall be specifically excluded from all districts except the Ag and I Districts.

(l) Sanitary Land Fill: Provided such use shall be specifically excluded from all districts except the Ag and Ru Districts.

(m) Sewage Disposal or Treatment Plants: Provided that these uses shall be specifically excluded from all districts except the Ag and I Districts.

(n) RV Park, Court, or Camp: Provided that these uses shall be specifically excluded from the GP, W, R, I and F Districts, and further provided that the following requirements are met:

1. Access to such use shall only be from a major or secondary arterial;
2. All tribal and Indian Health Service requirements shall be fulfilled;
3. All external boundaries abutting any R District shall be effectively sight screened by a view-obscuring fence or by a combination of fencing and landscaping.

4-3-322 REVIEW BOARD ACTION

In granting a permit for any of the above-listed special uses the Review Board shall ascertain whether the present and future needs of the community will be adequately served by the proposed development and if the community as a whole will benefit rather than be injured by the proposed development. As provided in section 4-3-122 the Review Board may attach additional conditions to the issuance of a special-use permit to insure that structures and areas proposed are surfaced, arranged and screened in such a manner that they are in harmony with and not detrimental to existing or reasonable expected future development of the neighborhood. In the case of those special uses for which no requirements have been listed, in addition to the conditions it may impose under section 4-3-122, the Review Board may impose any reasonable height, yard or lot size requirements provided that it is satisfied that the requirements and other conditions imposed are sufficient to prevent detrimental effects on adjoining land or structures.

SECTIONS 4-3-350 TO 4-3-439 RESERVED

AMENDMENTS

4-3-440 INITIATION OF AMENDMENT

This Chapter may be amended by changing the boundaries of zones or by changing any other provisions thereof, whenever the public necessity and convenience and the general welfare requires such an amendment. Such a change may be proposed by the Planning Department, the Review Board on its own motion, or by motion of the Colville Business Council. Any proposed quasi-judicial amendment or change shall first be submitted to the Review Board and the Board shall, within thirty (30) days after the hearing required in section 4-3-441 recommend to the Business Council approval, disapproval, or modification of the proposed amendment.

4-3-441 APPLICATION BY PROPERTY OWNER

An application for amendment by a property owner or his authorized agent shall be filed with the Planning Director. The application shall be made on the form provided by the Department. In acting upon the application the Department shall follow the procedures set forth in section 2-4-9 of the Colville Administrative Procedure Act (Chapter 2-4).

4-3-442 PUBLIC HEARING ON AN AMENDMENT

Before taking final action on a proposed amendment, the Review Board shall hold a public hearing thereon. The Planning Department and Board shall follow the procedures for rulemaking set forth in the Colville Administrative Procedure Act, Chapter 2-4 of the Colville Tribal Code. For amendments to the text, notice of the time and place of the hearing on the proposed amendment shall be given for publication in a newspaper of general circulation, not less than five (5) days, nor more than thirty (30) days, prior to the date of the hearing.

4-3-443 STANDARDS FOR ZONE CHANGE

The burden of proof is upon the one seeking change. The degree of that burden increases proportionately with the degree of impact of the change which is sought. The applicant shall in all cases establish:

1. Conformance with the Comprehensive Plan.
2. Conformance with all applicable statutes.
3. That there is a public need for a change of the kind in question.
4. That need will be best served by changing the classification of the particular piece of property in question as compared with other available property.
5. That there is proof of a change of circumstance or a mistake in the original zoning.

4-3-444 ACTION BY THE COLVILLE BUSINESS COUNCIL

The Colville Business Council may, after public hearing by the appropriate lower body, enact a Resolution granting the zone change or amendment, or may by motion deny the granting of the zone change or amendment.

4-3-445 RECORD OF AMENDMENTS

The signed copy of each amendment to the text of this Chapter, including the legal description of all lands rezoned legislatively or quasi-judicially shall be maintained on file in the office of the Planning Department. A record of such amendments shall be maintained by the Planning Director in a form convenient for use by the public and shall include a map showing the area and date of all amendments thereto. The Director shall keep the map of this Chapter as originally enacted. Every five (5) years after the enactment hereof, a map showing the cumulative amendments hereto for that period shall be filed with the Department.

4-3-446 RESOLUTION OF INTENT TO REZONE

If, from the facts presented, findings, and the report and recommendations of the Review Board, as required by this Subchapter, the Board determines that the public health, safety, welfare and convenience will be best served by a proposed change of zone; the Business Council may indicate its general approval in principle of the proposed rezoning by the adoption of a "Resolution of Intent to Rezone". This resolution shall include any conditions, stipulations or limitations which the Business Council may feel necessary to prevent speculative holding of the property after rezoning. The fulfillment of all conditions, stipulations and limitations contained in said Resolution of Intent on the part of the applicant, shall make such resolution final without further action by the Colville Business Council.

The failure of the applicant to meet any or all conditions, stipulations or limitations contained in a resolution of intent, including the time limit placed in the resolution, shall render said resolution null and void, automatically and without notice, unless an extension is granted, by the Business Council upon recommendation of the Review Board.

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Title

NON-INDIAN LAUNCHES SUIT OVER AUTHORITY OF TRIBE

Article

Dan Hoover showed up in a Colville tribal court, despite once vowing he would never appear there. Hoover, 64, contends the tribal court has no jurisdiction over him because he is not an Indian. "With all due respect to the court, I'm making a special appearance here today," Hoover told Colville Tribal Court Judge Mary Wynne on Monday. "I don't recognize the tribes' authority to hear this case." But Hoover reluctantly appeared Monday to answer a lawsuit the tribal government filed against him. The lawsuit seeks an order barring Hoover from proceeding with a four-unit subdivision that Ferry County officials approved for his 33-acre property. Hoover said he expect Wynne to rule against him but he hopes to do better in federal court. In July 1994, U.S. District Judge Fred Van Sickle rejected Hoover's bid to go straight to the federal court in Spokane. But Van Sickle didn't rule on the merits of Hoover's argument that he shouldn't have to answer to a government in which he can't vote. Hoover sued the Ferry County government in that case, claiming the county sold him down the river by agreeing to cooperate with the tribal government in land-use decisions. Both governments claim jurisdiction over reservation land owned by non-Indians. Ferry County Prosecutor Al Nielson, who just resigned, has twice refused to join the fray. Nielson said the county cannot afford a case that likely would have to go to the U.S. Supreme Court. Tribal attorney Tim Brewer and Hoover found little to agree on Monday, except that they will likely meet again in federal court. Witnesses said zoning protection is particularly important in the 200-square-mile Hells Gate Game Preserve in the southeast corner of the reservation; where Hoover has one of only about two dozen homes. Hoover repeatedly objected to "irrelevant" testimony, and insisted that the only issue is whether the tribal government has authority over non-Indians.

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COMMENTARY

Tribal Implementation of GIS: A Case Study of Planning Applications with the Colville Confederated Tribes¹

MICHAEL E. MARCHAND AND RICHARD WINCHELL

Geographic Information Systems (GIS) are computer systems that link large sets of data with spatial representation in maps. Much of the data utilized in governmental decision making has a spatial component, and the ability to map data and organize information spatially can be extremely valuable in governmental decision making. The application of GIS within tribal governments is an important process that can help empower tribes, particularly with regard to natural resources management and land and water rights litigation.²

Recognizing this potential, the Bureau of Indian Affairs in 1983 established a Geographic Information System (GIS) officially titled the Indian Integrated Resource Information Program (IIRIP).³ This project grew to offer a training program in 1986 and provided a demonstration project for ten tribes across the nation to create American Indian applications of Geographic Information Sys-

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tems.⁴ A national office, here called the National Center, was established in Golden, Colorado, to staff and support the development of a GIS database using ARC/INFO for each of the ten tribes and to promote the effective development and application of GIS management within each of the tribal governments. ARC/INFO is a specific software package capable of sophisticated mapping and analysis of spatial information and is recognized as "state of the art" GIS technology.

The National Center has successfully developed databases and limited GIS applications with the ten tribes, emphasizing timber and natural resource management, but implementation of integrated GIS applications within tribes has been difficult. Although the GIS effort has proven effective for resource management and development, particularly for forestry on the Colville Reservation, the expanded use of the system for land use records, planning, and other local government applications has been slow. An overreliance on the National Center GIS technical staff and Bureau of Indian Affairs resources has slowed the development of local agency staff capability.

This paper presents a case study of critical issues in the use of GIS within the tribal government of the Colville Confederated Tribes, one of the ten national demonstration projects selected by the Bureau of Indian Affairs. Research for this project was carried out as the planning department of the Colville Confederated Tribes worked with the tribal planning program at Eastern Washington University to conduct a land use assessment for a portion of the reservation, and to utilize the resources of the GIS demonstration project. Three important issues were identified during these efforts to conduct a land use feasibility study: (1) There was a need to create a coordinated, tribally based program in which local tribal members gained full access and control of GIS data and applications processes, with technical assistance to achieve this end provided by the Bureau of Indian Affairs; (2) such a system required additional staffing, hardware, and extensive education at a wide range of technical skill levels within the tribe; and (3) there are important concerns about sensitive cultural and community data which can be mapped but which tribal members do not wish to become public. This last issue creates a management problem in tribal control and use of the data. Sensitivity to traditional uses and values of the land should play a part in tribal GIS applications, integrating such data into maps, where possible, but recognizing the need for tribal controls and security of the data,

which has value even if not mapped. GIS applications within such contexts hold much potential for improved decision making within tribal governments, but the use of the technology and the implementation of effective GIS management systems will require major tribal efforts in conjunction with the utilization of federal resources.

THE NEED FOR TRIBALLY CONTROLLED GIS APPLICATIONS

The need for a coordinated, tribally based and tribally controlled GIS is evident in the existing policies between Indian communities and the Bureau of Indian Affairs to promote self-determination. The Indian Self-Determination and Education Act of 1975 identified the failure of the federal government to effectively create and support tribal governance and empowerment, including a failure to train tribal members for responsible roles in local tribal government. This act was furthered by formal policy statements regarding tribal government by both the Reagan and Bush administrations but has commonly met resistance in its application and implementation in the field.

Unfortunately, the Bureau of Indian Affairs did not fully embrace the principles of the act in establishing the National Center's GIS system, which should have included working actively to train local tribal governments for full takeover and administration of the program. Instead, a "neutral" position that supported either BIA or tribal control of the GIS applications was adopted. In many cases, the key application—forestry management—was controlled by National Center staff and local BIA officials instead of directly by the tribes, so the GIS applications became a federal function, instead of a new locally controlled resource. The BIA's neutral position did not restrict tribes that wanted control of GIS applications; however, because of the complexity of the GIS resource itself, including hardware, software, centralized data access, training, and technical assistance, tribes that may have desired more control of the GIS applications often allowed local BIA officials to dominate the applications process.

Additional problems were inherited because the GIS programs began in the pioneering stages of GIS technology, but this technology has evolved at a rapid pace. Five years ago, the expense and unwieldiness of hardware platforms led to the centralized "na-

tional Center" philosophy. Since that time, however, hardware technology has skyrocketed and prices have plummeted. Software has likewise evolved. The Colville database, for example, was initially created with the public domain "Moss" software. The BIA decided to convert to ARC/INFO, but the initial systems that were created are themselves obsolete at this time. The idea of a centralized database repository for all tribes is also no longer necessary with new workstations, and a decentralized, more extensive, and active application by tribes can be developed.

The sheer distance between National Center staff and end-users at the reservation level has also increased problems. The National Center staff, well-versed in computer technology, have very limited knowledge of tribal operational needs. There is a broad range in data quality. There is also considerable variation in the regional and local geographic situation of each tribe, which must be understood in creating appropriate GIS applications.

THE COLVILLE CONFEDERATED TRIBES' GIS APPLICATIONS

The Colville Confederated Tribes, with a land base approximately the size of Connecticut, has extensive timber resources and operates its own timber mill, which generates gross receipts of more than \$60 million annually and employs more than 160 tribal members. The tribe's timber resource is managed for sustained yield; application of GIS technology to that management process is simply the latest application of "state of the art" forestry management techniques. Within the Colville Confederated Tribes, the GIS applications were created primarily by National Center staff. This provided the framework for initial applications, utilizing an intact database created with special support and application to timber resources management.

Unfortunately, this application of GIS to timber management limited the scope of the applications within tribal government and created limitations for expansion of GIS applications to other offices and agencies, including planning and natural resources divisions of the tribal government. It was so time-consuming to utilize the system in resource management that it was difficult to expand to other applications run by tribal members directly under the tribal business council.

In addition, there was a huge gap between the database creators

at the National Center and the end-users at the reservation level. Local users did not know how to access the data, which was stored in Colorado. The access to this data for the Colville Confederated Tribes, for example, was through local BIA staff responsible for timber management. Other applications by the tribe were often limited to the time these staff members could take off from their regular assignments to assist in new applications. Although the system and data were in place, there was inadequate support staff to provide effective access beyond the initial application to forest management. In addition, National Center staff were not able to identify or assess problems in the quality of the data, which was generally poor. Maps were produced that indicated land uses or vegetation types that were not the same as what was actually on the ground. Recognition of these problems and correction requires working with the database over time in local field applications.

Two processes were begun in 1989 to expand the application of GIS throughout tribal government. First, an interdepartmental committee was established to inform all offices within the tribe about possible use of GIS and to coordinate such applications. Regional BIA staff, along with representatives of the Golden, Colorado, National Center made presentations and assisted the tribe to understand the varied opportunities for expanded GIS applications through presentations to this committee. The tribe, however, lacked the staff and the funding to implement the expanded program. Over time, the issue of control remained important, since the BIA was responsible for forest management and land titles and records, and seemed unwilling to relinquish control of some information to the tribe. On the other hand, some tribal members were concerned that tribal maps of archaeological sites and other cultural use areas might be used to disrupt sites. Both legitimate and political concerns guided the committee, but ultimately the tribe's Physical Resources Department was identified as the control point for GIS. The process remained dependent upon access, support, and technical assistance from the BIA through funding for a new GIS manager and continued support by local BIA forestry staff.

The second process to expand tribal GIS applications was a contract between the tribal planning department and Eastern Washington University to demonstrate a GIS application in a land use analysis of the impact of a proposed ski resort and recreation area on tribal lands. This project was funded by the tribe but was dependent upon the BIA to provide base maps generated by the

GIS program, along with digitized files of soils and environmental information for the site.

Initial meetings and presentations by the local BIA forestry officials were very promising, and the project was designed around assumptions of file access and some technical support from the BIA staff. As the project evolved, technical assistance was provided to develop the base maps, but the priorities of the BIA staff, combined with technical difficulties in downloading files, dragged out the time processes. Ultimately, although the project used a computer-generated soils base map for analysis, the analysis maps were generated by hand.

Self-determination—that is, the operation and control of programs and decisions by trained tribal members within local tribal government—is a difficult goal to achieve, but the delivery of GIS within tribes offers an excellent opportunity to further this effort. Unfortunately, applications of GIS in Indian tribal governments often have maintained too close relations with or been directly controlled by the National Center instead of tribal departments and staff. Current GIS delivery could and should be modified to fully promote self-determination. This can be done through expanded efforts to train tribal members to understand and operate GIS applications, and through development of long-term support for tribes so that their governments can take over the GIS applications.

COMPLEX ORGANIZATION AND TRAINING NEEDS

The second concern in tribal GIS applications lies not with the control of GIS but with the needs for additional staffing and with the complex and diverse training necessary to develop fully integrated GIS applications within local government. These issues are common to any governmental application and are based on diverse data needs and uses in government offices. Tribal governments are relatively new institutions in their present form, many formed under the Indian Reorganization Act of 1934 and most remaining extremely small until the late 1970s. The Colville Confederated Tribes, for example, employed only thirteen staff persons in 1972 and had a very limited role in governance. By 1991, the tribe employed over one thousand tribal members, with operating budgets of tribal and federal programs at over \$100 million.

The new and rapidly expanding government of the Colville

Confederated Tribes suffers from a lack of long-term definition of roles and responsibilities of various tribal agencies and offices but also has the potential to create new frameworks for effective governance. GIS applications therefore can serve as a catalyst to improved government within tribes, if adequate technical support and coordination to identify its full potential can be established. This is underway with considerable success within the Colville tribal government, and a combination of tribal resources and BIA local and national support seem to be leading to broader use and applications of GIS within the tribe.

The new tribal GIS manager has been on the job less than a year, so the actual linkage of different data sources and applications is still being developed. So far, most departments in the tribe and the BIA have been supportive of the effort, but under the current economic recession, funding any new program has been difficult. The ability of the tribe to integrate GIS effectively into its operations will continue to depend on an expanded training and education effort, which has been underway under the direction of the tribal steering committee. Improved access to the system by different departments, along with training and support for their staff in utilizing the system, will be a key for expanded applications. GIS technology is not suitable for part-time operators. Proficiency with the computer systems requires full-time systems analysts and programmers.

CULTURAL INFORMATION WITHIN GIS

An important concern of tribal governments is the generation and use of sensitive data in GIS. Tribal governments are more than just local governments. Their mission includes preservation of culture, language, and traditions—responsibilities that extend far beyond the “provision of services” goals of most other local governments. To meet these responsibilities, many tribes have cultural offices that help preserve and promote tribal cultures and also assure the protection of cultural resources. What is unique about these resources and this information is that it can sometimes be mapped, yet, through mapping, the information loses the informal controls of tribal elders and enters the domain of “just another set of data.” The appropriate mapping, interpretation, and use of such information are critical functions of the tribe to meet its obligation to its tribal member. Control of such infor

tion by the tribal government and by tribal elders is essential not only to the preservation of tribal culture but also to effective GIS management.

The Colville Confederated Tribes has a cultural resources board, which oversees all possible development. In this regard, the board does utilize maps of archaeological sites, historic sites, cultural resource areas, including hunting and gathering areas used by traditional peoples today, and spiritually significant sites. This information is clearly not public and is not even for use by tribal government staff. The integration of such information as part of tribal GIS applications is important but difficult. Again, tribal control of the system, and especially of culturally significant mapped data, is essential.

As part of the Moses Mountain ski resort land use analysis, students conducted extensive interviews with traditional community members. These interviews led to mapping of cultural resources, including berry-picking areas and medicinal plant areas within the study region. The maps were used as critical elements of an impact assessment in the project.

CONCLUSIONS

The implementation of an integrated GIS effort within tribal governments holds great potential as a contribution to increased effectiveness of local government. The Bureau of Indian Affairs has established GIS demonstration projects in ten Indian communities around the nation and has successfully created a national tribal GIS center in Golden, Colorado, linked to these ten tribal governments. Key issues of tribal control, along with training and technical support for tribal members to assume that control, still need to be resolved. In addition, special sensitivity to cultural resources must be achieved before effective implementation of GIS takes place.

The Colville database was initially created to serve very limited objectives under the National Center in Golden, Colorado. Future applications and potential data end-users were not considered in the initial systems setup. The existing GIS database is inadequate, and the centralizing demands of large mainframe computer hardware no longer is necessary. GIS technology's potential, however, does look promising, and the Colville Confederated Tribes has made a commitment to revamp the entire GIS system. At this time,

the tribe has started to acquire its own GIS staff and is initiating its own needs assessment and systems planning processes. Through these tribally controlled efforts, linked to decentralized National Center resources, GIS offers an important technology which can expedite positive governmental decision making and tribal development.

NOTES

1. An initial version of this paper was presented by the authors in October 1991 at the annual meeting of the Applied Geography Conference, Toledo, Ohio.
2. Bryan A. Marozas, "The Role of Geographic Information Systems in American Indian Land and Water Rights Litigation," *American Indian Culture and Research Journal* 15:3 (1991): 77-93.
3. Don Hall, "GIS Provides New Management Tool for Tribal Natural Resource Managers," *Native American Fish and Wildlife Society* (Spring 1991), 3.
4. The ten demonstration tribes in the initial implementation of GIS include the Colville Confederated Tribes and the Yakima Indian Nation from the state of Washington. Persons wishing further information may contact the National Center by writing to the Geographic Data Services Center, 730 Simms Street, Room 101, Golden, Colorado 80401 or calling (303) 231-5100.

Muckleshoot Zoning Ordinance

Enacted in 1981, the Muckleshoot Zoning Ordinance was designed for a relatively small reservation located near a large, fast-growing city, Seattle, Washington. The total area of the reservation is 3,840 acres, of which 689 acres are tribally owned and another 1,096 acres are trust allotments. About one-third of the total number of 3,200 reservation residents are tribal members.

Several different jurisdictions contend for authority within the Muckleshoot land base. Portions of two counties, a main highway, and the northern section of the city of Auburn all intersect with the reservation. The Zoning Ordinance, enacted before the United States Supreme Court's decision in the Brendale case, asserts jurisdiction over "all property located within the exterior boundaries of the Muckleshoot Reservation notwithstanding the issuance of any allotment or patent and notwithstanding the trust status of the land involved, and ... all trust or restricted fee property within Muckleshoot Indian Country." (Section 7.01.060) In 1997 the Tribe and King County clashed over an amphitheater project that the Tribe was developing on non-trust reservation land that it had acquired. Despite efforts of nearby non-Indian farmers to halt the project, the County did not issue an emergency measure that would have had that effect.

The reservation is composed of two distinct areas. The western portion is urban and melds with the city of Auburn. The eastern part of the reservation is primarily agricultural and open space area, and also includes gravel quarries. When the Muckleshoot first enacted their zoning ordinance, their primary objectives were to preserve the river valley and its steep slopes by zoning that area for conservation, and to ensure orderly development in areas zoned for such activity. At that time, the majority of employed tribal members pursued livelihoods in the fields of forestry, agriculture, and fisheries, occupations that are integral to Muckleshoot culture and identity. Since the opening of a tribal casino in 1995, economic development has become more important for the Muckleshoot. As a consequence, the zoning ordinance is under review to determine whether it goes too far in protecting rural areas of the reservation from economic activity.

The overall design of the Muckleshoot Zoning Ordinance is an elaborate statement of purpose and findings, combined with a restrictive set of permitted uses and flexible provision for special use permits. The avowed purpose of the Ordinance is "to maintain the Reservation as a social, cultural, political, and economic unit for the continued benefit and prosperity of the members of the Muckleshoot Indian Tribe." The Ordinance places a strong emphasis on preserving the natural environment and promoting tribal culture, as reflected in language emphasizing use of the land in a sensitive way; protection of traditional tribal lifestyles and culture by preserving natural resources; prevention of pollution that degrades the environment; preservation of agricultural areas and the rural character of the reservation; and preservation of existing views, vistas, archaeological sites, trails, and fruit picking areas of the Muckleshoot people. While development is allowed to advance the housing and other community welfare needs of reservation residents, that development must be properly planned in relation to adjacent uses, public utilities, and soil and flood conditions.

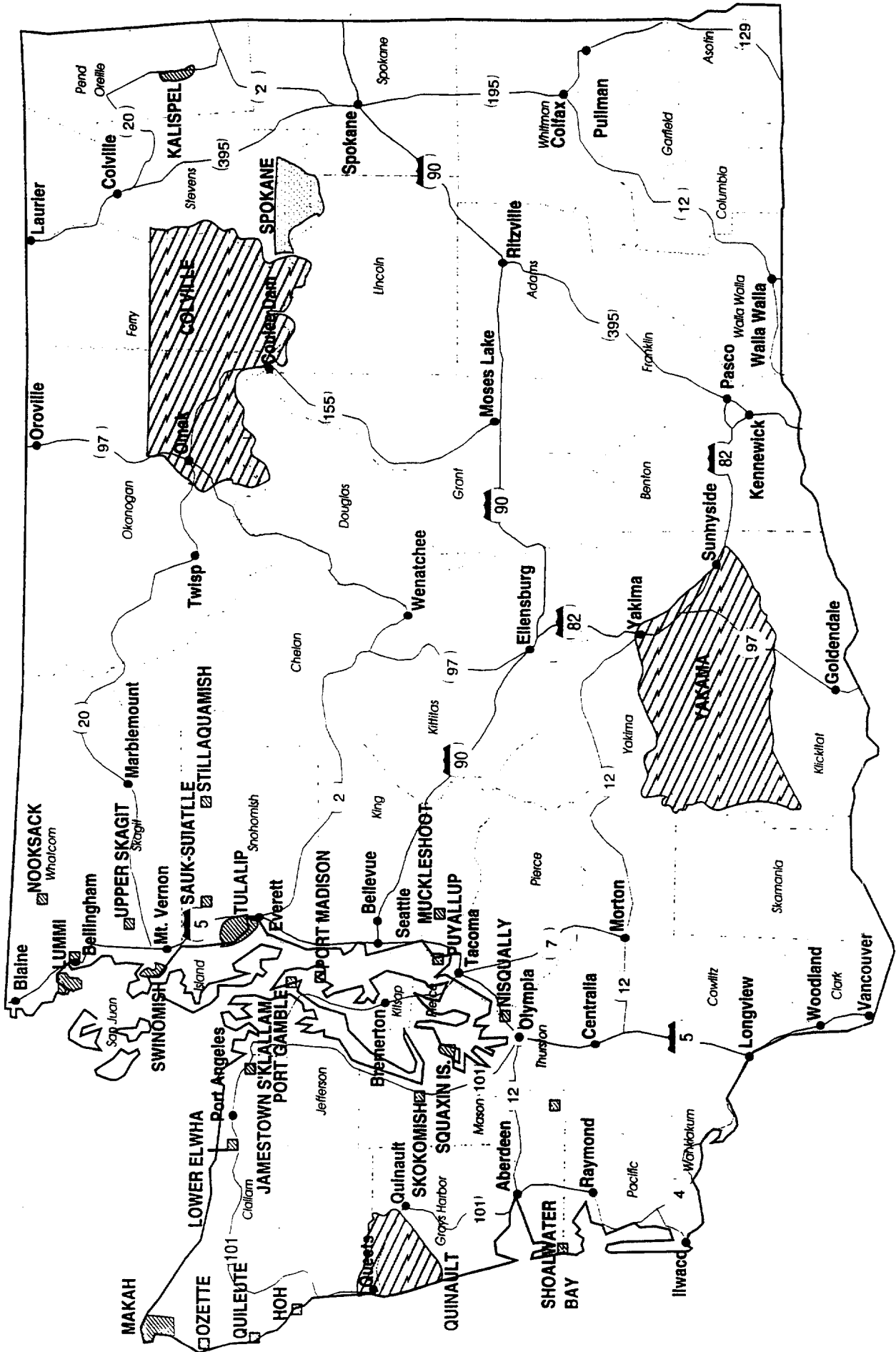
The Muckleshoot Zoning Ordinance creates the following zones for the reservation:

- Rural Residential and Agricultural, with permitted uses being agricultural, forestry, single family rural residential, cemeteries, churches, day care centers, home industry, and tribal community facilities;
- Neighborhood Commercial, with permitted uses including retail sales and services, restaurants, auto service stations, banks, and business and professional offices;
- Quarry, for continued use and development of existing quarries;

- Conservancy, to protect areas of wildlife habitat, natural scenic areas, sensitive areas of the environment, and floodplain and slope areas, where the only permitted uses are nonintensive.

To allow flexibility and creativity in land use decision-making, the Muckleshoot Zoning Ordinance provides for special use permits, which enable uses not otherwise permitted in a zone, so long as those uses adhere to the purpose of the zone and the overall objectives of the Ordinance. In determining whether and on what terms to recommend approval of such permits, the Tribal Planning Commission is directed to consider whether the proposed use is physically harmonious with the area in which it is proposed, the nature of any environmental impact, and the extent to which the proposed use meets the housing, employment, and other needs of reservation residents. The Planning Commission must hold a public hearing before preparing a recommendation regarding any special use permit. Ultimately, such recommendations are submitted to the Tribal Council, which has final decision-making authority, subject to review by the Muckleshoot Tribal Court. The Tribal Court's reviewing power is confined to determining whether the Tribal Council's decision was "clearly erroneous" or without factual basis.

The Muckleshoot Planning Department is responsible for administering and enforcing the Tribe's zoning ordinance. Under the Ordinance, any structure that is built or altered in violation of zoning requirements is declared a public nuisance. The Tribe or any individual may bring an action in Tribal Court to halt the use of any property in violation of the Ordinance, to obtain damages, and to achieve restoration of the property. In addition, civil penalties, seizure, or forfeiture may be imposed on any person who knowingly violates the Ordinance. It is important that the fines are deemed civil, because the United States Supreme Court has declared that Indian nations may not exercise criminal jurisdiction over non-Indians.



Muckleshoot Indian Reservation

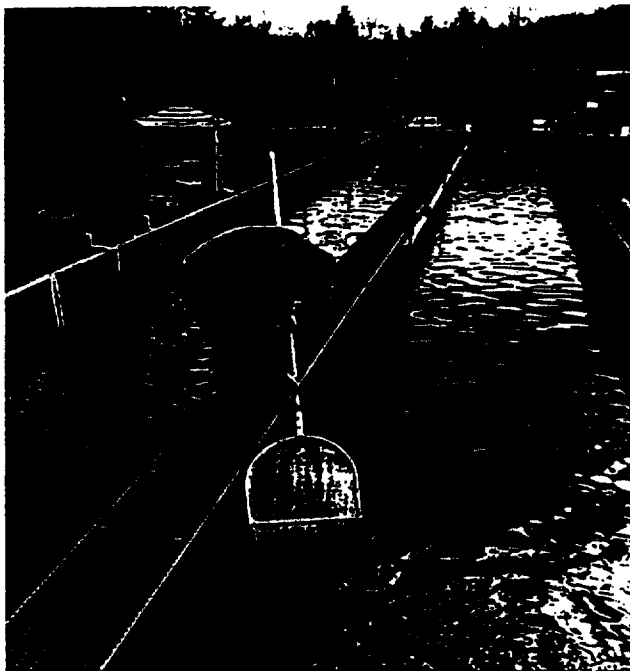
Federal reservation
Muckleshoot
King County, Washington
Muckleshoot Indian Tribe
39015 172nd Avenue SE
Auburn, WA 98002
(206) 939-3311

Total area	3,840 acres
Federal trust	1,095.56 acres
Tribally owned	689.57
Total labor force	1,484
Total reservation population	3,238
Tribal enrollment	1,008

LOCATION AND LAND STATUS

The reservation was established by executive order in 1857 and presidential order in 1874; however, the original 3,332 acres of the reservation were quickly taken away from the Muckleshoot through allotment in 1934. By 1971, the tribe owned only a single acre. Fortunately, ownership has increased 1994 and should continue to increase, according to the tribe. In 1994 it owned 600 acres.

Just east of the Seattle-Tacoma metropolitan area in King County, Washington, the Muckleshoot Indian Reservation sits on Muckleshoot Prairie between the Green and White rivers. The reservation is composed of two distinct areas. The western portion is urban and melds with the city of Auburn. The eastern part of the reservation is primarily agricultural and open space area, and also includes gravel quarries. The tribe seeks to preserve the river valley and its steep slopes by zoning this area for conservation. Tribal zoning ordinances, similar to those of the surrounding King County, are enforced to ensure orderly development within the reservation.



One of the Muckleshoot Fisheries

CULTURE AND HISTORY

The Muckleshoot had an intricate social structure which included a hereditary nobility. They lived in the Pacific Northwest coastal region and depended on the abundance of natural resources, especially salmon and red cedar. Both resources were husbanded with great care; cedar was an important material for goods and art. The Muckleshoot made elaborate cedar lodges, furniture and baskets crafted from bent cedar, and clothing made from cedar bark. The native culture and language was suppressed once the U.S. Government controlled their activities; teaching culture to their children was not in the Bureau of Indian Affairs school curriculum.

Despite these obstacles, Salish, the native language, is still spoken by elders. Treaty fishing rights were affirmed by the landmark Boldt Decision (U.S. vs. Washington). Fishing in their usual and accustomed areas has further enabled the Muckleshoot to carry on their coastal culture. The tribe has also begun to teach its own children in light of concern about the future. Therefore the tribe is actively working to carry what is best in its traditions into a new century. Muckleshoots are regaining their land and through gaming revenues are changing the landscape of their economy. In the changing landscape of the reservation, the tribe is prepared for growth. Its zoning ordinances state that "Indian culture emphasizes living within nature's limitations, rather than controlling nature for what is perceived by some as Man's benefit."

GOVERNMENT

The Muckleshoot Tribe has both a general council and a tribal council. The chief administrative officer is the general manager, who oversees managers for grants, economic development, and general administration; the administrative manager oversees officials responsible for building maintenance, personnel, and security. There is a planning director as well as coordinators of health and human services, community services, education, and natural resources. A comptroller presides over the tribe's finances.

ECONOMY

The reservation has an excellent location adjacent to the Seattle-Tacoma metropolitan area. In recent years this has enabled the tribe to upgrade the depressed economic status of its reservation. Unemployment reached as high as 75 percent, and 53.6 percent of employed tribal members were earning less than \$7,000 in 1991. In the early 1990s, the principal source of employment for tribal members were fishing, tribal government, and the Muckleshoot Bingo. Employment has increased since then as a result of the completion of the Muckleshoot Indian Casino in September of 1995.

Similarly, planned construction of a large outdoor performing-arts amphitheater, upon its completion, will further enhance the infrastructure at Muckleshoot. In turn, the attraction will draw even more customers (who visit the casino and bingo) from the Seattle-Tacoma population to the Auburn area. In conjunction and to ensure a reasonable amount of employment at the amphitheater for its members, the tribe established a technical training institute in 1995.

The tribal government is also working with area merchants and the state so that Muckleshoot Indians will not have the 8.25 percent sales tax levied on their purchases as they are exempt from such a tax under federal law.

AGRICULTURE AND LIVESTOCK

Approximately 200 acres of reservation land are used for farming, and approximately another 100 for grazing cattle.

CONSTRUCTION

In the mid-1990s major new construction projects were planned and begun. These include a 63,000-square-foot casino (scheduled for opening September 1995), and in the planning stages, a 25,000-seat amphitheater, a restaurant and other commercial construction in the amphitheater region, a large park, and a cultural center.

ECONOMIC DEVELOPMENT PROJECTS

In addition to the casino, amphitheater, cultural center, and park projects described above, the tribe received a \$270,000 grant in 1994 to begin a 29,400-square-foot tribal office and retail store project.

In anticipation of the needs of these new enterprises, Muckleshoot Technical Services was instituted in 1995 to provide installation, maintenance and operation services in audio, video, lighting and electronics for the amphitheater, planned tribal restaurant, and other commercial construction in the amphitheater region, including a large planned park and cultural center.

FISHERIES

The tribe has constructed two fish hatcheries, one on the White River near Buckley and another at Coal Creek Springs. Carefully planned fish husbandry is conducted and monitored under the supervision of the Fish Committee of the Muckleshoot Indian Tribe Natural Resources Department. The number of employees varies according to the season (2-6 persons). The fisheries supplement the dwindling number of fish in the area's streams, rivers, and lakes by restocking. Fishing on open water is vital to individual tribal income. The Muckleshoot exercise their "usual and accustomed" fishing rights as outlined in treaties and as upheld by federal court.

FORESTRY

Approximately 200 acres are wooded; there are no plans for logging.

GAMING

Muckleshoot Bingo opened in 1985 and the Muckleshoot Indian Casino opened in September of 1995. The casino offers its guests one fine-dining restaurant, a casual restaurant, and a sports lounge, in addition to its 23-table poker room, blackjack and roulette tables, numerous slot machines, and off-track betting. The bingo employs approximately 200 members. Projected employment figures for the casino numbered 400 people.

GOVERNMENT AS EMPLOYER

Tribal government employs 135 people. As of 1986, more than nine percent of heads of household were employed by the tribe.

As of 1991 there were 1,319 households on the Muckleshoot reservation, with an average household size of 5.2 persons.

SERVICES

A convenience store is tribally owned. A liquor store employs fifteen.

INFRASTRUCTURE

The reservation is on State Road 164, 15 miles east of U.S. Interstate 5. Sea-Tac Airport, about 24 miles from the reservation,

handles international air traffic. UPS, Federal Express, and other major carriers are available, and a rail spur is adjacent to the reservation. The Port of Seattle is 45 miles distant and the Port of Tacoma is 25 miles away. While the tribe does not recognize the annexation by the city of any lands within the reservation, the city does serve this reservation area with sewer and water services. The Auburn city bus system serves the reservation. Another sewer system was under construction and planned to connect with the city of Auburn's system in fall 1995. A new bicycle and pedestrian path was planned in 1994 between the Muckleshoot Housing Authority and a local youth center.

COMMUNITY FACILITIES

A tribal community center exists on the Muckleshoot Reservation; reservation residents use community facilities in the city of Auburn.

Nisqually Reservation

Federal reservation
Nisqually
Thurston County, Washington

Nisqually Indian Tribe
4820 She-Nah-Num Drive S.E.
Olympia, WA 98503
(360) 456-5221
Fax: 438-8618

Total area	4,800 acres
Federal trust	500 acres
Government owned	3,300 acres
Tribally owned	500 acres
Total labor force	711
Total reservation population	1,726
Tribal enrollment	450

LOCATION AND LAND STATUS

The Nisqually Reservation is located in western Washington State, approximately ten miles east of Olympia. It was established in 1857 by executive order.

CULTURE AND HISTORY

The Nisqually Indian Tribe signed the Treaty of Medicine Creek with representatives of the U.S. Government on December 26, 1854. The treaty was ratified by the U.S. Senate and signed by President Franklin Pierce in 1855. The tribe adopted its constitution in 1946; it was approved by the secretary of the interior in the same year. Much of the original reservation was condemned, against the wishes of the tribe, to establish the Fort Lewis Military Reservation. The remaining acreage was largely uninhabited by the Nisqually people as late as the early 1970s. Public utilities to the reservation were extremely limited, so tribal members lived in nearby communities. The establishment and development of a community with services within the boundaries of the reservation was a goal of the tribe which began to be realized in the mid-1970s, when housing and community facilities were developed. The housing projects were funded by HUD. The population increased dramatically from 1980 to 1985 and continue to increase into the 1990s.

TITLE 7

MUCKLESHOOT ZONING ORDINANCE

7.01.010 Statement of Purpose.

(a) The Muckleshoot Indian Reservation is located in a rural area of south King County and north Pierce County. The primary uses of land on the Reservation are agriculture and forestry. In the northern section of the Reservation there are extensive gravel quarries. Within the last several years the reservation has become subject to intensive development pressure and these historic uses have begun to be displaced in the northern portion of the Reservation by poorly planned collections of mobile home parks, roadside businesses, apartment buildings, and other uses. The Muckleshoot Indian Tribe recognizes the need to ensure the orderly growth of its Reservation and the development of the Reservation to meet the needs of its people. The purpose of this ordinance is to maintain the Reservation as a social, cultural, political, and economic unit for the continuing benefit and prosperity of the members of the Muckleshoot Indian Tribe. This ordinance shall be interpreted so as to implement this goal and those goals and standards listed below consistent with due process and equal protection guarantees.

(b) The goals and objectives to be implemented by this ordinance are:

- (1) To ensure use of the land that is sensitive to its physical and aesthetic nature;
- (2) To protect and reinforce traditional tribal lifestyles and culture by protecting the rural

environment of the Reservation, its fishery and other natural resources;

- (3) To provide properly planned community facilities roads, and utilities, thereby promoting the health, safety and general welfare of reservation residents;
- (4) To provide development standards flexible enough to stimulate creativity and variation while maintaining sufficient control to achieve the objectives of this ordinance;
- (5) To ensure that adjacent land uses are functionally and aesthetically compatible;
- (6) To preserve fish, game, timber, water, mineral, and other natural resources;
- (7) To prevent degradation of the Reservation environment including but not limited to air and water quality and the protection of reservation ground and surface water supplies;
- (8) To preserve agricultural areas and the rural character of the Reservation;
- (9) To restrict gravel mining to existing quarries;
- (10) To restrict further mobile home parks and apartment development;
- (11) To ensure that housing and business developments meet the needs of tribal members as well as other Reservation residents. Among the housing needs of tribal members which development

should meet is the need for low and moderate income housing which has suitable space for large families and adequate open space and recreational area;

- (12) To protect against the hazards of development in areas subject to flooding long periods of standing water, and on steep slopes and geologically unstable areas;
- (13) To ensure that development is consistent with the capacity of public facilities and services;
- (14) To preserve and restore the natural conditions of the White Stuck River Valley and other Reservation stream areas;
- (15) To ensure that soil conditions and sewage disposal systems are appropriate for a proposed use;
- (16) To preserve cemeteries, archeological sites, and artifacts;
- (17) To preserve existing views and vistas;
- (18) To preserve trails, berry and fruit picking areas of the Muckleshoot people.

7.01.020 Findings.

(a) The Muckleshoot Indian Tribal Council finds that:

(1) The Muckleshoot Indian Reservation was established to provide a permanent homeland for the use and benefit of the Muckleshoot Indian Tribe.

(2) The majority of the employed members of the Muckle-

shoot Indian Tribe pursue livelihoods in the area of forestry, agriculture, and fisheries and such livelihoods are an integral part of Muckleshoot culture and identity.

(3) The existence of land within the Reservation suitable for these uses provides opportunities for members and other Reservation residents to pursue livelihoods dependent on these land resources.

(4) The existence of rural and agricultural lands in urbanizing areas provides unique open space, educational and economic benefits and contributes to the quality of life enjoyed by all Reservation residents.

(5) Preservation of the reservation's land resources and of employment opportunities dependent on agricultural, forestry and fisheries land uses is essential for the continued maintenance of Muckleshoot culture and identity.

(6) Agriculture, forestry, and fishery uses are a predominant land use within the Muckleshoot Indian Reservation and viable agricultural uses in the area have an average minimum size of 10 acres.

(7) Areas near the Reservation contain sufficient suitable land to accommodate future urban type commercial, urban residential and industrial uses, while maintaining the rural character of the Reservation.

(8) Land suitable for agricultural and other rural uses is a unique and irreplaceable environment and when such land is converted to other uses an important natural resource is lost.

(9) Agricultural, forestry, fishery and other rural uses are affected by the activities permitted and carried out on adjacent properties. Incompatible uses on adjacent properties will, where conflicts are created, negatively impact the continued use of agricultural, forestry, fishery related uses.

(10) The preservation of agricultural, fishery and related uses provides local residents with the opportunity to purchase local products from local outlets.

(11) A significant portion of the land in the Reservation suitable for agricultural, forestry, fishery and other related uses is not currently served by adequate urban services such as sewer, water and public road systems. The pressure for development of such land for more intensive uses creates a concomitant pressure for publicly financed urban services which may cost more than the revenue generated by the development they serve.

(12) Muckleshoot culture and identity are threatened by urbanization of the Reservation.

(13) Indian culture emphasizes living within nature's limitations rather than controlling nature for what is perceived by some as man's benefit. Land use on the Reservation should be compatible with the natural physical and aesthetic nature of Reservation lands. Development which strips the land of its vegetation, destroys wildlife habitat, substantially alters the natural features of the land or otherwise is incompatible with the natural carrying capacity and ecological balance of the land is inconsistent with Indian culture.

(14) Preservation of the rural character of the Reservation and limitation of development to uses compatible with the natural physical and aesthetic nature of Reservation land is essential for the continued maintenance of Muckleshoot culture and identity.

(15) A large portion of the land within the White River Valley is unsuitable for intense development because of flooding hazards and unstable and steep slopes. This land is suitable for fishery, forestry and agriculture uses. Development for more intensive uses aggravates flooding, adversely affects the White River fishery, replaces water retentive with impervious surfaces, and creates pressure for construction of publicly funded flood control projects and urban services.

(16) Urban services available on the Reservation including but not limited to water, sewage disposal, roads, fire and police protection are severely limited.

(17) Commercial residential land development threatens to overtax the available services and presents problems of scale not presented by individual development by landowners for their own use and that of their families.

(18) A substantial portion of the housing occupied by Indian families on the Reservation is substandard. Low and moderate income replacement housing is needed with suitable space for large families, good quality construction, and adequate open space and recreation areas.

(19) A substantial portion of the existing Reservation

housing consists of mobile home units located in trailer parks and apartments. Existing mobile home park spaces and apartments meet present and future needs for this type of housing by Reservation residents. Additional mobile home park spaces and apartment units are inconsistent with the maintenance of the existing rural Indian character of the Reservation.

(20) Adequate general commercial development to serve the needs of Reservation residents exists in areas near the Reservation. The need for commercial land use on the Reservation is therefore limited to neighborhood commercial uses serving the day to day needs of Reservation residents.

(21) The primary arterial serving the Reservation has a limited capacity. Commercial and other uses which generate excessive traffic volumes should be limited.

(22) Gravel scalping operations on the Reservation have defaced Reservation lands and destroyed Reservation game, fishery and timber resources. Further gravel mining should be limited to existing quarries and should not be permitted in or near the White River.

7.01.030 Definitions.

Accessory Use - A use subordinate to the principal use and located on the same parcel as the principal use.

Agricultural Use - See Section 7.01:040 (b)

Building Setback - The distance beyond which a building shall not extend into any yard or the distance a building or use must be removed from lot line or rights of way.

Commercial - Any activity for profit.

Community Facility - See Section 7.01.040

Forestry Use - See Section 7.01.040

May - When used in this ordinance the word "may" indicates a discretionary decision to be made by the Muckleshoot Planning Commission or Muckleshoot Tribal Council.

Non-Conforming Use - The use of a building, structure or parcel of land which does not conform to the regulations of the zone in which it is located. Such use is non-conforming regardless of whether it was lawful at the time ordinance became effective.

Official Zoning Map - The map approved by the Muckleshoot Tribal Council as a part of this ordinance which describes the boundaries of the zones provided herein.

Planning Commission - The Muckleshoot Tribal Planning Commission.

Planning Staff - The Muckleshoot Planning Department Staff.

Plat - A plan or map subdividing a tract of land into lots or parcels considered to be separate units of property.

Shall - A mandatory action ministerial in nature.

Site Development Standard - The standard established by this ordinance and other applicable tribal ordinances for proposed building sites such as but not limited to parking, yard area lot size, landscaping, buffering devices, access to public right-of-way, etc; these standards may vary from site to site.

Subdivision - A parcel of property which has been divided into two or more separate units by a tribally approved, registered plat. The act of dividing a parcel of property

into two or more units.

Tribal Council - The Muckleshoot Tribal Council.

Zone - A portion of the Muckleshoot Reservation designated on the zoning map as one of the districts described in this ordinance.

Section 7.01.040 Description of Zones.

(a) Rural Residential and Agricultural Zone - The purpose of this zone is to maintain the rural residential and agricultural character of the zone. Agricultural, forestry, single family rural residential, home industry, community facilities and related uses are permitted. ^{No other uses are permitted} except by special use permit; nor shall the subdivision of land into two or more parcels, any of which is less than 10 acres, for the purposes of sale or commercial development including commercial residential development, whether immediate or future, be permitted within this zone, except by special use permit. Any land divided into two or more parcels shall not be further divided for a period of five years without a special use permit.

(1) Permitted Uses -

a. Agricultural Use - Includes

Agricultural crops and open field growing,
Pasturage and grazing,
Dairies, livestock, poultry and small animals,
Greenhouses incidental to agricultural uses,
Stables,
On-site sales of produce grown within the zone,
This use shall not include commercial feed lots.

b. Forestry Use - Includes:

Growing and harvesting forest products,

Game and fish management,

Harvesting of wild crops,

Watersheds,

This use shall not include sawmills.

c. Single Family Rural Residential Use - Includes:

Detached single family dwellings and accessory buildings

such as garages, storage sheds, net sheds, smokehouses,

boat sheds and other related structures,

Cemetaries,

Churches,

Public Utility Structures,

Day Care Centers,

No residential structures shall be constructed within 100 feet of the right-of-way of the Enumclaw-Auburn Highway or within 40 feet of the right-of-way of other streets.

A minimum lot width of 100 feet will be required for all subdivision of land.

d. Home Industry Use - Includes:

An occupation, industry or profession carried on in a dwelling or accessory building secondary and incidental to the use of the property for dwelling purposes, providing employment for immediate family residing in the dwelling and up to one non-family member.

Sale of goods produced by the home industry.

Home industry must be non-disruptive to adjoining property.

It shall not produce significant increase in noise, traffic, air or water pollution or produce an unpleasant visual impact.

A business license shall be required of all home industries.

e. Community Facilities Includes:

Any building, structure or activity which is operated in whole or in part by the Muckleshoot Indian Tribe for the use or benefit of the Tribe.

(b) Neighborhood Commercial Zone

(1) The purpose of this zone is to provide an area for light neighborhood commercial uses.

(2) Permitted uses include: retail sales and services, restaurants, auto service stations, banks, business and professional offices, business and other schools, community and public utility facilities, caretaker apartments and the manufacture of goods to be sold only on the premises.

(3) The following uses are not permitted except by special use permit: drive-in restaurants, auto sales, mobile home and trailer sales, heavy equipment sales, parking lots not connected to a permitted use, convalescent and rest homes, funeral homes, motels and hotels, entertainment and recreational uses, and other use not expressly permitted above.

(4) All buildings shall be setback a minimum of 40 feet from any public road right of way 10 feet from adjacent property along the building sides and 20 feet at the rear of the building. Four parking spaces or one parking space for each 200 square feet of building (for restaurants 1 space for each 4 seats or 1 employee) whichever is greater shall be required. The Planning Commission may waive the parking requirement upon a showing that less parking will be sufficient for the use proposed.

(5) The Planning Commission shall establish site development standards including standards for landscaping of commercial uses. Landscaping shall be required along the sides and rear where deemed necessary by the Planning Commission to prevent undesirable impacts on adjoining property. Landscaping plans shall be submitted to the Planning Commission for review.

(c) Quarry Zone

(1) The purpose of this zone is to allow the continued use and development of existing quarries.

(2) Quarrying and primary processing of sand, gravel, rock, clay and other minerals is permitted. Additional uses permitted are growing and harvesting of forest products, public utility facilities, dwellings occupied by persons employed in a permitted use, and agricultural use. A special use permit is required for any other use.

(3) All commercial quarrying operations requiring a business license must complete and submit an environment checklist, a site plan showing existing and proposed topography, and will be subject to an environmental review by the Planning Commission and Tribal Council. Any business license granted for quarrying will contain appropriate conditions and development standards to prevent adverse environmental impacts.

(8) Conservancy Zone

(1) The Conservancy Zone is intended to protect areas for wildlife habitat, maintain natural scenic areas, protect sensitive areas of the environment and protect the health and welfare of the community from the hazards of flood plain and steep slope development. Any uses allowed in this zone must be non-

intensive.

(2) Permitted uses shall include:

Agricultural use

Forestry Use

Fisheries management and harvesting

Public Parks and trails

Wildlife conservation and enhancement

(3) No residential development shall be permitted without a special use permit.

(4) No subdivisions of lots smaller than 20 acres shall be permitted.

(5) No construction of permanent structures shall be allowed within the 100 year flood plain of the White River, on slopes exceeding 30 percent, or within 100 feet of the top of the bluff overlooking the White River.

(6) No other uses shall be permitted without a special use permit.

(7) Overnight camping by persons other than landowners is not permitted.

7.01.050 Special Use Permit

(a) Purpose

The special use permit is intended to allow flexibility and creativity in the application of the zoning ordinance by providing a procedure for the approval of uses not otherwise permitted in a zone where such uses are in conformity with the purpose of the zone and the overall objective of this ordinance.

(b) Application

(1) Application for special use permits shall be submitted to the Tribal Licensing Clerk who shall forward them to the Planning Commission within 10 days and shall be reviewed in accordance with the procedures set forth in subsections (d) to (g). When a business license is also required the applications for a business license and special use permit shall be filed and processed concurrently.

(2) In determining whether or not to issue a special use permit, the following factors shall be considered:

- a. The consistency of the use with the objectives of this ordinance;
- b. The compatibility of the use with the purpose of the zone in which it is proposed and its impact on the integrity of the zone;
- c. The location of the proposed use and its physical harmony with the area in which it is proposed;
- d. The environmental impact of the use;
- e. The extent to which the use meets the housing, employment, and other needs of all Reservation residents, tribal members as well as non-members.

(c) All special use permit applications requiring preliminary plat approval shall be accompanied by an application for a preliminary plat, as set forth in the Muckleshoot Subdivision Ordinance.

(d) The Tribal Council may impose appropriate site development standards and conditions in addition to those otherwise required by this and other applicable ordinances upon special use permits to ensure the compatibility of the proposed use with the objectives of this ordinance, and to mitigate any adverse environmental impacts.

(e) The following information must be submitted with a special use permit application:

- (1) Name and address of person submitting application
- (2) Name and address of legal owner
- (3) Legal description of property
- (4) Type of use proposed
- (5) A description and detailed plan of any anticipated construction on said property or currently owned adjacent property
- (6) Topographical contours and other physical features including all water sources (5 foot contours pre and post project)
- (7) Access right-of-way
- (8) Utility lines and easements
- (9) Solid waste disposal methods
- (10) Sewage disposal methods including soils information where private sewage disposal systems are proposed
- (11) Analysis of traffic patterns
- (12) Landscape plan
- (13) Phasing or timing of the project

- (14) List of restrictive covenants (if any) concerning quality of private structure and landscape to be erected
- (15) Water supply provisions and requirements
- (16) Fire and police protection
- (17) Road standards to be used for drives and roads
- (18) Storm drainage plans
- (19) List of deviations from normal requirements of any state, county, city or tribal standards for such building or business
- (20) Any other relevant data requested by the Tribal Council or the Planning Commission

(f) Procedures Before Planning Commission/Hearing Officer

(1) Upon referral of an application for a special use permit to the Planning Commission, the Planning Commission shall cause notice of the pending application to be posted at locations within the Muckleshoot Reservation. The Planning Commission may on its own motion determine that a hearing on the application is to be held. If the Planning Commission has determined to hold a hearing on the application, the notice provided in this section shall state the time and location of said hearing, and shall be published in a newspaper of general circulation within the Muckleshoot Reservation. An applicant or other interested person may also request a hearing. Notice of all scheduled hearings shall be published and posted at locations within the Muckleshoot Reservation at least five (5) days prior to any scheduled hearing. In cases where no hearing is held, the Planning Commission may consider the application and make recommendations without referring the application to an hearing officer.

(2) All applications for which a hearing has been requested shall be referred to a hearing officer(s). The Hearing Officer shall hold the requested hearing, and may call witnesses or request the submission of any other material considered relevant to a determination of an application for a license. The Hearing Officer shall determine the rules of procedure to be followed at hearings provided by this section.

(3) The Hearing Officer and/or Planning Commission shall prepare a report and deliver it to the Tribal Council within sixty (60) days following the date on which the Planning Commission received the application for a license. In cases where the hearing officer has prepared the required report, the Planning Commission shall review it and attach its recommendation, if any, prior to transmittal to the Council. The Report shall detail the material considered in reviewing the application, whether a hearing was held, and shall note the reasons for any recommendation contained therein.

(g) Procedures Before Tribal Council

(1) The Tribal Council shall either grant or deny the application within thirty (30) days of receipt of the report. The Tribal Council shall consider a pending application based upon the record and finding made before the Hearing Officer or Planning Commission. The Tribal Council may, within its discretion, receive additional written or oral testimony, or remand the application to the Hearing Officer or Planning Commission, and may, but need not, call for an additional hearing prior to making a final decision. If the Tribal Council elects to receive additional testimony, and/or remand the application, it may delay a final decision for an additional thirty (30) days. The Tribal Council may extend the

time periods set by this ordinance, for good cause, including but not limited to the need to obtain additional information concerning an application. The Tribal Council may issue a permit subject to any limitations or conditions found appropriate by the Tribal Council.

(2) Within ten (10) days of its decision, the Tribal Council shall notify the applicant indicating the decision, the grounds for the decision and the procedure for petitioning for review of an unfavorable decision to the Muckleshoot Tribal Court.

(h) Construction work on any structure or use for which a special use permit is required shall be commenced within 1 year of permit issuance and diligently prosecuted to completion. The permit or special use upon which construction has not commenced within one year or which has been abandoned for six (6) continuous months may be withdrawn by action of the Planning Commission.

(i) A petition for review of the denial of a special use permit shall be filed within 10 days of receipt of the decision.

7.01.060 Application of Regulations.

(a) Except as hereinafter provided, no building shall be erected, reconstructed or structurally altered except in compliance with the regulations established by this ordinance and for the district in which the building or land is located, and the provisions of the building, subdivision, other applicable tribal ordinances.

(b) Where site development standards are established by this ordinance no building permit shall be issued for new construction or reconstruction until a site development plan has been approved by the designated body.

(c) Where a structure or land use exists at the effective date of adoption of this ordinance that could not be built under the terms of this ordinance by reason of restrictions, such structure or land use shall be deemed non-conforming and may be continued, so long as it remains otherwise lawful. The non-conforming use of a structure and/or land or any portion thereof shall not be improved, extended, or enlarged after passage of this ordinance.

(d) A non-conforming use shall be deemed abandoned if it is discontinued or abandoned for a continuous period of six months and any subsequent future use of such land or buildings shall be in conformity with the provisions of this ordinance.

(e) This ordinance shall apply to all property located within the exterior boundaries of the Muckleshoot Reservation notwithstanding the issuance of any allotment or patent and notwithstanding the trust status of the land involved, and to all trust or restricted fee property within Muckleshoot Indian Country. This ordinance shall further apply to all persons who have any interest whatsoever in any real property or any appurtenance to said real property within the boundaries of the Muckleshoot Reservation, whether said interest is in fee or otherwise, and to all persons within the exterior boundaries of the Muckleshoot Reservation.

(f) Unless otherwise stated, all land use zones shown on the official zoning map are intended to follow lot lines and road center lines along the boundaries of the neighborhood commercial and quarry zones. The boundary of the conservancy zone shall be construed to run 100 feet out from the bluff along the White River Valley as indicated on the map. Where application of the rules above leaves a reasonable doubt as to the boundaries

between two land use zones the regulations of the more restrictive zone shall govern the entire area in question.

7.01.070 Administration and Enforcement.

(a) The Muckleshoot Planning Department shall administer and enforce this ordinance. If the Department finds that any of the provisions of this ordinance are being violated, it shall notify the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it.

(b) No oversight or dereliction on the part of the Planning Commission or any official or employee of the Muckleshoot Indian Tribe vested with authority or duty to issue permits or licenses shall legalize, waive, or excuse the violation of any of the provisions of this ordinance. No permit or license for any use, building, mobile home trailer, or other structure or use shall be issued if the same would conflict with any provision of this ordinance or any other regulations in effect referring to this ordinance. No permit or license shall legalize, authorize, waive and excuse the violation of any of the provisions of this ordinance.

7.01.080 Violations.

(a) It shall be unlawful for any person, corporation, firm, or other entity to use, erect, construct, move, alter, or attempt to use erect, construct, move or alter any property, building, mobile home, trailer, or structure in violation of this ordinance, and the same are hereby declared public nuisances.

(b) The Muckleshoot Indian Tribe, any person, corporation or entity may bring an action in the Muckleshoot Tribal Court to halt, abate, or modify the construction of any building, structure or use of any real property which is in violation of this ordinance. Any such action may in addition seek damages, and/or restoration of the property.

(c) In addition to all other penalties, any person, firm, or Corporation knowingly violating this ordinance shall be subject to a civil penalty of not more than \$500.00 for each violation, and seizure and forfeiture as contraband pursuant to the procedures of the Muckleshoot Tribal Code Section 2.01.07 to 2.01.10 of any property used in connection with such violation. 7.01.090 Judicial review.

(a) The Muckleshoot Tribal Court shall have exclusive jurisdiction of all actions arising under this ordinance.

(b) A petition for review of a denial of a special use permit shall be filed with the tribal court within 10 days of receipt of the decision from the Tribal Council. A petition for review of any other action taken under this ordinance shall be filed within 30 days of the date such action becomes final. The petition shall be served within 5 days of filing.

(c) The Muckleshoot Tribal Court, when reviewing a final action of the Tribal Council or Planning Commission, shall consider only whether the action was clearly erroneous and wholly without factual basis such as to be a denial of protections guaranteed by the Indian Civil Rights Act.

7.01.100 Sovereign Immunity.

(a) Nothing in this ordinance shall be deemed as a waiver of the sovereign immunity of the Muckleshoot Indian Tribe authorizing suit against the Tribe in any court other than the Muckleshoot Tribal Court, nor shall it be deemed as authorizing a suit for damages against the Tribe in any action arising under this ordinance, unless the Muckleshoot Tribal Council by specific, express, and unequivocal legislation should authorize such an action for damages.

7.01.110 Severability.

(a) Should any word, section, clause, paragraph, sentence, or provision of this ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any other part of this ordinance, which can be given effect without such invalid parts.

7.01.120 Effective Date.

(a) This ordinance is reenacted and recodified as Title 7, and is effective as of September 17, 1981, pursuant to Resolution No. 81-57-11, and supersedes any prior inconsistent ordinances.

20-119

Indian Country Today (Lakota Times) 12-08-97 p. B1

Title

Tribe escapes stop-work order, for now: Muckleshoot amphitheater battle rages on

Author

Laird, Lucy

Article

Wearing buttons which boldly claim their allegiances, opposing sides in the fight over the Muckleshoot Tribe's construction of a 20,000-seat amphitheater gathered in front of the 13-member King County Council on Nov. 17 to voice their opinions.

In the end, the council could not muster enough votes to pass the emergency land-use restriction that would halt construction. As an emergency, the council would have had to approve the measure by a super-majority, or nine out of 13 votes.

Without the emergency clause attached to the proposal, the council would need only a simple majority of seven votes to for it to pass. This would send the measure through the council's regular hearing process. Another vote was scheduled for Dec. 1, but the council may not be able to act on it until January.

Proposed by Councilmember Kent Pullen, the measure would establish interim rural zoning on 1,200 acres of land between the towns of Auburn and Enumclaw, Wash, where the Muckleshoot Tribe has been constructing the White River Amphitheater. It would also require a county permit and corresponding environmental impact statement for any future development on the site surrounding the amphitheater. The ordinance did not include language that would halt the project, but implementation of the law could have resulted in stoppage.

Although the Muckleshoot Tribe has agreed to cooperate with King County to find ways to avoid negative impacts on the amphitheater's surrounding neighborhood, a group of the tribe's opponents, the Citizens for Safety and the Environment, filed a federal lawsuit Nov. 12 against the tribe, amphitheater manager, construction contractor, the BIA and others.

The lawsuit asks for an injunction to stop work pending the outcome of an environmental impact statement and a review of the BIA decision-making process which the group contends allowed the tribe to start the \$10 million process without BIA oversight or an environmental impact statement.

As elders and other tribal members looked on from the front row, Karen Allston, attorney for the Muckleshoot Tribe, presented legal arguments against King County's authority on land-use in private land on the reservation.

"It would be ludicrous to suggest that the Muckleshoot Tribe would in any way jeopardize or harm those natural resources it relies on for the exercise of its federally-guaranteed treaty rights," said Ms. Allston, disputing allegations that the tribe has neglected the impact its theater would have on the environment.

David Bricklin, the lawyer representing Citizens for Safety and the Environment, said the group would put its lawsuit on hold if the tribe decided to stop building voluntarily. Citing the weather sensitivity of the project,

Muckleshoot Vice Chairwoman Virginia Cross, in a letter to Councilwoman Cynthia Sullivan, asserted the need to complete the project before the onset of winter.

If the measure eventually passes, Ron Sims, the county executive, could veto it. He does not wish for a confrontation with the tribe.

Residents of the rural area near the Muckleshoot amphitheater did want a confrontation, however, and approached the podium to express their vehement opposition.

Cathy Thomasson, a dairy farmer who lives a quarter-mile from the site, said the disruption to her cows from noise and traffic would result in lower milk output and devastation to her business. The construction "takes away our heritage," she said in reference to the fact that her farm has been in her family for 100 years.

Tribal members and their supporters constantly referred to Ms. Thomasson's assertion, countering that American Indians had been on the land for thousands of years when their land, livelihood and heritage were stolen from them.

Other opponents of the amphitheater voiced their disgust with the poverty rate on reservations such as Pine Ridge, S.D., and accused the tribes of being greedy and not using casino funds to educate their children. These affronts were met with cries of indignation by tribal members.

John Halliday, Muckleshoot tribal member and first generation high school and college graduate, summed up the feelings of the tribe when he asked the council for a favorable decision. "We cannot afford to live in political and economic suspension."

As the Muckleshoot Tribe quickens the pace of building and their opponents continue to face road-blocks, the likelihood of suspending anything grows dimmer.

Author : Laird, Lucy
Article Title : Tribe escapes stop-work order, for now: Muckleshoot amphitheater battle rages on
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Zoning

Indian Country Today (Lakota Times) 12-01-97 p. A1

Title

Muckleshoot fights for sovereign rights

Author

Laird, Lucy

Article

Between the towns of Enumclaw and Auburn, Wash., the Muckelshoot Tribe has been building a 20,000-seat concert amphitheater since June.

Although the construction is over one-third complete, a recent move by the Metropolitan King County Council threatens the future of an enterprise that tribal leaders hope will guarantee them some measure of economic independence.

King County believes it has the authority to tax and regulate reservation property that is privately owned, whether by tribal members, non-members or the tribe itself.

Councilman Kent Pullen, joined by Citizens for Safety and the Environment, a local advocacy group, led the attack on the tribe's economic sovereignty.

They believe the amphitheater's construction is polluting nearby White River and will inevitably cause the congestion of roads leading to the facility when it opens. Despite the fact that the Muckelshoot Tribe investigated environmental impacts according to their own regulations, county officials and neighboring residents remain worried.

Mr. Pullen proposed an emergency ordinance that would temporarily impose a rural land-use designation on all privately owned reservation land, including that owned by the tribe or its members. This would remain in effect, halting the amphitheater construction, until a permanent zoning solution could be worked out.

On Nov. 10, representatives on both sides appeared in front of the committee of the whole of the King County courthouse. Though the county's representatives hoped that the measure would come up for a vote immediately, the council finally agreed to postpone any decision.

Walter Pacheco, the community services coordinator for the Muckelshoot Tribe in his speech to the council, urged them to come to a decision that would show respect for tribal sovereignty.

Stressing the economic importance such a project would have in his community, he also cited a poll of registered voters that reported 51 percent believed the amphitheaters would be of benefit to the whole county.

"We are where the U.S. government put us and we are making the best of what we have," Mr. Pancheo said with evident emotion, "do not turn back the clock."

Mr. Pacheco concluded his remarks by invoking help from the Creator to come to a reasoned decision.

Jane Hague, committee chairwoman, agreed that the council would indeed need divine guidance in this matter.

Council members then asked questions of Norm Maleng, the attorney for the county, David Bricklin of the Citizens for Safety and Environment, and Mr. Pacheco.

The overall attitude of the council members emerged throughout the proceedings as being one of caution. Mr. Pullen in the minority, felt that the issue could not wait until next week.

Councilman Larry Gossett in particular voiced concern that the county was ignoring the importance of maintaining relations with the tribe. He asked the county's attorney, "Why can't we sit down, government-to-government, and talk about these problems?"

He also believed there was no proof put forth of an emergency environmental situation.

Citing "filmy information," councilman Larry Phillips emphasized that full understanding of the tribe's treaty rights was imperative in making an informed decision.

Councilwoman Maggi Fimea suggested a compromise wherein the county could tap into their transit resources to reduce congestion on the roads.

Many of the council members were troubled that the lawyer representing the tribe, was absent from the meeting due to illness and could not counter legal attacks.

Members of the public still had not had an opportunity to voice their opinions on the matter, either. The county executive office was not interested in issuing stop-work orders at this time and recommended talks between the tribe and the county before the next meeting.

"Time isn't of the essence," Mr. Pacheco said to reporters after the council decided to wait until next week.

He continued, saying that the tribe was prepared to sit down and talk, not to be hasty, but also not to halt the \$18 million project that represents a commitment by the whole tribe.

Mr. Bricklin, who represents approximately 8,000 people who signed a petition to stop the amphitheater, said he would meet with the tribe, depending on "how flexible," they were. If the county does not force the tribe to stop work on the project, Citizens for Safety and the Environment has threatened to sue.

The U.S. Supreme Court has held that counties may impose taxes and land-use regulations on certain lands within a reservation under certain circumstances.

Despite this, tribal members seem optimistic that the decision will go their way.

"It's a little bit unfair. The impact is not any worse than what they [the farmers] do," Iola Bill, a Muckelshoot elder, said in reference to the surrounding community's attacks on the construction.

She argued that agriculture results in polluted water and that the county should have taken care of the roads long ago.

"No matter how they paint the picture," she added "it's still racial (Ly motivated)."

Author : Laird, Lucy
Article Title : Muckleshoot fights for sovereign rights
Publication Name : Indian Country Today (Lakota Times)
Publication Date : 12-01-97
Page : p. A1

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Menominee Tribal Zoning Ordinance

The Menominee Tribe, located in northeast Wisconsin, enacted its comprehensive, detailed zoning ordinance in 1997. The ordinance specifies and limits uses in fifteen different zones and four overlay zones, with separate provision for conditional uses associated with each zone. Although the law is very long (131 pages), it includes seventeen helpful appendices which provide guides for obtaining various permits, variances, amendments, and appeals, as well as a "Quick Reference Chart of Permitted Land Uses." The guides are in question-and-answer format, making them accessible to the general public.

The Menominee designed their zoning ordinance for a relatively large reservation that is some distance from major urban centers. The reservation spans approximately 235,000 acres, nearly all of which is held in trust for the Tribe. More than 90% of this reservation territory is heavily forested, and the reservation also features abundant lakes, rivers, and streams. In addition, there are four communities and a tribal casino. The total reservation population is approximately 3,500.

The concisely stated purposes of the Menominee Tribal Zoning Ordinance are to protect environmental and natural resources, to prevent congestion, to insure compatible adjacent uses of land, to facilitate adequate provision of services, and to prevent harm to persons and property as a result of natural and human-made hazards. The Tribe asserts jurisdiction over all land and water within the reservation and all other lands held in federal trust for the Tribe. Because most of the reservation land is tribal trust land, there is little evidence of friction between the Tribe and its local county government related to zoning power. Zoning authority is most important for tribal lands that are leased to tribal members.

After an extensive set of definitions and a reservation-wide ban on facilities for sale of alcohol and adult bookstores, the Menominee Tribal Zoning Ordinance establishes fifteen different zones and four overlay zones. The overlay zones cut across districts, establishing more restrictive requirements in order to protect environmentally sensitive areas. For each zone, the ordinance identifies permitted principal uses, permitted principal structures, permitted accessory uses, permitted accessory structures, conditional uses (allowed with special permits), and dimension requirements. The zones are as follows:

- Single-Family Residential, with single-family housing and parks and playgrounds the only permitted principal uses;
- Single-Family Mobile Home, with single mobile homes and parks and playgrounds the only permitted principal uses;
- Low Density Multiple-Family Residential, with low density residential, single-family housing, and parks and playgrounds the only permitted principal uses;
- High Density Multiple-Family Residential, with multi-family housing and child care the only permitted principal uses;
- Single Family Rural Residential (where public sewer and water systems may not exist), with single-family housing and parks and playgrounds the only permitted principal uses;
- Tribal Institutional, where government services, health care, religious facilities, cemeteries, child care, and recreational and social programs are the permitted principal uses;
- Neighborhood Business, where various specified retail sales, professional, service, and commercial uses are permitted;
- General Business, where a broader range of retail sales, professional, service, and commercial uses is permitted;
- Utility-Industrial, where mill yard overflow, fire control, game management, and public utilities are the permitted principal uses;

- Exclusive Industrial, where a wide range of specified industrial and manufacturing uses is permitted;
- Exclusive Forestry, where forestry, fire control, recreational uses, and wildlife habitat are the only permitted principal uses;
- Exclusive Agriculture, where agriculture and single family housing are the only permitted principal uses;
- Conservancy, where uses are limited to recreation and wildlife habitat;
- Planned Unit Development, for multiple-use projects conceived and implemented as comprehensive and cohesive developments and designed to conserve open space
- Highway Access and Setbacks;
- Prohibited Development Overlay, where no structures are allowed and the only permitted uses are recreational, in order to preserve natural and cultural resources;
- Shoreland Overlay, where construction is sharply limited;
- Floodplain Overlay, where development is constrained in order to minimize damage from flooding, and special construction requirements apply;
- Wellhead Protection Overlay, designed to limit uses that would endanger the municipal water supply and well fields.

The Menominee Tribal Zoning Ordinance maintains flexibility, control, and public involvement through a system of conditional use permits, waivers, and variances. Conditional uses are specified separately for each zone. In addition, conditional use permits must be obtained for all large subdivisions, high-density multi-unit dwelling, mobile home parks, and campgrounds. In a particularly helpful passage, the Menominee Tribal Zoning Ordinance asserts that "The conditional use permitting process should inform public decision makers and private individuals on the environmental and economic effects of actions that have been proposed, increase the exchange of information among interested parties, lead to environmentally and economically sound projects, and be used as a planning tool for aspects of decision making."

To obtain a conditional use permit, applicants must ordinarily provide an impact evaluation report, which includes social, economic, and environmental consequences of the project, as well as possible alternatives. Applications are considered initially by the Tribe's Community Development Department, which conducts a review and generates comments. The Department then refers the application to a Committee of the Tribal Legislature, which holds a public hearing and then renders a decision. If the applicant wishes to appeal the Committee's decision, it must first present the appeal to the Committee, which then formulates a recommendation to the Tribal Legislature. Final disposition of the appeal is in the form of a resolution by the Tribal Legislature. (Section 34) There is no special provision for judicial review.

Unlike conditional uses, which are different for each zone, allowable waivers and modifications are identified across all districts. Waivers or modifications are allowed, without the need for a conditional use permit or variance, for a variety of specified purposes, including yard regulations, fences, recreational vehicles, and family day care homes.

Variances can be obtained under special conditions, where the literal enforcement of the zoning ordinance would cause unnecessary hardship, defined as "an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district, caused by facts such as rough terrain or soil conditions uniquely applicable to that particular piece of property..." (Sec. 34.020(C)(1)) Applications for variances are presented to the Community Development Department, considered by the Committee of the Tribal Legislature after notifying adjacent residents or leaseholders, and then finally resolved by a vote of the Tribal Legislature.

Enforcement of the Menominee Tribal Zoning Ordinance begins with investigations by the Community Development Department and notice to responsible parties that violations should be halted or remedied. If an alleged violation is not remedied within the specified time period, the

Tribe's Prosecuting Attorney's Office may initiate proceedings for forfeiture and/or injunction. If a forfeiture is not paid, the violator is confined for a period up to six months, or until the amount is paid. And if such proceedings are ineffective to halt violations, the Community Development Department may proceed with lease cancellation. Forfeiture amounts are specified for a variety of different violations. There is no clear indication that the monetary forfeitures represent civil rather than criminal penalties, raising the possibility that non-Indians may challenge the Tribe's jurisdiction under the Supreme Court's Oliphant decision.

ORDINANCE # 87-32
ZONING

MENOMINEE NATION
MENOMINEE TRIBAL LEGISLATURE
AMENDMENT TO TRIBAL ORDINANCE NO. 87-32
ZONING AND MAPS

FINAL APPROVAL:

BE IT ORDAINED BY THE LEGISLATURE OF THE MENOMINEE INDIAN TRIBE OF WISCONSIN:

Tribal Ordinance No. 87-32, entitled "Zoning and Maps" is amended as follows which is incorporated into the ordinance:

"Strike Subsection 23.010 and substitute the following:

"SECTION 23. Subsection 23.010 General Provisions

B. Boundaries.

1. The boundary of the floodplain districts and, where shown, the floodway and the flood fringe districts shall be those areas designated as 100 Year Flood Plain Ice Jam on the Flood Plain Delineation Map/Flood Insurance Rate Map. Map developed by the U.S. Army Corps of Engineers dated November 1995 for the part of the Reservation within Township 28 North, Range 15 East of the State of Wisconsin."

End of Amendment

CERTIFICATION

We, the undersigned officers of the Menominee Tribal Legislature, do hereby certify that the foregoing amendment to Tribal Ordinance No. 87-32, entitled "Zoning and Maps", was approved at a regular meeting of the Menominee Tribal Legislature held on May 21, 1998, at which a quorum was present, by a vote of 5 for, 0 opposed, 0 abstentions, and 3 absent.

We further certify that this ordinance has been posted in accordance with the Constitution and ByLaws of the Menominee Indian Tribe of Wisconsin.



APESANAHKWAT, CHAIRMAN
MENOMINEE INDIAN TRIBE OF WISCONSIN



LISA WAUKAU, SECRETARY
MENOMINEE INDIAN TRIBE OF WISCONSIN

DATE: May 21, 1998



MENOMINEE INDIAN TRIBE OF WISCONSIN

MENOMINEE TRIBAL LEGISLATURE

ORDINANCE NUMBER 87-32

Amended January 9, 1997

MENOMINEE TRIBAL ZONING ORDINANCE



MENOMINEE NATION
MENOMINEE TRIBAL LEGISLATURE
AMENDMENT TO ORDINANCE 87-32
ZONING & MAPS

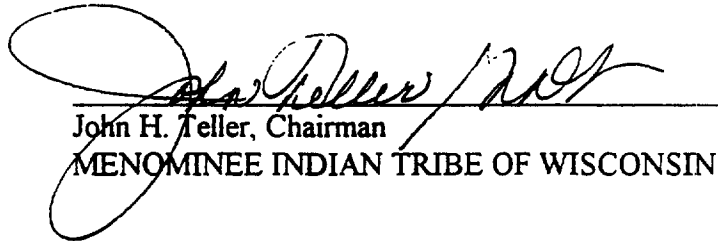
FINAL APPROVAL

BE IT ORDAINED BY THE LEGISLATURE OF THE MENOMINEE INDIAN TRIBE
OF WISCONSIN:

Pursuant to the authority vested in the Menominee Tribal Legislature by the Menominee
Constitution and Bylaws, the Zoning Plan & Maps, as amended and attached hereto and
incorporated herein, is enacted into tribal law.

CERTIFICATION

The Undersigned Officers of the Menominee Tribal Legislature hereby certify that the
attached ordinance was duly ADOPTED at a Special Meeting held on January 9, 1997
by a vote of 5 for, 4 opposed, 0 abstentions and 0 absent. The Undersigned also
certify that the ordinance has been posted in accordance with the Menominee Constitution
and Bylaws.



John H. Teller, Chairman
MENOMINEE INDIAN TRIBE OF WISCONSIN

Date: January 9, 1997



Leslie Penass, Secretary
MENOMINEE INDIAN TRIBE OF WISCONSIN

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SECTION 1. PURPOSE, INTENT AND NATURE OF THE ORDINANCE

1.001 Authority. The Menominee Tribal Legislature is the legally constituted governing body of the Menominee Indian Tribe with all governmental powers vested in it in accordance with Article I and III of the Menominee Constitution and Article II, Section 2, paragraph (g) of the Bylaws of the Constitution of the Menominee Tribe.

1.010 Title. This ordinance shall be known as the "Menominee Tribal Zoning Ordinance."

1.020 Purpose. It shall be the purpose of this Ordinance, through the regulation of the use of lands and structures, through the establishment of physical standards, through the creation of separate zoning districts and through the mechanisms provided herein for the enforcement and administration to:

- A. To promote the public health, safety, comfort, convenience and general welfare of the citizens of the Menominee Indian Tribe;
- B. To protect and conserve the environmental and natural resources such as forests, wetlands, surface and groundwater, by conserving the most appropriate use of land;
- C. To prevent the overcrowding of land and undue congestion of population;
- D. To provide adequate light, air, and convenient access to property by regulating the use of land and buildings and the bulk of structures in relationship to surrounding properties;
- E. To facilitate adequate and economic provisions of services such as roads, water and sewer, schools, and police and fire protection;
- F. To encourage the use of land and buildings which are compatible with nearby existing and planned land uses, and to prohibit and control existing land uses deemed incompatible with nearby land uses.
- G. To prevent harm to persons and property by flood, fire, explosion, toxic fumes or other hazards.

1.030 Jurisdiction. The jurisdiction of this Ordinance shall apply to all land and water within the exterior boundaries of the Menominee Indian Reservation and all other lands held in federal trust for the Menominee Indian Nation.

1.040 Relation to the Land Use and Natural Resource Plan. It is the policy of the Menominee Indian Tribe that the enactment, amendment and administration of this Ordinance shall be accomplished with due consideration of the purposes and goals of the Land Use and Natural Resource Plan adopted on October 25, 1984, as amended from time to time, and other land use plans adopted by the Tribe, such as a recreation plan. The Tribal Legislature recognizes that the Land Use and Natural Resource Plan and its amendments is a guide for the future development for the Tribe.

1.050 Nature of the Zoning Ordinance. The Menominee Tribal Zoning Ordinance shall consist of original official zoning maps and current official zoning maps designating various use districts in conjunction with this Ordinance, the combination of which shall control the uses of land, the bulk of structures and dimensions of lots or building sites and yards, the location and size of signs and the number and location of off-street parking and loading facilities.

- A. Original Official Zoning Maps. Each of the initial zoning district map or set of maps shall be entitled "Original Official Zoning Map," and dated. Each map shall be made part of this Zoning Ordinance and adopted by the Tribal Legislature. The original official zoning map or maps shall be kept in the Department, and shall not be changed. Such maps shall be used for reference purposes only when there is a need to determine the original applicable zoning.
- B. Current Official Zoning Maps. One or more sets of zoning entitled "Current Official Zoning Maps," shall be made available for public reference in the Department. All amendments to the district boundaries or any other feature of the map shall be placed upon such maps by the Department promptly after each amendment has been adopted by the Tribal Legislature and is made part of this Zoning Ordinance.

SECTION 2. RULES AND DEFINITIONS

2.010 Rules of General Construction. The following rules of construction shall be applied in this Ordinance:

- A. The present tense includes the future tense, and the singular includes the plural.
- B. The word "shall" is mandatory, the word "may" is permissive.
- C. All measured distances shall be to the nearest integral foot or meter and increments of one-half or more of a foot or meter shall cause the next highest foot or meter to be applied.
- D. The word "person" includes a family, firm, association, organization, governmental entity, partnership, trust, company, corporation as well as an individual.
- E. The words "used" or "occupied" also mean intended, designed, or arranged to be used or occupied.
- F. As to the herein contained words, the following construction shall apply. The term "structure" shall include any part thereof; the phrase "use for" shall include "arrange for;" the word "lot" shall include the words "parcel," "plot," "site," "zoning lot," and "tract," unless the context clearly dictates otherwise.

2.020 Definitions. The following definitions shall apply in this Ordinance unless the context clearly dictates otherwise:

1. "**A-Zones**" means those areas shown on the official floodplain zoning map as inundated by the base flood or regional flood (see definition #140 "Regional Flood"), numbered as A0, A1 to A30, A99, or as un-numbered A-Zones. A-Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
2. "**Access Road**" means a road designed to provide vehicular access to abutting property and to discourage, if not prevent, through traffic.
3. "**Adult Book Store**" means an establishment having as a predominate portion of its stock in trade, books, magazines and other periodicals, video cassettes, or films which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "Specified Anatomical Areas" (see definition #161) or "Specified Sexual Activities" (see definition #162).
4. "**Adult Entertainment Facility**" means an enclosed building which is significantly or substantially used for presenting live strip-tease acts, live sexual acts, motion picture films, video cassettes, cable television or any other such visual media, distinguished or characterized by their emphasis on matter depicting, describing, or relating to "Specified Anatomical Areas" (see definition #161) or "Specified Sexual Activities" (see definition #162) for observation and/or participation by patrons therein.
5. "**Agriculture**" means the production, keeping, or maintenance, for sale, lease, or personal use, or plants and animals useful to culture and society, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery, floral, ornamental, and greenhouse products; or lands devoted to a soil conservation.

6. "Alley" means a public way used as a secondary vehicular access to the side or rear of abutting property.
7. "Animal Boarding Facility" (See definition #91 "Kennel.")
8. "Apartment" means a room or rooms in a multiple dwelling structure or multiple use structure intended to be used as a separate housing unit.
9. "Aquifer" means the rocks which hold groundwater and from which significant quantities of groundwater (see definition #78 "Groundwater") can be extracted.
10. "Army Corps of Engineers [ACOE]" means a federal regulatory agency governing navigable waters (see definition #109 "Navigable Water") and wetlands (see definition #184 "Wetlands").
11. "Automotive Gasoline Station" means a business whose principal activity is the sale of gasoline, oil, and other automotive products, and the accessory of minor tune-up and repair work.
12. "Automotive Repair Service" means a business whose principal activity is body or engine repairs, or painting of motor vehicles.
13. "Automotive Sales and Service" means a business whose principal activity is the sale of new or used motor vehicles and the performance of repair work as an integral part of the business.
14. "Barn" means a structure used primarily for the storage of agricultural equipment and implements and/or livestock.
15. "Base Flood" means a flood having a one percent (1%) chance of being equalled or exceeded in any given year.
16. "Base Flood Elevation" means an elevation equal to that which reflects the height of the base flood (see definition #15 "Base Flood").
17. "Basement" means a portion of a building with the floor located below the mean grade level. For the purposes of this Ordinance, any such basement with more than four (4) feet above grade level shall be counted as a story.
18. "Bed and Breakfast Establishment" means any place of lodging that provides four (4) or fewer rooms for rent for more than ten (10) nights in a twelve (12) month period; is owner-occupied; and in which the only meal served to guest(s) is breakfast.
19. "BIA" means the Bureau of Indian Affairs of the Department of the Interior.
20. "Block" means a platted tract of land bounded by streets or by a combination of streets and public parks or other recognized lines of demarcation.
21. "Boarding House" means an owner-occupied dwelling where lodging and meals are furnished for compensation for three (3) or more persons not members of the same family.
22. "Boathouse" means a structure at or near the water to house boats or boating accessories.
23. "Building" means a structure, including a roof supported by walls designed or built for the support, enclosure, shelter, or protection of persons, animals, possessions, or property of any kind.
24. "Bulkhead Line" means a geographic line along a reach of navigable water (see definition #109 "Navigable Waters") that has been adopted by an ordinance and approved by the Menominee Tribal Conservation Department, and which allows complete filling on the landward side except where such filling is prohibited by the floodway provisions of this Ordinance.
25. "Cemetery" means a parcel of land used for the burial and/or entombment of deceased persons pursuant to cultural or religious protocol, as well as health and safety regulations.

26. "**Cemetery Structures**" means all structures used in conjunction with a cemetery use (see definition #25 "Cemetery"). Such structures include, but not limited to, mausoleums, statues, memorial markers (see definition #103 "Memorial Marker"), worship/ceremonial buildings, and grounds keeping building.
27. "**Certificate of Occupancy**" means a certification by the Department, stating that the use of land, and the use and location of structures conforms to the provisions of this Ordinance and any additional requirements placed on the property through the Conditional Use or Variance procedures.
28. "**Channel**" means a natural or artificial watercourse with definite bed and banks which confine and conduct normal flow of water.
29. "**Church**" means a building designed or used as the principal place of worship of a religious organization or congregation along with association uses such as fellowship rooms, and "Sunday School" rooms. The term church includes temple, synagogue, etc., but does not include elementary or secondary schools, day care centers or seminaries.
30. "**Clinic**" means an establishment of physicians or dentists for the examination and treatment of persons on an exclusive out-patient basis.
31. "**Clinic, Veterinarian**" means an establishment for the examination and treatment of animals.
 - a. "**Without Outside Runs**" means such a clinic with no facilities to house or exercise animals outside of the clinic.
 - b. "**Full Veterinarian Services**" means that outdoor sheltering and exercising facilities are available.
32. "**Committee**" means the Committee of the Tribal Legislature assigned to make recommendations regarding land use situations.
33. "**Community Based Residential Facility [CBRF]**" means a place where three (3) or more unrelated adults reside in which care, treatment or services above the room and board level but not including nursing care are provided to persons residing in the facility as a primary function of the facility.
34. "**Community Living Arrangement**" means, but not limited to, any of the following facilities licensed and operated, or permitted under the authority of the Department: child welfare agencies, group homes for children, and community based residential facilities; but, however, does not include day care centers, general hospitals, special hospitals, prisons, and jails.
35. "**Community Water System**" (see definition #108 "Municipal Water System.")
36. "**Conditional Use**" means a use, either public or private which because of its unique characteristics, cannot properly be classified as an approved or permitted use in a particular district. Based on the facts in each case, the impact of the proposed use upon neighboring lands and the public need for that particular use at that particular location, the Committee may recommend to the Tribal Legislature to grant such a use, subject to standards and conditions as may be deemed appropriate and necessary.
37. "**Day Care Center**" means a facility used for the care of pre-school or school age children which meets the requirements of a day care center formulated by the Wisconsin Department of Health and Social Service.
38. "**Department**" means the Community Development Department and is distinguished within this Ordinance by the capitalization of the first letter ["the Department"], unless the context clearly defines otherwise.

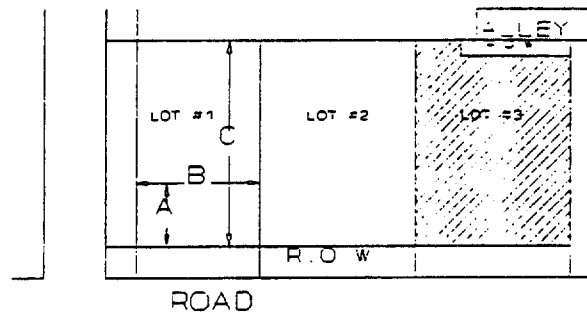
39. **"Departments"** means the Community Development Department and all other Tribal programs and departments and is distinguished in this Ordinance by a lower-case first letter ["departments"].
40. **"Development"** means any man-made change to improved or unimproved real estate, including but not limited to construction of or additions or substantial improvements to buildings, other structures, or accessory uses, the placement of mobile homes, mining, dredging, filling, grading, paving, excavation, drilling operations, or deposition of materials.
41. **"Discharge Outfall Structure"** means a man-made water source such as a sewage treatment facility.
42. **"District"** means a specific area designated with reference to this Ordinance and the Official Zoning Maps within which the regulations governing the use and erection of structures and the use of premises are uniformly applied.
43. **"Drainageway"** means a natural or artificial watercourse including, but not limited to, streams, rivers, creeks, ditches, channels, canals, conduits, culverts, waterways, gullies, ravines, or washes in which water flows in a definite direction or course, either continually or intermittently, or in which run-off water accumulates permanently or temporarily, including any adjacent area subject to inundation by overflow or floodwater.
44. **"Driveway"** means a private roadway providing access to a street, road, or highway.
45. **"Duplex"** means a residential structure containing two (2) dwelling units (see definition #46.b. "Dwelling Unit, Low Density Multiple Family").
46. **"Dwelling Unit"** means a residential structure or portion thereof, containing separate and complete living area, for one family, not including boarding houses, camping trailers, hotels, motor homes, or motels.
 - a. **"Single Family Dwelling Unit"** means a residential structure containing only one dwelling unit.
 - b. **"Low Density Multiple Family Dwelling Unit "** means a residential structure containing two (2) to four (4) individual dwelling units (see definition #45 "Duplex" and definition #133 "Quad-plex").
 - c. **"High Density Multiple Family Dwelling Unit"** means a residential structure containing more than four (4) individual dwelling units.
47. **"Dryland Access"** means a vehicular access route which is above the regional flood (see definition #140 "Regional Flood") elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles.
48. **"Easement"** means a grant of one or more of the property rights by the property owner to and/or for the use of the public, a corporation, or another person or entity.
49. **"Encroachment"** means any obstruction or illegal or unauthorized intrusion in a delineated floodway, right-of-way, or on adjacent land.
50. **"Enforcement"** means the administration of citations and penalties in order to compel a violator to adhere to the ordinance

51. "Essential Services" means services provided by public and private utilities, necessary for the exercise of the principal, accessory, or conditional use or service of a principal, accessory, or conditional structure. These services include underground, surface, or overhead gas, electrical, steam, water, sanitary sewerage, storm water drainage, and communications systems and accessories thereto, such as poles, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, conduits cables, fire alarms, lift stations, and hydrants, but not including buildings and structures.
52. "Family Day Care Home" means a dwelling licensed as a home occupation day care center by the Department of Health and Social Services, where care is provided for not more than eight (8) children.
53. "Fast Food Establishment" means a restaurant as identified under definition #143 "Restaurant," but the business specializes in food that can be prepared and served quickly, usually a franchise operation (i.e. McDonald's, Dairy Queen, etc.).
54. "FEMA" means the Federal Emergency Management Agency.
55. "FIA" means the Federal Insurance Admistration.
56. "Filling, Dredging, Grading, Lagooning, Ditching, Excavating" means alterations to any navigable water (see definition #109 "Navigable Waters") and/or wetland (see definition #184 "Wetlands") by either removing from or adding to the water's banks or bed natural or man-made materials.
57. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas and from the overflow of inland waters, or the unusual and rapid accumulation of run-off of surface waters from any source.
58. "Flood Frequency" means the probability of a flood occurrence. A flood frequency is generally determined from statistical analysis. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years, or as a percent (%) chance of occurring.
59. "Floodfringe" means that portion of the floodplain outside of the floodway which is covered by floodwaters during the regional flood (see definition #140 "Regional Flood") and generally associated with standing rather than rapidly flowing water.
60. "Flood Hazard Boundary Map" means a map prepared by FEMA, designating areas of special flood hazard within a given community as A-Zones, and forming the basis for both the regulatory and insurance aspects of the National Flood Insurance Program. To be used as the "Official Floodplain Zoning Map (see definition #116)" for this Ordinance.
61. "Floodplain" means the portion of a river valley, adjacent to the channel and has been or may hereafter be covered with water when the river overflows its banks at flood stages.
62. "Flood Profile" means a graph or a longitudinal profile showing the relationship of the water surface elevation of a flood event to locations along the stream or river.
63. "Floodproofing" means any combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the purpose of reducing or eliminating flood damage to properties, water and sanitary facilities, and structures and contents of buildings in flood hazard areas.
64. "Flood Protection Elevation" means a point two (2) feet of freeboard (see definition #70 "Freeboard") above the water surface profile associated with the regional flood (see definition #140 "Regional Flood") and the official floodway lines.
65. "Floodway" means those floodlands, including the channel, required to carry and discharge the regional flood (see definition #140 "Regional Flood").

66. **"Floor Area"** means the sum of the usable horizontal area of the several floors of a building as measured from the exterior walls, including interior balconies and mezzanines, elevator shafts, stairwells and utility rooms, but not including basements, garages, breezeways and unenclosed porches.
67. **"Floor Area Ratio"** means the gross floor area of all buildings or structures on a lot divided by the total lot area.
68. **"Flowages"** (see definition #43 "Drainageway.")
69. **"Foundation"** means the underlying base or support of a building especially the masonry sub-structure, such as a basement or crawlspace.
70. **"Freeboard"** means a factor of safety usually expressed in terms of a certain amount of feet above a calculated flood level, compensating for the many unknown factors that contribute to flood heights greater than the height calculated, including, but not limited to, ice jams, dams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, and loss of flood storage areas due to development and grading/leveling of the river or stream bed.
71. **"Frontage"** means the width of a lot as measured on a public street, road, or highway and having access to said street, road, or highway.
72. **"Four Lane Divided Highway"** means a thoroughfare which has at least two (2) lanes for each direction, which are separated by a median or barrier.
73. **"Garage, Municipal"** means a structure or portion thereof owned and operated by a municipality for parking, storing, and maintaining exclusively municipal vehicles.
74. **"Garage, Private"** means an accessory structure or portion of a principal structure utilized for the private storage motor vehicles.
75. **"Garage, Public"** means a structure or portion thereof, whether privately or municipally owned, where motor vehicles of the general public are stored for compensation or for free.
76. **"Greenhouse"** means a structure exclusively used for the cultivation of plants in which natural sunlight is allowed to enter through transparent material and temperature and humidity are controlled.
77. **"Greenhouse, Commercial"** means a structure from which plants, seeds, trees, and those items related to cultivation are sold, traded, or bartered to the public.
78. **"Groundwater"** means the water that fills or saturates consolidated or unconsolidated formations in the subsurface environment below the water table.
79. **"Habitation"** means a fixed place of residence.
80. **"Heavy Industrial Uses"** means, but not limited to, the following: chrome plating, bottling, clothing manufacturing, slaughter house, paper and wood product manufacturing and storage, machine shop, metal fabrication, processing, and welding.
81. **"High Flood Damage Potential"** means damage that could result from flooding that includes any danger to life or health or significant economic loss to a structure or building and its contents.
82. **"Home Occupation"** means a gainful occupation customarily conducted within a dwelling or accessory building by the residents thereof, which is clearly secondary to the residential use and does not change the character of the structure as a residence.
83. **"Hospital"** means an establishment of physicians for the examination and treatment of persons on an emergency, out-patient, and/or in-patient basis.
84. **"Hotel"** (See definition #106 "Motel and Hotel.")

85. "**Hydraulic Reach**" means that portion of the river or stream extending from one significant change in the hydraulic character of the river or stream to the next significant change, usually associated with breaks in the slope of the water surface profile, and may be caused by bridges, dams, expansion and contraction of the water flow, and changes in stream bed slope and vegetation.
86. "**Increase in Regional Flood Height**" means a calculated upward rise in the regional flood elevation, equal to or greater than one-one hundredth (0.01) of a foot, resulting in comparison of existing conditions and proposed conditions which are directly attributable to displacement caused by development in the floodplain. By this definition an increase cannot be attributed to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients, and discharge.
87. "**Institution**" means an organization, either public or private, dedicated to serving the public interest, generally a non-profit organization.
88. "**Improvement**" means any permanent structure that becomes part of, placed upon, or is affixed to real estate.
89. "**Junk Yard**" means any establishment or premises where worn out or discarded materials, whether purchased, donated, or abandoned are kept, or where two (2) or more unlicensed motor vehicles, operable or inoperable, are kept or stored either for purposes of sale or otherwise. It is the intent of this definition to enhance the definitions of Tribal Ordinance 87-19 (Junk Yard Ordinance).
90. "**Junkyard Materials**" means, but not limited to, the following: waste paper, scrap metal, rags, bottles, machines and machine parts, motor vehicles and motor vehicle parts, and uses or secondhand items. It is the intent of this definition to enhance the definitions of Tribal Ordinance 87-19 (Junk Yard Ordinance).
91. "**Kennel**" means a place where four (4) or more dogs over the age of three (3) months are boarded, bred, or offered for sale.
92. "**Lease**" means a contract by which the Tribe conveys real estate and/or facilities for a specified term and for a specified fee and specified use.
93. "**Leaseholder**" means the individual receiving, and therefore responsible for, real estate from the Tribe via a lease (see definition #92 "Lease").
94. "**Light Industrial Uses**" means, but not limited to, the following: carpentry, woodworking, bottled gas storage and distribution, radio and television broadcast transmission functions, highway maintenance facilities, plumbing fixture and equipment wholesale, and welding supply wholesale.
95. "**Limited Access Highway**" means a thoroughfare which is normally entered and exited by a ramp system and is usually characterized by continuous speed limits of forty-five (45) miles-per-hour or greater and a lack of traffic stopping mechanisms (i.e. traffic lights, stop sign, railroad crossings). A specific example of Limited Access Highways is the Federal Interstate Highway System.


96. "Lot" means a parcel of land, legally platted which is occupied or designed to provide space for one principal structure and approved uses, including the open space required by this Ordinance.
- "Corner Lot" means a lot situated at the intersection of two (2) streets, roads, and/or highways.
 - "Interior Lot" means a lot with frontage on only one (1) street, road, or highway.
 - "Through Lot" means a lot other than a corner lot with frontage on two (2) streets, roads or highways.
97. "Lot Area" means that area located within lot lines, not including any part of a street, highway, alley, or railroad right-of-way or access easement.



LOT #1 - Corner Lot A=Front Yard Setback

LOT #2 - Interior Lot B = Lot Width

LOT #3 - Through Lot C = Lot Depth

 Lot Area of Lot #3

98. "Lot Depth" means the shortest horizontal distance between the front lot and the rear lot line measured at a ninety (90) degree angle from the road right-of-way.
99. "Lot Width" means the horizontal distance between the side lot lines along the entire length of the front yard setback line as delineated in Section 20 - Highway Access and Setbacks.
100. "Lot of Record" means a lot which has been legally created prior to the effective date of this Ordinance.
101. "Manicured Lawn" means a yard which is kept intact with the use of applications of herbicides, pesticides, and fertilizers.
102. "Manufactured Home" means a factory built structure that is manufactured or constructed under the authority of the National Manufactured Home Construction and Safety Standards Act (42 U.S.C Section 5401), and shall be used for human habitation. Such a structure is not constructed or equipped with a permanent hitch or other device allowing it to be moved, other than for the purposes of moving to a permanent site; and shall not have a permanently attached to its body or frame any wheels or axles. A mobile home (see definition #104 "Mobile Home") is not a manufactured home.
103. "Memorial Marker" means a monument, plaque, or artifact placed to serve as a reminder of past events or persons.

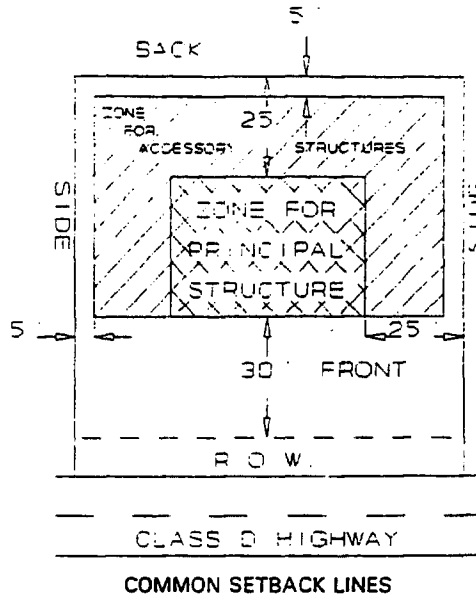
104. **"Mobile Home"** means a portable structure with a permanent chassis and axles designed to be towed as a single unit, or in sections, upon a highway and is equipped, used or intended to be used primarily as a single family dwelling; with walls of rigid, uncollapsible construction; and which has an overall length in excess of forty-five (45) feet.
105. **"Mobile Home Park"** means a single parcel on which is provided the required space for the accommodation of two (2) or more mobile homes, together with the necessary accessory buildings, driveways screening and other requirements of Section 6 (Single Family Mobile Home District) and Section 33 (Modifications, Exceptions, and Special Requirements).
106. **"Motel and Hotel"** means a structure or group of structures containing rooms which are offered to travelers for temporary accommodations in exchange for compensation.
107. **"Motor Vehicle"** means, but not limited to, the following: any watercraft, automobile, truck, motorcycle, trailer, semi-trailer, travel trailer, snowmobile, all-terrain vehicle, bus, or other motorized or mobile vehicle.
108. **"Municipal Water System"** means a public water system that pipes water for human consumption to at least fifteen (15) service connections used by year round residents, or a system that regularly serves at least twenty-five (25) year round residents.
109. **"Navigable Waters"** means all natural inland lakes, flowages and any other waters which have a bed and banks, and in which it is possible to float a canoe or other small craft at sometime of the year; even if only during spring floods, within the territorial limits of this Ordinance (see definition #184 "Wetlands" for comparison).
110. **"Net Acreage"** means the gross area less land dedicated for public streets.
111. **"Nonconforming Lot"** means a lot of record which does not meet the minimum area, depth, width, or frontage required by this Ordinance.
112. **"Nonconforming Structure"** means a structure which existed on the date of adoption of this Ordinance or amendments thereto, which does not conform to the yard, parking, loading, height, and access requirements of this Ordinance.
113. **"Nonconforming Use"** means the use of land, water, or structures existing at the time of the adoption of this Ordinance or amendments thereto, which does not meet the requirements of this Ordinance and which have been continually maintained.
114. **"Obstruction to Flood"** means any development (see definition #40 "Development") which physically blocks the conveyance of floodwaters such that this development by itself or in conjunction with any future similar development will cause an increase in the regional flood height.
115. **"Occupied"** means the use of a structure originally designed for human habitation on a permanent basis for a specified purpose.
116. **"Official Floodplain Zoning Map"** means that "Flood Hazard Boundary Map (see definition #60)," adopted and made part of this Ordinance, which has been approved by the FIA office of FEMA.
117. **"Official Letter of Map Amendment"** means the official notification from the FIA office of FEMA that a flood hazard boundary map or flood insurance study map has been amended.

118. "**Official Zoning Map, Current**" means the original Official Zoning Map approved by the Tribal Legislature on January 9, 1997 (see definition #119 "Official Zoning Map, Original") and all subsequent amendments and used by the Department for determining appropriate districts.
119. "**Official Zoning Map, Original**" means the first zoning map approved by the Tribal Legislature on January 9, 1997 and used for historical purposes by the Department to understand the original intent of the zoning districts.
120. "**Open Space Use**" means those uses having a relatively low flood damage potential and not involving structures.
121. "**Outhouse**" means an accessory structure (see definition #168.a "Accessory Structure") that is an outdoor toilet facility designed without a sewage treatment and disposal system. Another common name is "Privy."
122. "**Panalized Home**" means a factory build structure that is shipped in small sections to the site, such as wall by wall or room by room; as opposed to a manufactured home (see definition #102 "Manufactured Home") or a mobile home (see definition #104 "Mobile Home") which are towed as a single or bisected unit and are placed on site.
123. "**Parking Area**" means a portion of a lot with access to a street or alley, which is suitably surfaced and maintained for the temporary storage of motor vehicles, but not including the display of vehicles for sale.
124. "**Parking Space, Off Street**" means a space containing parking area or a stall in a private garage.
125. "**Parks and Playgrounds**" means public areas usually characterized by open space; outdoor, recreational equipment for children (i.e. swings, slides, sandboxes, etc.); and/or memorial markers (see definition #103 "Memorial Markers").
126. "**Planned Unit Development [PUD]**" means a lot or tract of land containing two (2) or more principal buildings or uses developed as a unit where such buildings or uses may be located in relation to each other rather than to a lot line or zoning district.
127. "**Platted**" means the recording of a lot by a certified survey map.
128. "**Porch**" means a roofed open area, which may be screened, usually attached to or part of and with direct access to or from a building. A porch shall also have the window area greater than the wall area and shall not be climate controlled, such as heat and/or air conditioned.
129. "**Private Sewage System**" means a sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. This term may also apply to an alternative sewage system approved by the Tribal Legislature such as a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) structure, or a system located on a different parcel than the structure.
130. "**Professional Office**" means the office of one engaging in a occupation requiring specialized knowledge and often long and intensive academic preparation, including but not limited to offices of doctors of medicine or dentistry, architects, engineers, attorneys, musicians, or artists.
131. "**Provisions**" means stipulations and requirements to be satisfied prior to approval or for continuance of approval of the use and/or structure.
132. "**Public Utilities**" means those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer, and storm sewer.

133. "**Quad-plex**" means a residential structure containing four (4) dwelling units (see definition #46.b "Dwelling Unit, Low Density Multiple Family").
134. "**Quarter Section and Quarter-Quarter Section**" means a division of a section of land according to the rules of the original United States Government Public Land Survey System.
135. "**Quasi-Public Uses**" means those facilities which are partially public in nature such as churches, and schools.
136. "**Recharge**" means the source of groundwater (see definition #78 "Groundwater") from precipitation or surface water that percolates down into the aquifer (see definition #9 "Aquifer").
137. "**Recharge Area**" means permeable deposits directly overlying the aquifer (see definition #9 "Aquifer").
138. "**Recreational Vehicle**" means a vehicular-type portable structure without permanent foundation that can be towed, hauled, or driven and primarily designed as a temporary living accommodation for recreational, camping, and travel use and including, but not limited to, travel trailers, truck campers, camping trailers, and self-propelled motor homes.
139. "**Recycling Drop-Off Station**" means a facility consisting of appropriate storage containers designed to accept a limited volume of recyclable materials from households, including aluminum food and beverage containers, glass food and beverage containers, magazines or other material printed on similar paper, newspapers or other material printed on newsprint, kraft paper (e.g. paper grocery bags), corrugated cardboard, office paper, plastic food and beverage containers, steel or bimetal food or beverage containers, and waste tires, that are intended to be stored temporarily in the containers provided before being taken to a Resource Recovery Facility (see definition #141 "Resource Recovery Facility") or Resource Recovery Processing Facility (see definition #142 "Resource Recovery Processing Facility"). Sorting, shredding, crushing, baling or other separation, other than that required of residents using a Recycling Drop-Off Station to separate recyclable materials for placement in appropriate containers, shall be prohibited. A Recycling Drop-Off Station can be a permitted or an accessory use except when the facility accepts waste tires and then it shall be a conditional use. Also a form of a waste transfer site according to Tribal Ordinance 92-11 (Solid Waste Disposal).
140. "**Regional Flood**" means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of the like physical characteristics. The flood frequency (see definition #58 "Flood Frequency") of the regional flood is once in every one hundred (100) years; this means that in any given year there is one percent (1%) chance that the regional flood may occur or be exceeded.

141. **"Resource Recovery Facility"** means a building in which collected recyclables from residential and commercial sources, including aluminum food and beverage containers, glass food and beverage containers, magazines or other material printed on similar paper, newspapers or other material printed on newsprint, kraft paper (e.g. paper grocery bags), corrugated cardboard, office paper, plastic food and beverage containers, steel or bimetal food or beverage containers, or other incidental recyclable items that may be delivered from time to time provided no dismantling is necessary according to market requirements and in which the incoming recyclables are sorted, shredded, crushed, baled, or otherwise separated and processed using equipment not to exceed fifteen (15) horsepower, for later shipment to markets. All activities that take place at a Resource Recovery Facility shall take place inside the building including recyclables; none of these activities shall be allowed outdoors. Dismantling, salvaging, crushing, or storage of motor vehicles, machinery, or appliances, or the processing or storage of decomposable, hazardous or toxic wastes are prohibited. Also a form of a waste transfer site according to Tribal Ordinance 92-11 (Solid Waste Disposal).
142. **"Resource Recovery Processing Facility"** means a Resource Recovery Facility which collects from residential, commercial, and industrial sources where equipment of any horsepower may be used, outdoor storage may be allowed, and where dismantling of separate motor vehicles parts or components and separate machinery parts or components may be allowed. Resource Recovery Processing Facilities may be allowed in conjunction with Salvage Yards (see definition #149 "Salvage Yards").
143. **"Restaurant"** means a business structure consisting of a kitchen and separate dining area, whose primary purpose is to prepare and serve food to be consumed on the premises.
144. **"Restaurant, Drive-In"** means a business establishment consisting of a kitchen, with or without a dining room, where a portion of the food is sold is eaten either off the premises or within automobiles on the premises.
145. **"Right-of-Way"** means a strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, crosswalk, railroad, electrical transmission lines, oil or gas pipeline, water line, sanitary storm sewer, and other similar uses.
146. **"Right-of-Way Lines"** means the lines that form the boundaries of a right-of-way (see definition #145 "Right-of-Way").
147. **"Riprap"** means large fragments of broken rock, thrown together irregularly (as offshore or on a soft bottom of a water body) or fitted together (as on the downstream face of a dam). Its purpose is to prevent erosion by waves or currents and thereby preserve a surface, slope, or underlying structure. It is used for irrigation channels, river-improvement works, spillways at dams, and sea walls for shore protection.
148. **"Rural Area"** or **"Rural Community"** means a sparsely developed area, with a population density of less than one hundred (100) persons per square mile and where the land is undeveloped or primarily used for agricultural purposes (see definition #5 "Agriculture") and/or forestry management program.
149. **"Salvage Yard"** means any establishment or premises where motor vehicles or other materials are collected for the purposes of dismantling, salvaging, or demolition. Refer to Tribal Ordinance 87-19 (Junk Yard Ordinance).
150. **"Seasonal Structure"** means a structure used occasionally or periodically for a period not to exceed six (6) months of a calendar year.

151. "Setback Lines" means lines established parallel to right-of-ways, lot lines, or water bodies for the purpose of defining limits within which structures, buildings, or uses must be constructed, maintained, or confined.

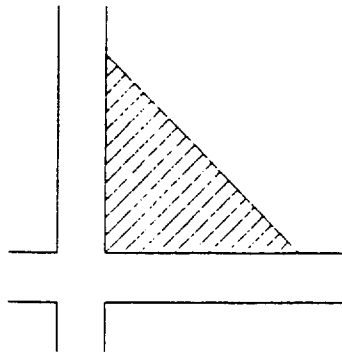


152. "Shed" means an accessory structure (see definition #168.a "Accessory Structure"), not to exceed one hundred forty-four (144) square feet, used primarily for the storage of material accessory to the primary use, excluding the storage of motor vehicles as in a private garage (see definition #74 "Garage, Private").
153. "Shorelands" means lands within the following distances from the ordinary high water mark of navigable waters (see definition #109 "Navigable Waters"): one thousand (1,000) feet from a lake, pond, or flowage; five hundred (500) feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
154. "Sign" means any structure or natural object or part thereof, device attached thereto, or printed thereon which is intended to attract attention to any object, product, place, activity, person, institution, organization, or business. Such a display shall include any letter, word, model, banner, flag, pennant, insignia, device, or representation, used as an announcement, direction, or advertisement.
- a. "Advertising (Off-Premise)" means a billboard, poster panel, painted bulletin board, or other sign which is used to advertise products, goods, or services which are not exclusively related to the premises on which the sign is located.
 - b. "Area Identification" means a freestanding sign which identifies a subdivision, a multiple residential complex consisting of three (3) or more structures, a shopping center consisting of three (3) or more separate business concerns, an industrial area, or an office complex consisting of three (3) or more structures of any combination thereof.
 - c. "Business (On-Premise)" means any sign which identifies a business or group of businesses, either retail or wholesale, or any sign which identifies a profession or is used in the identification of promotion of any principal commodity or service, including entertainment, offered or sold upon the premise where such sign is located.

- d. "**Campaign Sign**" means a sign erected for the purpose of soliciting support for or application to a candidate or a political party or relating to a referendum question during an election.
 - e. "**Construction**" means a temporary sign placed at a construction site identifying the project or the name of the architect, engineer, contractor, financier, or other involved parties.
 - f. "**Directional**" means a sign which bears the address and name of a business, institution, church, or other use or activity plus directional arrows or information on location.
 - g. "**Flashing**" means an illuminated sign upon which the artificial light is not kept constant in terms of intensity or color at all times when the sign is illuminated (not including time, temperature, and public information signs).
 - h. "**Freestanding**" means a stationary or portable, self-supporting sign not affixed to any other structure.
 - i. "**Illuminated**" means a sign which is lighted by an artificial light source either directed upon it or illuminated from an interior source.
 - j. "**Information**" means a sign giving information to employees, visitors, or delivery vehicles, but containing no advertising or identification.
 - k. "**Name Plate**" means a sign indicating the name and address of a building and its functions or the name of an occupant thereof and the practice of permitted home occupation.
 - l. "**Portable**" means a sign so designed as to be movable from one location to another and which is not permanently attached to the ground, sales display or device or structure.
 - m. "**Projecting**" means a sign other than a wall sign, which is affixed to a building and which extends in a perpendicular manner from the building wall.
 - n. "**Roof**" means a sign which is erected, constructed, or wholly or in part upon the roof of a building and which projects completely above the parapet wall.
 - o. "**Temporary**" means a sign which is erected or displayed for a specified period of time.
 - p. "**Wall**" means a sign which is affixed to the exterior wall or mansard roof of a building and which is parallel to the building.
- 155. "**Sign Alteration**" means any structural change to a sign but shall not include routine maintenance, painting, or change of copy of an existing sign.
 - 156. "**Sign Area**" means the entire face of a sign, including the advertising surface and any framing, trim, or molding, but not including the supporting structure.
 - 157. "**Sign Structure**" means the supports, uprights, bracing and framework for a sign including the sign area.
 - 158. "**Silviculture**" means the art and science of growing and replacing stands of timber on a basis of permanency.

159. **"Site-Built Home"** means a structure, designed for human habitation, in which the component parts are erected, installed, or constructed on the lot in which the structure is to be placed.
160. **"Slope Percent"** means the net result from one of two formulas to describe the incline of land surface and is expressed as a percentage (%). Also called "Percent Grade."
 a. $\% = 100 \cdot \tan [\text{Degree Angle } (^{\circ})]$.
 b. $\% = [100 \cdot \text{Vertical Rise}] \div \text{Horizontal Distance}$.
161. **"Specified Anatomical Areas"**
 a. Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola;
 b. Human male genitals in a discernible turgid state, even if completely and opaquely covered.
162. **"Specified Sexual Activities"**
 a. Human genitals in a state of sexual stimulation or arousal; or
 b. Acts of human masturbation, sexual intercourse or sodomy; or
 c. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
 d. Acts of bestiality, necrophilia, and other similar behavior.
163. **"Storage Capacity of a Floodplain"** means the volume of space above an area of floodplain land that can be occupied by flood water of a given stage at a given time, regardless of whether the water is moving.
164. **"Storage Shed"** (See definition #152 "Shed.")
165. **"Story"** means that part of a building between a floor and either the next floor above, or the ceiling. A basement shall constitute a story if it is more than four (4) feet above grade level.
166. **"Streets, Roads, or Highways"** means a thoroughfare which may either provide the principal means and/or movement of pedestrian and vehicular access to abutting property.
 a. **"Private Streets, Roads, or Highways"** means a thoroughfare which is owned and maintained by a private entity for the use by a limited membership.
 b. **"Public Streets, Roads, or Highways"** means a thoroughfare which is owned and maintained by a governmental entity for use by all members of society.
167. **"Structural Alteration"** means any change in the supporting members of a building such as bearing walls, columns, rafters, beams, girders, footings, and piles.
168. **"Structure"** means anything constructed or erected, the use of which requires a permanent or temporary location on or in the ground, stream bed, or lake bed, including but not limited to objects such as buildings, sheds and cabins, fences, mobile homes, docks, dams, retaining walls, bridges, and transmission towers.
 a. **"Accessory Structure"** means a subordinate structure which is clearly and customarily incidental to and located on the same lot as a principal structure except that mobile homes are not allowed as storage structures.
 b. **"Principal Structure"** means the main structure on a lot.
169. **"Structure Height"** means the vertical distance measured from the mean grade level to the highest point of a flat surface roof, to the deck level of mansard roof, or to the mean height level between eaves and ridges of gable, hip and gambrel roofs.
170. **"Structure Setback"** means the minimum distance between structure or use and property line or right-of-way line or high water mark of a water body.

171. **"Substance Abuse Treatment Facility"** means an establishment dedicated to aiding individuals needing and/or wanting treatment in regards to addiction to alcohol and/or drugs both prescription and controlled substances, according to Tribal Ordinance 80-17 (Controlled Substances).
172. **"Substantial Improvement"** means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the present equalized assessed value of the structure either before the improvement or repair is started, or, if the structure has been damaged and is being restored, before the damaged occurred. The term does not, however, include either: 1) any project for improvement of a structure to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or 2) any alteration of a structure or site documented as deserving preservation by the Wisconsin State Historical Society or listed on the National Register of Historic Places. Ordinary maintenance repairs are not considered structural repairs, modifications, or additions; such ordinary maintenance repairs include internal and external painting, decorating, panelling, and the replacement of doors, windows, and other nonstructural components.
173. **"Time of Travel"** means recharge area (see definition #137 "Recharge Area") up-gradient of the cone of depression, the outer most boundary of which is determined or estimated that the groundwater (see definition #78 "Groundwater") and potential contaminates will take a specific amount of time to reach the well (see definition #182 "Well"), e.g. Five Year Time of Travel.
174. **"Traffic Visibility Triangle"** means an area adjacent to the intersection of two (2) or more of the following: road, street, highway, or railroad. The area shall be free of visual obstructions that would prevent a driver of a vehicle from seeing another vehicle or train on the intersecting road, street, highway, or railroad. See Section 20 - Highway Access and Setbacks for greater detail.

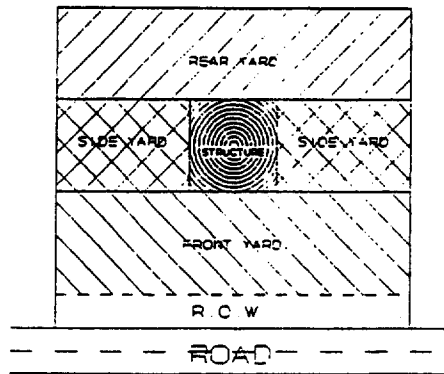


TRAFFIC VISIBILITY TRIANGLE

175. **"Travel Trailers"** means a towed structure built on a chassis, with or without complete kitchen, toilet, and such facilities designed to be used for temporary habitation for travel or recreation.
176. **"Tribal Legislature"** means the constitutional governing body of the Menominee Indian Nation.

177. **"Unnecessary Hardship"** means that circumstance which as a result of special conditions which were not self-created, affect a particular lot and make strict conformity with restrictions governing area, setbacks, frontage, height, or density unnecessarily burdensome or unreasonable in light of the purposes of this Ordinance.
178. **"Use"** means the purpose for which land or structures, or portions thereof, are occupied or maintained.
- a. **"Accessory Use"** means a use which is clearly and customarily incidental to and located on the same lot as a principal use.
 - b. **"Permitted Use"** means a principal or accessory use of land or structures which is allowed as a matter of right within a particular district or districts, provided it conforms to all applicable requirements and standards of the districts.
 - c. **"Principal Use"** means the primary or main use of land or structures as distinguished from accessory use.
179. **"Utilities"** means any public or private distribution, or waste collection and/or disposal system, including but not limited to: septic systems, private and public wells, including their attendant facilities, public sewage collection systems, and public utilities such as natural gas, electric, and telephone systems.
180. **"Variance"** means the waiving by the Tribal Legislature after recommendation by the Committee of the literal provisions of this Ordinance in cases where their strict enforcement would cause undue hardship because of physical circumstances unique to the property involved (limited to height, bulk, density, and yard requirements).
181. **"Water Surface Profile"** means a graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood (see definition #140 "Regional Flood") is used in regulating floodplain areas.
182. **"Well"** means an excavation opening in the ground made by digging, boring, drilling, driving, or other methods, for the purpose of obtaining groundwater regardless of its intended use.
183. **"Well Field"** means a lot, parcel, plot of land used primarily for the purposes of locating wells to supply a municipal water system (see definition #108 "Municipal Water System").
184. **"Wetlands"** means those areas where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and having soils indicative of wet conditions.

185. "Wisconsin Construction Site Best Management Practice Handbook" means a document of the same name published and distributed by the Wisconsin Department of Natural Resources - Bureau of Water Resources Management. The document is intended to be a model on how to conduct a construction site in respect to water resources and erosion control. A copy shall be kept in the Department for reference purposes.
186. "Yard" means open space on a lot not occupied by structures.
- a. "Front Yard" means a yard extending the full width of the lot between any building and the road right-of-way line and measured perpendicular to the building at the closest point to the road right-of-way line.
 - b. "Rear Yard" means a yard extending the full width of the lot between the rear lot line to the nearest part of the structure.
 - c. "Side Yard" means a yard on each side of the structure extending from the structure to the lot line and from the front yard line to the rear yard line.



187. "Zoning Administrator" means the Director of the Community Development Department or any staff member authorized by the Director to perform such zoning functions.

SECTION 3. GENERAL PROVISIONS

3.010 Scope of Regulations. No structure, or land shall hereafter be used or occupied, and no structure of part thereof shall hereafter be erected, converted, enlarged, constructed, moved or structurally altered, unless in conformity with all the regulations specified in this Ordinance for the district in which it is located.

3.020 Interpretation. In interpreting and applying the provisions of this Ordinance, the provisions shall be held to be the minimum requirements for the public health, safety, comfort, convenience and general welfare of the members and descendants of the Tribe, and shall be liberally construed in favor of the Tribe.

3.030 Relations to Other Ordinances and Regulations. Where the provisions of this Ordinance impose greater restrictions than those of any code, regulation, or other ordinance, the provisions of this Ordinance shall be controlling, except that the shoreland provisions under Section 22 (Shorelands Overlay District) of this Ordinance supersede all the provisions of any Tribal Ordinance which relate to shorelands. Where the provisions of any code, regulation or other ordinance impose greater restrictions, those provisions shall be controlling.

3.040 Severability. If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a Tribal or Federal court, the remainder of this Ordinance, if severable therefrom, shall not be affected thereby.

3.050 Rules for Determining District Boundaries. Where uncertainty exists as to the boundaries of districts as shown on the official zoning maps, the following shall apply:

- A. Boundaries indicated as approximately following the centerlines of streets, highways, railroads, or lakes, streams and other water bodies, shall be construed to follow such centerlines.
- B. Boundaries indicated as approximately following platted lot lines, quarter section and quarter-quarter section lines, or municipal boundaries, shall be construed to follow such lines.
- C. Boundaries indicated as being parallel to or an extension of the features listed in 3.050A or 3.050B above shall be so construed. Distances not specified on the map shall be determined by map scale.
- D. In situations not covered by 3.050A through 3.050C above, or when there is a dispute over a determination of district boundaries made by the Department, the Committee shall recommend to the Tribal Legislature determination of the district boundaries when the physical or cultural features existing on the ground differ with those shown on the map.

3.055 Rules for Interpreting Incorrectly Referenced Sections and Sub-Sections. If, during the process of writing, editing, or updating the Ordinance, an error has occurred in identifying the correct reference number to a section or any sub-section, the Zoning Administrator shall apply the following:

- A. The smallest possible sub-section in which the error is located shall not be literally interpreted;
- B. Locate the appropriate section or sub-section by means of any identification accompanying the referred number;
- C. Refer to the hidden codes within the word processing program to assure proper correlation between the paragraph number and the target number;
- D. If no identification accompanies the referred number, the error shall be assumed to be a sub-section within the current section, and the correct number shall be located through context;
- E. If context is insufficient to locate the referred number, previous additions and drafts of the Ordinance shall be consulted;
- F. If the correct section or sub-section still cannot be identified or located, the appropriate section or sub-section shall be assumed to be deleted from the text;
- G. The Zoning Administrator shall write a memorandum, addressed to the Ordinance, identifying the appropriate corrections, including additions and deletions, necessary to interpret the Ordinance properly;
- H. The memorandum shall be copied and forwarded to the Committee to initiate the amendment process in accordance with section 34.050 (Administration; Amending the Zoning Ordinance).

3.060 Lot Provisions.

- A. No Tribal development shall take place until an archeological and environmental survey has been conducted.
- B. Except in the case of planned unit developments, not more than one (1) principal building or use and its accessory buildings or uses shall be located on the lot.
- C. Grandfather Clause. Any lot in existence at the time of adoption of this Ordinance, and legally created, shall be considered a lot of record, and shall be considered legally buildable even though the lot may not meet the minimum lot area and lot width requirements, provided that the lot is in separate ownership from abutting land, and further provided that the lot is developed with a use that is permitted and at the setback requirements by the district in which it is located under this Ordinance.
- D. No yard of other open space existing on the date this Ordinance was adopted shall be reduced below the minimum required by this Ordinance.
- E. Lots which were created through platting or certified survey procedures and which are under single contiguous ownership are to be considered as separate lots of record if they meet the dimensional requirements of the district in which they are located.
- F. All lots shall have a minimum frontage on a public road equivalent to the minimum width of the district in which it lies, except for lots created through the planned unit development procedures.

3.070 Acquisition of Property

- A. Any newly acquired property, upon the transfer into federal trust status to be held for the Menominee Indian Nation, shall temporarily be assigned to the Planned Unit Development [PUD] District (refer to Section 18) for no more than one hundred twenty (120) days or until an official, permanent determination can be made as to the best zoning district or districts for the property.
- B. If no official, permanent determination has been made after one hundred twenty (120) days, then the whole property is designated as a PUD District and cannot be changed unless by amendment according to section 34.050 (Administration; Amending the Zoning Ordinance).

3.080 Excluded Uses.

- A. Within the jurisdiction of all lands held in federal trust for the Menominee Indian Nation in Township 28 North and Range 14 East of the State of Wisconsin, the following uses and structures are prohibited in the ensuing districts:
 - 1. Any manufacture, distribution, or sale of alcoholic or fermented beverages.
 - a. Findings and Purpose. The Tribal Legislature finds that due the existence of a substance abuse treatment facility in the immediate vicinity, the manufacture, distribution, or sale of alcoholic or fermented beverages would be detrimental to the recovery process.
 - b. Nothing in this subsection is intended to prohibit the possession of alcoholic or fermented beverages within residences, subject to lease restrictions or covenants.
 - 2. Adult book stores and/or adult entertainment facilities.
 - a. Findings and Purpose. The Tribal Legislature finds that due to their nature, the existence of adult bookstores and adult entertainment facilities has serious objectional operational characteristics, such as an effect upon property values, local commerce and crime. Due to the deleterious combined effect on adjacent areas, they should be excluded to prevent their contribution to the blighting or downgrading of the surrounding neighborhood.
 - b. Nothing in this subsection is intended to authorize, legalize or permit the establishment, operation, or maintenance of any business, building or use which violates any law, ordinance, or code regarding public nuisances, sexual conduct, lewdness or obscene or harmful matter or the exhibition or public display thereof.
- B. Within the jurisdiction of all lands held in federal trust for the Menominee Indian Nation, the following uses and structures are prohibited in the ensuing districts:
Adult book stores and/or adult entertainment facilities in accordance with 3.080A.2.

3.090 Determination of Uses Not Listed. In any zoning district, whenever a use is neither specifically permitted nor denied, the use shall be considered to be prohibited. In such a case, the Committee, on its own initiative or upon the request of a Tribal community member, may recommend to the Tribal Legislature a study be conducted to determine which zoning district, if any, is most appropriate for the use contemplated and which, if any, performance standards are appropriate to govern said use.

SECTION 4. SINGLE FAMILY RESIDENTIAL DISTRICT (R-1)

4.001 Purpose. To provide an area for development on public sewer and water systems or where public facilities may feasibly be extended. The standards set out in this section shall apply in the district.

4.005 (Reserved).

4.010 Permitted Principal Uses. The following principal uses are permitted in the R-1 District:

- A. Single-family housing;
- B. Parks and playgrounds.

4.015 Permitted Principal Structures. The following principal structures are permitted in the R-1 District:

- A. Single-family houses, excluding mobile homes;
 - 1. Manufactured homes.
 - 2. Panelized homes.
 - 3. Site-built homes.
- B. Park and playground related structures.

4.020 Permitted Accessory Uses. The following accessory uses are permitted in the R-1 District:

- A. Private storage of motor vehicles;
- B. Home occupations, as detailed in Section 27 (Home Occupations).

4.025 Permitted Accessory Structures. The following accessory structures are permitted in the R-1 District:

- A. Private garages;
- B. Noncommercial greenhouses, storage sheds, and playhouses.

4.030 Conditional Uses. The following conditional uses may be allowed in the R-1 District, provided that the requirements of Section 26 (Conditional Use Permits) are met:

- A. Planned unit development;
- B. Low density multi-family residential;
- C. Governmental and religious uses;
- D. Public recreational activities, including golfing, tennis, and swimming;
- E. Public and private schools;
- F. Nursery schools and day care centers.

4.035 Structures Allowed Under Conditional Use Permits. The following structures may be allowed in the R-1 District under the conditional use permit, issued pursuant to the provisions of Section 26 (Conditional Use Permits):

- A. Structures for planned unit development;
- B. Duplexes and quad-plexes;
- C. Governmental structures such as police and fire stations, libraries, and town halls;
- D. Public recreational structures, including swimming pools, tennis courts, and golf courses;
- E. Schools and ancillary structures;
- F. Structures utilized for religious purposes, including convents, parish houses and other buildings integral to the functioning of religious organization;
- G. Public and quasi-public utility structures not covered by Section 33 (Modifications, Exceptions and Special Requirements);
- H. Nursery schools and day care centers.

4.040 Dimensional Requirements. The following lot, height, and yard requirements are established for the R-1 District:

- A. Yard Requirements.
 - 1. Lot Area.
 - a. Lot area shall be a minimum of twenty thousand (20,000) square feet.
 - b. Lot area shall be a minimum of twice the area requirements of 4.040A.1.a for Conditional Use Permits.
 - 2. The minimum lot width shall be eighty (80) feet.
- B. Maximum Height. The maximum height for the principal structure shall be thirty-five (35) feet, and for an accessory structure twenty (20) feet.
- C. Setbacks.
 - 1. The minimum highway setback shall be regulated under Section 20 (Highway Access and Setbacks).
 - 2. The minimum side-yard setback for all residential structures shall be ten (10) feet, and for an accessory structure five (5) feet.
 - 3. The minimum rear-yard setback shall be twenty-five (25) feet for a principal structure, and five (5) feet for an accessory structure.
 - 4. No accessory structure may be located in a required front yard.
 - 5. Side yard setback on corner lots shall be twenty-five (25) feet.
- D. Lot, Height, and Yard Requirements for Conditional Uses. Lot, height, and yard requirements for structures and uses under conditional use permits shall be incorporated into said permits.

4.045 Additional Requirements. The following regulations shall apply within the R-1 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.

SECTION 5. SINGLE-FAMILY MOBILE HOME DISTRICT (R-2)

5.001 Purpose. To provide an area for mobile home development on separate, individual lots that may or may not be served by public sewer and water systems or where public facilities may feasibly be extended. The standards set out in this section shall apply in the district.

5.005 (Reserved).

5.010 Permitted Principal Uses. The following principal uses are permitted in the R-2 District:

- A. Single mobile homes on separate, individual lots;
- B. Parks and playgrounds.

5.015 Permitted Principal Structures. The following principal structures are permitted in the R-2 District:

- A. Mobile homes;
- B. Park and playground related structures.

5.020 Permitted Accessory Uses. The following accessory uses are permitted in the R-2 District:

- A. Private storage of motor vehicles;
- B. Home occupations, as detailed in Section 27 (Home Occupations).

5.025 Permitted Accessory Structures. The following accessory structures are permitted in the R-2 District:

- A. Private garages;
- B. Storage sheds and playhouses.

5.030 Conditional Uses. The following conditional uses may be allowed in the R-2 District, provided that the requirements of Section 26 (Conditional Use Permits) are met:

- A. Planned unit development;
- B. Governmental and religious uses;
- C. Public recreational activities, including golfing, tennis, and swimming;
- D. Nursery schools and day care centers.

5.035 Structures Allowed Under Conditional Use Permits. The following structures may be allowed in the R-2 District under the conditional use permit, issued pursuant to the provisions of Section 26 (Conditional Use Permits):

- A. Structures for planned unit development;
- B. Governmental structures such as police and fire stations, libraries, and town halls;
- C. Public recreational structures, such as swimming pools, tennis courts, and golf courses;
- D. Structures utilized for religious purposes, including convents, parish houses and other buildings integral to the functioning of religious organizations;
- E. Public and quasi-public utility structures not covered by Section 33 (Modifications, Exceptions and Special Requirements);
- F. Nursery schools and day care centers.

5.040 Dimensional Requirements. The following lot, height, and yard requirements are established for the R-2 District:

- A. Yard Requirements.
 - 1. Lot Area.
 - a. Lot area shall be a minimum of twenty thousand (20,000) square feet.
 - b. Lot area shall be a minimum of twice the area requirements of 5.040A.1.a for Conditional Use Permits.
 - 2. The minimum lot width shall be one hundred (100) feet.
- B. Maximum Height. The maximum height for the principal structure shall be thirty-five (35) feet, and for an accessory structure twenty (20) feet.
- C. Setbacks.
 - 1. The minimum highway setback shall be regulated under Section 20 (Highway Access and Setbacks).
 - 2. The minimum side-yard setback for all residential structures shall be ten (10) feet, and for an accessory structure five (5) feet.
 - 3. The minimum rear-yard setback shall be twenty-five (25) feet for a principal structure and five (5) feet for an accessory structure.
 - 4. No accessory structure may be located in a required front yard.
 - 5. Side yard setback on corner lots shall be twenty-five (25) feet.
- D. Lot, Height, and Yard Requirements for Conditional Uses. Lot, height, and yard requirements for structures and uses under conditional use permits shall be incorporated into said permits.

5.045 Additional Requirements. The following regulations shall apply within the R-2 District:

- A. A mobile home stand with the minimum dimensions of seventeen (17) feet by seventy (70) feet, or approved equal by permitting, intended for the placement of the mobile home shall be provided on each mobile home site. The stand shall be constructed to provide for adequate drainage and support against settling, frost heave, and rodent control;
- B. A mobile home shall not be older than five (5) years on the date of placement within the district, unless issued a variance in accordance with section 34.020C (Administration; Committee; Variances) and in good condition.
- C. All mobile homes shall be secured by the use of the appropriate tie-down mechanism;
- D. Skirting shall be placed and maintained around the base of all mobile homes;
- E. Section 29 as pertaining to parking;
- F. Section 30 as pertaining to the placement and use of signs.

5.050 Floodplain Requirements. No new mobile home developments or additions to existing mobile home developments shall be within a floodplain. All existing developments shall require that when an existing mobile home is replaced in a floodplain that the new home is protected as required by section 23.090 (Floodplain Overlay District; Floodproofing).

SECTION 6. LOW DENSITY MULTIPLE-FAMILY RESIDENTIAL DISTRICT (R-3)

6.001 Purpose. To provide an area for duplex and quad-plex development served by public water and sewage disposal facilities. The standards set out in this section shall apply in the district.

6.005 (Reserved).

6.010 Permitted Principal Uses. The following principal uses are permitted in the R-3 District:

- A. Low density residential;
- B. Single-family housing;
- C. Parks and playgrounds.

6.015 Permitted Principal Structures. The following principal structures are permitted in the R-3 District:

- A. Duplexes;
- B. Quad-plexes;
- C. Single-family residences, except mobile homes;
- D. Park and playground related structures.

6.020 Permitted Accessory Uses. The following accessory uses are permitted in the R-3 District:

- A. Private storage of motor vehicles;
- B. Home occupations, as detailed in Section 27 (Home Occupations).

6.025 Permitted Accessory Structures. The following accessory structures are permitted in the R-3 District:

- A. Private garages;
- B. Noncommercial greenhouses, storage sheds and playhouses.

6.030 Conditional Uses. In the R-3 District, the following uses are conditional, and are subject to the provisions of Section 26 (Conditional Use Permits):

- A. Planned unit development;
- B. Governmental and religious uses;
- C. Nursery school and day care centers.

6.035 Structures Allowed Under Conditional Use Permits. The following structures may be allowed in the R-3 District under conditional use permits issued pursuant to the provisions of Section 26 (Conditional Use Permits):

- A. Structures for planned unit developments;
- B. Governmental structure, such as police and fire stations, libraries, and town halls;
- C. Structures utilized with public recreational uses;
- D. Public and quasi-public utility structures not covered by Section 33 (Modifications, Exceptions and Special Requirements);
- E. Structures utilized for religious purposes, including convents, parish houses and other buildings integral to the functioning of religious organization.

6.040 Dimensional Requirements. The following lot, height and yard requirements are established for the R-3 district:

- A. Yard Requirements.
 - 1. Lot Area.
 - a. Lot area shall be a minimum of twenty thousand (20,000) square feet.
 - b. Lot area shall be a minimum of twice the area requirements of 6.040A.1.a for Conditional Use Permits.
 - 2. The minimum lot width shall be eighty (80) feet.
- B. Maximum Height. The maximum height for the principal structure shall be thirty-five (35) feet, and for an accessory structure twenty (20) feet.
- C. Setbacks.
 - 1. The minimum highway setback shall be regulated under Section 20 (Highway Access and Setbacks).
 - 2. The minimum side-yard setback for all residential structures shall be ten (10) feet, and for an accessory structure five (5) feet.
 - 3. The minimum rear-yard setback shall be twenty-five (25) feet for a principal structure and five (5) feet for an accessory structure.
 - 4. No accessory structure may be located in a required front yard.
 - 5. Side yard setback on corner lots shall be twenty-five (25) feet.
- D. Lot, Height, and Yard Requirements for Conditional Uses. Lot, height, and yard requirements for structures and uses under conditional use permits shall be incorporated into said permits.

6.045 Additional Requirements. The following regulations shall apply within the R-3 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.

SECTION 7. HIGH DENSITY MULTIPLE-FAMILY RESIDENTIAL DISTRICT (R-4)

7.001 Purpose. To provide an area for high density residential development served by public sewer and water service. The standards set out in this section shall apply in the district.

7.005 (Reserved).

7.010 Permitted Principal Uses. The following principal uses are permitted in the R-4 District:

- A. Multi-family housing;
- B. Child care uses.

7.015 Permitted Principal Structures. The following principal structures are permitted in the R-4 District:

- A. Multi-family residences;
- B. Nursery schools and day care centers.

7.020 Permitted Accessory Uses. The following accessory uses are permitted in the R-4 District:

- A. Private storage of motor vehicles;
- B. Private recreational activities, including but not limited to swimming, tennis, horticulture, and playground activities;
- C. Offices in conjunction with apartment complexes.

7.025 Permitted Accessory Structures. The following accessory structures are permitted in the R-4 District:

- A. Private garages;
- B. Private recreational structures as allowed in Section 33 (Modifications, Exceptions and Special Requirements);
- C. Separate offices in conjunction with apartment complexes.

7.030 Conditional Uses. In the R-4 District, the following uses are conditional and are subject to the provisions of Section 26 (Conditional Use Permits):

- A. Planned unit developments;
- B. Single-family and low density multi-family residential housing;
- C. Community living arrangements subject to regulation and section 33.100 (Modifications, Exceptions, and Special Requirements; Community Living Arrangements);
- D. Clubs and fraternal organizations.

7.035 Structures Allowed Under Conditional Use Permits. The following structures and limitations upon structures may be allowed in the R-4 District under conditional use permits, issued pursuant to the provisions of Section 26 (Conditional Use Permits):

- A. Structures for planned unit developments;
- B. Single-family dwellings, except mobile homes;
- C. Duplexes and quad-plexes;
- D. Structures for the housing of clubs and fraternal organizations;
- E. Public and quasi-public utility structures not covered by Section 33 (Modifications, Exceptions and Special Requirements);
- F. Community living arrangement structures subject to regulation and section 33.100 (Modifications, Exceptions, and Special Requirements; Community Living Arrangements).

7.040 Dimensional Requirements. The following lot, height, and yard requirements are established for the R-4 District:

- A. Yard Requirements.
 - 1. Lot area shall be a minimum of ten thousand (10,000) square feet plus an additional one thousand five hundred (1,500) square feet per dwelling in excess of four units.
 - 2. The minimum lot width shall be eighty (80) feet.
- B. Maximum Height. The maximum height for all principal structures shall be thirty-five (35) feet and for an accessory structure, twenty (20) feet.
- C. Setbacks.
 - 1. The minimum highway setbacks shall be regulated by Section 20 (Highway Access and Setbacks).
 - 2. The minimum side yard setback shall be twenty (20) feet for all principal structures and ten (10) feet for all accessory structures.
 - 3. The minimum rear yard setback shall be thirty (30) feet for all principal structures and ten (10) feet for all accessory structures.
 - 4. No accessory structure may be placed in a required front yard.
 - 5. Side yard setback on a corner shall be thirty (30) feet.
- D. Lot Coverage and Open Space.
 - 1. Maximum lot coverage by principal or accessory buildings is thirty-five percent (35%).
 - 2. Minimum open space shall be thirty percent (30%). No area with dimensions less than twenty (20) feet in depth or width shall be counted as open space.
- E. Lot, Height, and Yard Requirements for Conditional Uses. Lot, height, and yard requirements for structures and uses under conditional use permits shall be incorporated into said permits.

7.045 Additional Requirements. The following regulations shall apply within the R-4 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.
- C. Section 34 (Administration) with respect to the requirement of site plan review.

SECTION 8. SINGLE FAMILY RURAL RESIDENTIAL DISTRICT (R-R)

8.001 Purpose. To provide an area for residential development within rural areas, which are not agricultural in nature, that may or may not be served by public sewer and water systems or where public facilities may not feasibly be extended. The standards set out in this section shall apply in the district.

8.005 (Reserved).

8.010 Permitted Principal Uses. The following principal uses are permitted in the R-R District:

- A. Single-family housing;
- B. Parks and playgrounds.

8.015 Permitted Principal Structures. The following principal structures are permitted in the R-R District:

- A. Single-family houses, excluding mobile homes;
 - 1. Manufactured homes.
 - 2. Panelized homes.
 - 3. Site-built homes.
- B. Park and playground related structures.

8.020 Permitted Accessory Uses. The following accessory uses are permitted in the R-R District:

- A. Private storage of motor vehicles;
- B. Home occupations, as detailed in Section 27 (Home Occupations).

8.025 Permitted Accessory Structures. The following accessory structures are permitted in the R-R District:

- A. Private garages;
- B. Noncommercial greenhouses, barns, storage sheds, and playhouses.

8.030 Conditional Uses. The following conditional uses may be allowed in the R-R District, provided that the requirements of Section 26 (Conditional Use Permits) are met:

- A. Single mobile homes on separate, individual lots;
- B. Planned unit development;
- C. Low density multi-family residential;
- D. Governmental and religious uses;
- E. Public recreational activities, including golfing, tennis, and swimming;
- F. Public and private schools;
- G. Nursery schools and day care centers.

8.035 Structures Allowed Under Conditional Use Permits. The following structures may be allowed in the R-R District under the conditional use permit, issued pursuant to the provisions of Section 26 (Conditional Use Permits):

- A. Mobile Homes;
- B. Structures for planned unit development;
- C. Duplexes and quad-plexes;
- D. Governmental structures such as police and fire stations, libraries, and town halls;
- E. Public recreational structures, including swimming pools, tennis courts, and golf courses;
- F. Schools and ancillary structures;
- G. Structures utilized for religious purposes, including convents, parish houses and other buildings integral to the functioning of religious organization;
- H. Public and quasi-public utility structures not covered by Section 33 (Modifications, Exceptions and Special Requirements);
- I. Nursery schools and day care centers.

8.040 Dimensional Requirements. The following lot, height, and yard requirements are established for the R-R District:

- A. Yard Requirements.
 - 1. Lot Area. Lot area shall be a minimum of twenty thousand (20,000) square feet.
 - 2. The minimum lot width shall be one hundred (100) feet.
- B. Maximum Height. The maximum height for the principal structure shall be thirty-five (35) feet, and for an accessory structure twenty (20) feet.
- C. Setbacks.
 - 1. The minimum highway setback shall be regulated under Section 20 (Highway Access and Setbacks).
 - 2. The minimum side-yard setback for all residential structures shall be twenty (20) feet, and for an accessory structure five (5) feet.
 - 3. The minimum rear-yard setback shall be twenty-five (25) feet for a principal structure, and five (5) feet for an accessory structure.
 - 4. No accessory structure may be located in a required front yard.
 - 5. Side yard setback on corner lots shall be twenty-five (25) feet.
- D. Lot, Height, and Yard Requirements for Conditional Uses. Lot, height, and yard requirements for structures and uses under conditional use permits shall be incorporated into said permits.

8.045 Additional Requirements. The following regulations shall apply within the R-R District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.

SECTION 9. TRIBAL INSTITUTIONAL DISTRICT (TI-1)

9.001 Purpose. To establish and preserve areas for Tribal and public institutional uses of such a nature that they do not create serious problems of compatibility with adjacent land uses. The standards set out in this section shall apply in the district.

9.005 (Reserved).

9.010 Permitted Principal Uses. The following principal uses are permitted in the TI-1 District:

- A. Governmental services;
- B. Fire, police, and ambulance service;
- C. Community activities, meetings and gatherings;
- D. Education;
- E. Health care;
- F. Religious uses;
- G. Cemetery;
- H. Child Care;
- I. Senior citizen care, activities, and housing;
- J. Recreational uses;
 - 1. Indoor activities.
 - 2. Parks and playgrounds.
- K. Social programs.

9.015 Permitted Principal Structures. The following principal structures and similar structures are permitted in the TI-1 District:

- A. Public municipal buildings.
 - 1. Community Center.
 - 2. Emergency-medical services facility.
 - a. Fire-Rescue station.
 - b. Police station.
 - c. Ambulance outpost.
 - 3. Governmental-Municipal offices.
- B. Public service buildings.
 - 1. Educational facility.
 - a. Elementary school.
 - b. Secondary school.
 - c. College.
 - d. Trade, vocational, technical school.
 - e. Library.

2. Health care facility.
 - a. Hospital.
 - b. Clinic.
 - i. Physical health care.
 - (A) Overall out-patient.
 - (B) Specific treatment (i.e. chiropractic, dialysis, etc.)
 - ii. Mental health care.
 - c. Substance abuse treatment facility.
 - d. Hospice.
 3. Postal service facility.
 4. Animal control facility (i.e. dog pound).
- C. Religious structures.
1. Ceremonial building.
 2. Church.
 3. Parsonage.
 4. Convent.
 5. Retreat house.
- D. Cemetery structures.
- E. Social program structures.
1. Child Care facility.
 - a. Day care building.
 - b. Nursery school.
 - c. Headstart center.
 2. Senior Citizen care facility.
 - a. Community based residential facility [CBRF].
 - b. Skilled nursing home.
 - c. Adult day care - respite facility.
 - d. Governmental offices.
 - e. Senior citizen residences.
 - f. On-site health care facility.
 - g. Multi-purpose complex (combination of services available).
 3. Recreational facility.
 - a. Recreational building
 - b. Park and playground equipment.
 - c. Weather shelter.
 4. Shelter-Safe House.
 - a. Physical abuse.
 - b. Domestic violence.
 - c. Juvenile - Runaway.
 - d. Sexual abuse.
 - e. Homeless.
 - f. Detention facility.
 - i. Juvenile.
 - ii. Adult.

9.020 Permitted Accessory Uses. Uses customarily associated with and secondary to permitted principal uses shall constitute accessory uses in the TI-1 District.

9.025 Permitted Accessory Structures. Structures customarily associated with and secondary to permitted principal structures shall constitute accessory structures in the TI-1 District.

9.030 Conditional Uses. In the TI-1 District, the following uses are conditional, and are subject to the provisions of Section 26 (Conditional Use Permits):

- A. Community living arrangements not administered by an institution identified in 9.015, subject to regulation and section 33.100 (Modifications, Exceptions, and Special Requirements; Community Living Arrangements);
- B. Clubs and fraternal organizations;
- C. Planned unit developments.

9.035 Structures Allowed Under Conditional Use Permits. The following structures may be allowed in the TI-1 District under the provisions of Section 26 (Conditional Use Permits):

- A. Community living arrangement structures not administered by an institution identified in 9.015, subject to regulation and section 33.100 (Modifications, Exceptions, and Special Requirements; Community Living Arrangements);
- B. Structures for planned unit development;
- C. Public and quasi-public utility structures not covered in Section 33 (Modifications, Exceptions, and Special Requirements);
- D. Structures utilized in connection with any of the identified conditional uses under Section 9.030.

9.040 Dimensional Requirements. There are no minimum lot size, width or setback requirements, except for rear yard of fifteen (15) feet setback and except that a visual triangle shall be maintained in accordance with the Section 20 (Highway Access and Setback).

9.045 Additional Requirements. The following regulations shall apply within the TI-1 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.

SECTION 10. NEIGHBORHOOD BUSINESS DISTRICT (C-1)

10.001 Purpose. To provide an area for the daily or frequent convenience shopping for the nearby residential areas. The standards set out in this section shall apply in the district.

10.005 (Reserved).

10.010 Permitted Principal Uses. The following principal uses are permitted in the C-1 District, in accordance to any subsequent or additional code or ordinance prohibiting the sale of any specified item (i.e. alcohol, etc.):

- A. Automotive gasoline station;
- B. Bait, sales [live and artificial];
- C. Bakery, retail sales;
- D. Banking services;
- E. Bar, tavern, cocktail lounge;
- F. Barber and beauty services;
- G. Candy, ice cream and confectionery sales;
- H. Clothing sales;
- I. Convenience store (with or without fuel sales);
- J. Curio and souvenir shop sales;
- K. Drugstore and pharmaceutical sales;
- L. Dry cleaning;
- M. Florist sales;
- N. Funeral home services;
- O. Gaming operation;
- P. Grocery;
- Q. Hotel, motel services;
- R. Laundromat operations;
- S. Restaurants, but not including drive-in restaurants, as defined in Section 2 (Rules and Definitions);
- T. Professional services (i.e. engineer, doctor, attorney, dentist, etc.);
- U. Public and private parking;
- V. Travel bureau services;
- W. Veterinary services, without outside runs;
- X. General retail sales.

10.015 Permitted Principal Structures. The following principal structures are permitted in the C-1 District:

- A. Structures to provide for retail activities such as bakeries, grocery, clothing, souvenirs, etc.;
- B. Structures to provide services, such as beauty and barber shops, banks, gas stations, laundromats, professional services, etc.;
- C. Hotels and motels;
- D. Gaming operation buildings;

10.020 Permitted Accessory Uses. The following accessory uses are permitted in the C-1 District:

- A. Parking of trucks or delivery vehicles used in conjunction principal or conditional use;
- B. Activities and uses which are customarily associated with and secondary to principal or allowed conditional uses shall constitute accessory uses in the C-1 District.

10.025 Permitted Accessory Structures. The following structures are permitted in the C-1 District: Structures which are customarily associated with and secondary to principal or allowed conditional uses shall constitute accessory structures in the C-1 District.

10.030 Conditional Uses. In the C-1 District, the following uses are conditional and are subject to the provisions of Section 26 (Conditional Use Permits):

- A. Planned unit development;
- B. Club and fraternal organizations;
- C. Community centers;
- D. Full veterinarian services;
- E. Automotive repair service;
- F. Automotive sales and service;
- G. Bottled gas storage and distribution;
- H. Printing, lithograph, photo engraving, etc.;
- I. Restaurant, Drive-in.

10.035 Structures Allowed under Conditional Use Permits. The following structures may be allowed in the C-1 District under conditional use permits issued pursuant to the provisions of Section 26 (Conditional Use Permits):

- A. Structures for planned unit development;
- B. Public and quasi-public utility structures not covered under Section 33 (Modifications, Exceptions and Special Requirements);
- C. Structures utilized in connection with any of the identified conditional uses under 10.030.

10.040 Dimensional Requirements. The following lot, height, and yard requirements are established for the C-1 District:

- A. Yard Requirements.
 - 1. Lot area shall be a minimum of ten thousand (10,000) square feet.
 - 2. The minimum width for all lots shall be one hundred (100) feet.
- B. Maximum Height. The maximum height for all principal structures shall be thirty-five (35) feet and for an accessory structure, thirty (30) feet.
- C. Setbacks.
 - 1. The minimum highway setbacks shall be regulated by Section 20 (Highway Access and Setbacks).
 - 2. The minimum side yard setback shall be fifteen (15) feet for all structures, and the minimum side yard setback, if abutting a residential district, shall be thirty (30) feet.
 - 3. The minimum rear yard setback shall be fifteen (15) feet for all structures, and the minimum rear yard setback, if abutting a residential district, shall be thirty (30) feet.
 - 4. No accessory structure may be placed in a required front yard.
 - 5. Side yard setback on a corner shall be thirty (30) feet.
- D. Lot, Height, and Yard Requirements for Conditional Uses. Lot, height, and yard requirements for structures and uses under conditional use permits shall be incorporated into said permits.

10.045 Additional Requirements. The following regulations shall apply within the C-1 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.
- C. Section 34 (Administration) with respect to the requirement of site plan review.

SECTION 11. GENERAL BUSINESS DISTRICT (C-2)

11.001 Purpose. To provide an area for retail businesses of a community-wide range. The standards set out in this section shall apply in the district.

11.005 (Reserved).

11.010 Permitted Principal Uses. The following principal uses are permitted in the C-2 District, in accordance to any subsequent or additional code or ordinance prohibiting the sale of any specified item (i.e. alcohol, etc.):

- A. All permitted principal uses identified within the C-1 district;
- B. Antique sales;
- C. Art supply, art gallery, artist studio, or schools;
- D. Automobile and truck sales, repair, parts supplies and storage;
- E. Bookstore;
- F. Bottled gas, storage, and distribution;
- G. Camera and photographic supply;
- H. Feed wholesale, sales, storage and fertilizer;
- I. Furniture and home furnishings;
- J. Garden supply;
- K. Government offices;
- L. Jewelry sales;
- M. Locksmith;
- N. Music store, accessories, and studios;
- O. Paint and wallpaper sales;
- P. Repair, rental, and servicing of any article, the sale of which is permitted in this district;
- Q. Restaurant, drive-in;
- R. Skating rink (Ice or rollerskate);
- S. Sporting goods;
- T. Sauna, steambath (commercial);
- U. Theater (indoor only);
- V. Veterinarian, full facilities;
- W. General retail sales.

11.015 Permitted Principal Structures. The following principal structures are permitted in the C-2 District:

- A. Structures as may be appropriate for permitted principal uses identified within the C-1 district;
- B. Structures as may be appropriate for permitted principal uses identified within 11.010.

11.020 Permitted Accessory Uses. The following accessory uses are permitted in the C-2 District:

- A. Parking of trucks or delivery vehicles used in conjunction principal or conditional use;
- B. Owner-occupied living quarters;
- C. Activities and uses which are customarily associated with principal or allowed conditional uses.

11.025 Permitted Accessory Structures. The following structures are permitted in the C-2 District:

- A. Structures which are used in conjunction with principal or conditional uses.
- B. Public and private parking lots.

11.030 Conditional Uses. In the C-2 District, the following uses are conditional and are subject to the provisions of Section 26 (Conditional Use Permits):

- A. All conditional uses identified in the C-1 District unless specifically listed in 11.010
- B. Planned unit development;
- C. Club and fraternal organizations;
- D. Theater, Drive-in.
- E. Agricultural implements display, distribution, sales, and repair;
- F. Animal boarding (commercial kennel);
- G. Arms and ammunition wholesale and storage;
- H. Commercial health club;
- I. Country club, banquet facilities;
- J. Beverages, wholesale and storage;
- K. Boat sales and service;
- L. Bus line depot, garage, and repair;
- M. Recreation vehicle sales and service;
- N. Dairy products manufacture and sales;
- O. Livestock feed wholesale, sales, and storage;
- P. Fish or meat wholesale, storage, and curing;
- Q. Miniature golf;
- R. Rafting and other commercial boating excursions;
- S. Business park development;
- T. General wholesale sales.

11.035 Structures Allowed under Conditional Use Permits. The following structures may be allowed in the C-2 District under conditional use permits issued pursuant to the provisions of Section 26 (Conditional Use Permits):

- A. Structures for planned unit development;
- B. Public and quasi-public utility structures not covered under Section 33 (Modifications, Exceptions and Special Requirements);
- C. Structures utilized in connection with any of the identified conditional uses under 11.030.

11.040 Dimensional Requirements. The following lot, height, and yard requirements are established for the C-2 District:

- A. Yard Requirements.
 - 1. Lot area shall be a minimum of ten thousand (10,000) square feet.
 - 2. The minimum width for all lots shall be one hundred (100) feet.
- B. Maximum Height. The maximum height for all principal structures shall be thirty-five (35) feet and for an accessory structure, thirty (30) feet.
- C. Setbacks.
 - 1. The minimum highway setbacks shall be regulated by Section 20 (Highway Access and Setbacks).
 - 2. The minimum side yard setback shall be fifteen (15) feet for all structures, and the minimum side yard setback, if abutting a residential district, shall be thirty (30) feet.
 - 3. The minimum rear yard setback shall be fifteen (15) feet for all structures, and the minimum rear yard setback, if abutting a residential district, shall be thirty (30) feet.
 - 4. No accessory structure may be placed in a required front yard.
 - 5. Side yard setback on a corner shall be thirty (30) feet.
- D. Lot, Height, and Yard Requirements for Conditional Uses. Lot, height, and yard requirements for structures and uses under conditional use permits shall be incorporated into said permits.

11.045 Additional Requirements. The following regulations shall apply within the C-2 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.
- C. Section 34 (Administration) with respect to the requirement of site plan review.

SECTION 12. UTILITY - INDUSTRIAL DISTRICT (UID-1)

12.001 Purpose. To provide an area for mill yard overflow and public utilities as well as an area for light industrial activities. The standards set out in this section shall apply in the district.

12.005 (Reserved).

12.010 Permitted Principal Uses. The following principal uses are permitted in the UID-1 District:

- A. Mill yard overflow;
- B. Fire control functions;
- C. Game management;
- D. Public utilities, including but not limited to sewer, water, and electricity.

12.015 Permitted Principal Structures. The following principal structures are permitted in the UID-1 District: Structures as may be appropriate with the permitted principal uses of this district.

12.020 Permitted Accessory Uses. Uses customarily associated with and secondary to permitted principal uses shall constitute accessory uses in the UID-1 District.

12.025 Permitted Accessory Structures. Structures customarily associated with and secondary to permitted principal structures shall constitute accessory structures in the UID-1 District.

12.030 Conditional Uses. In the UID-1 District, the following uses are conditional, and are subject to the provisions of Section 26 (Conditional Use Permits):

- A. Uses which are accessory to permitted open space uses.
- B. Planned unit developments.
- C. Public and quasi-public utility activities not covered by Section 33 (Modifications, Exceptions and Special Requirements).
- D. Light industrial uses, as determined and permitted by the Committee and Tribal Legislature on an individual basis.

12.035 Structures Allowed Under Conditional Use Permits. The following structures may be allowed in the UID-1 District under the provisions of Section 26 (Conditional Use Permits):

- A. Public utilities;
- B. Streets, roads, and bridges;
- C. Structures for planned unit developments;
- D. Public and quasi-public utility structures not covered by Section 33 (Modifications, Exceptions and Special Requirements);
- E. Structures utilized in connection with any identified conditional uses.

12.040 Dimensional Requirements. The following lot, height, and yard requirements are established for the UID-1 District:

- A. Yard Requirements. There are no lot size requirements for this district.
- B. Maximum Height. The maximum height for all principal structures shall be thirty-five (35) feet and for an accessory structure, thirty (30) feet.
- C. Setbacks.
 - 1. The minimum highway setbacks shall be regulated by Section 20 (Highway Access and Setbacks).
 - 2. The minimum side yard setback shall be fifteen (15) feet for all structures, and the minimum side yard setback, if abutting a residential district, shall be thirty (30) feet.
 - 3. The minimum rear yard setback shall be fifteen (15) feet for all structures, and the minimum rear yard setback, if abutting a residential district, shall be thirty (30) feet.
 - 4. No accessory structure may be placed in a required front yard.
 - 5. Side yard setback on a corner shall be thirty (30) feet.
- D. Lot, Height, and Yard Requirements for Conditional Uses. Lot, height, and yard requirements for structures and uses under conditional use permits shall be incorporated into said permits.

12.045 Additional Requirements. The following regulations shall apply within the UID-1 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.
- C. Section 34 (Administration) with respect to the requirement of site plan review.

SECTION 13. EXCLUSIVE INDUSTRIAL DISTRICT (I-2)

13.001 Purpose. To provide an area for industrial development which are:

- A. Located on transportation routes suitable for industrial traffic;
- B. Compatible with nearby land uses; and
- C. By the nature of the activity, require municipal sewer and water services.

The standards set out in this section shall apply in the district.

13.005 (Reserved).

13.010 Permitted Principal Uses. The following principal uses are permitted in the I-2 District:

- A. Any permitted principal use identified within the UID-1 District;
- B. Acoustical material storage and manufacture;
- C. Asphalt product and storage;
- D. Boat building;
- E. Building contractor, equipment and material storage;
- F. Bus line depot, garage, and repair;
- G. Carpentry, cabinet making, woodworking;
- H. Cement and concrete products manufacturing, sales and service;
- I. Dairy products manufacturing and sales;
- J. Electric light and power company yards;
- K. Express mail and packages warehouse and garage;
- L. Fish or meat wholesale, storage and curing;
- M. Freight depot;
- N. Frozen food, cold storage locker;
- O. Gasoline, fuel oil, bulk storage tanks, and related facilities;
- P. Ice manufacturing, sales, and storage;
- Q. Pipe and culvert sales and storage;
- R. Radio and television transmitting station and tower;
- S. Resource recovery facility and resource recovery processing facility;
- T. Sawmill and lumber yard;
- U. Septic tank sales, service, and manufacture;
- V. Solid waste transfer station;
- W. Storage, campers, boats, etc.;
- X. Storage warehouse;

13.015 Permitted Principal Structures. The following principal structures are permitted in the I-2 District: Structures as may be appropriate with the permitted principal uses of this district.

13.020 Permitted Accessory Uses. Uses customarily associated with and secondary to permitted principal uses shall constitute accessory uses in the I-2 District.

13.025 Permitted Accessory Structures. Structures customarily associated with and secondary to permitted principal structures shall constitute accessory structures in the I-2 District.

13.030 Conditional Uses. In the I-2 District, the following uses are conditional, and are subject to the provisions of Section 26 (Conditional Use Permits):

- A. Uses which are accessory to permitted open space uses;
- B. Public and quasi-public utility activities not covered by Section 33 (Modifications, Exceptions and Special Requirements);
- C. Abattoir (slaughter house), eggs, and poultry processing;
- D. Automobile and truck salvage, scrap, and junk storage;
- E. Bottling plant;
- F. Clothing manufacture;
- G. Machine shop, welding, metal fabrication, processing and welding;
- H. Paper and wood product manufacturing and storage;
- I. Paving batch plant for cement, asphalt and related materials;
- J. Heavy industrial uses, as determined and permitted by the Committee on an individual basis.

13.035 Structures Allowed Under Conditional Use Permits. The following structures may be allowed in the I-2 District under the provisions of Section 26 (Conditional Use Permits):

- A. Public utilities;
- B. Streets, roads, and bridges;
- C. Public and quasi-public utility structures not covered by Section 33 (Modifications, Exceptions and Special Requirements);
- D. Structures utilized in connection with any identified conditional uses.

13.040 Dimensional Requirements. The following lot, height, and yard requirements are established for the I-2 District:

- A. Yard Requirements. There are no lot size requirements for this district.
- B. Maximum Height. The maximum height for all principal structures shall be thirty-five (35) feet and for an accessory structure, thirty (30) feet.
- C. Setbacks.
 - 1. The minimum highway setbacks shall be regulated by Section 20 (Highway Access and Setbacks).
 - 2. The minimum side yard setback shall be fifteen (15) feet for all structures, and the minimum side yard setback, if abutting a residential district, shall be thirty (30) feet.
 - 3. The minimum rear yard setback shall be fifteen (15) feet for all structures, and the minimum rear yard setback, if abutting a residential district, shall be thirty (30) feet.
 - 4. No accessory structure may be placed in a required front yard.
 - 5. Side yard setback on a corner shall be thirty (30) feet.
- D. Lot, Height, and Yard Requirements for Conditional Uses. Lot, height, and yard requirements for structures and uses under conditional use permits shall be incorporated into said permits.

13.045 Additional Requirements. The following regulations shall apply within the I-2 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.
- C. Section 34 (Administration) with respect to the requirement of site plan review.

SECTION 14. EXCLUSIVE FORESTRY DISTRICT (F-1)

14.001 Purpose. To preserve and protect the forestry resource of the Reservation and to limit those uses that are incompatible with or have a detrimental effect upon sustained yield forestry practices. The standards set out in this section shall apply in the district.

14.005 (Reserved).

14.010 Permitted Principal Uses. The following principal uses are permitted in the F-1 District:

- A. Forestry;
- B. Fire control functions;
- C. Recreational uses, provided such uses do not require a structure.
- D. Wildlife habitat.

14.015 Permitted Principal Structures. The following principal structures are permitted in the F-1 District: Structures as may be appropriate with permitted principal uses of this district.

14.020 Permitted Accessory Uses. The following accessory uses are permitted in the F-1 District: Uses customarily and clearly incidental to permitted principal uses.

14.025 Permitted Accessory Structures. The following accessory structures are permitted in the F-1 District: Structures customarily and clearly incidental to permitted principal uses and structures.

14.030 Conditional Uses. In the F-1 District, the following uses are conditional, and are subject to the provisions of Section 26 (Conditional Use Permits):

- A. Lumber milling on a temporary and permitted basis;
- B. Uses which are accessory to permitted open space uses.

14.035 Structures Allowed Under Conditional Use Permits. The following structures may be allowed in the F-1 District under the provisions of Section 26 (Conditional Use Permits):

- A. Sawmill on a temporary and permitted basis;
- B. Public utilities;
- C. Streets, roads, and bridges;

14.040 Dimensional Requirements. There are no dimensional requirements in this district.

14.045 Additional Requirements. The following regulations shall apply within the F-1 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.

SECTION 15. EXCLUSIVE AGRICULTURE DISTRICT (A-1)

15.001 Purpose. To preserve in agriculture those rural lands suited for such uses and where because of the excessive cost of providing urban type services, a low density of population should be maintained and rural standards prevail.

15.005 Special Exception. To provide the opportunity of multiple principal uses and structures which are prevalent within the rural community, section 3.060B (General Provisions; Lot Provisions) shall be exempt in the A-1 District.

15.010 Permitted Principal Uses. The following principal uses are permitted in the A-1 District:

- A. Agriculture, including animal boarding (kennel), commercial beekeeping, dairying, floriculture, forestry, general farming, grazing, horticulture, nurseries, orchards, paddocks, pasturage, stabling, and viticulture;
- B. Single family housing;

15.015 Permitted Principal Structures. The following principal structures are permitted in the A-1 District:

- A. Single family dwellings;
- B. Agriculture related structures including, but not limited to:
 - 1. Barns;
 - 2. Commercial greenhouses;
 - 3. Kennels;
 - 4. Stables.

15.020 Permitted Accessory Uses. The following accessory uses are permitted in the A-1 District:

- A. Private storage of motor vehicles and agriculture equipment;
- B. Home occupations, as detailed in Section 27 (Home Occupations);
- C. Private utilities;
- D. Temporary seasonal roadside sales of agricultural products primarily produced on the premises;
- E. Sales of agricultural related products such as feed, seed, fertilizer, herbicides, and pesticides, by a farmer to supplement farm income and customarily carried on as a part of the farm operation;
- F. Private recreational activities including, but not limited to, swimming, tennis, and playground activities.

15.025 Permitted Accessory Structures. The following accessory structures are permitted in the A-1 District:

- A. Private garages;
- B. Private greenhouses and storage sheds;
- C. Electrical generating windmill;
- D. Temporary seasonal roadside stands;
- E. Private recreational structures, as allowed in section 33.060 (Modifications, Exceptions and Special Requirements; Private Recreation Facilities).

15.030 Conditional Uses. In the A-1 District, the following uses are conditional, and are subject to the provisions of Section 26 (Conditional Use Permits):

- A. Temporary housing for seasonal farm employees;
- B. Irrigation;
- C. Commercial outdoor recreation areas including, but not limited to:
 - 1. Golf courses.
 - 2. Stable ring.
 - 3. Fairgrounds.
 - 4. Rifle ranges and gun clubs.
 - 5. Drive-in movie theaters.
 - 6. Campgrounds.
- D. Country club and/or banquet facilities;
- E. Sawmill operations;
- F. Public wayside or roadside park;
- G. Bulk storage, processing, and distribution of local agricultural products;
- H. Game farms, feed lots, fisheries, hatcheries, and the commercial raising of fur-bearing animals, provided the following criteria are met:
 - 1. Not closer than one thousand (1,000) feet from a residential district;
 - 2. Animal waste handling plan;
 - 3. Fencing or screening;
 - 4. No structure shall be place within one hundred (100) feet of any lot line.
- I. Religious and government uses;
- J. Agricultural related businesses which are secondary to the use of the premises, provided the following criteria are met:
 - 1. The use shall be conducted entirely within the residence or an accessory structure customarily located on a farm or rural homestead;
 - 2. Crafts and other related products are allowed so that they are incidental and negligible to the agricultural related business;
 - 3. There shall be no outside storage or display of materials, equipment, or products except for those products that are grown on the property and are sold on a seasonal basis;
 - 4. There shall be no excessive noise, odor, dust, glare, vibrations, or electrical disturbances beyond a lot line;
 - 5. One on-premise sign shall be allowed stating the name of the business, the owner/operator, and the product being sold or service offered. The sign shall not exceed twenty-four (24) square feet in area, shall be non-illuminated, and shall not be placed within a vision triangle.

15.035 Structures Allowed Under Conditional Use Permits. The following structures may be allowed in the A-1 District under the provisions of Section 26 (Conditional Use Permits):

- A. Temporary structures for the purpose of seasonal housing;
- B. Irrigation structures and facilities such as, but not limited to, canals, dams, and reservoirs;
- C. Accessory structures utilized in connection with commercial outdoor recreational uses as cited in, 15.030C;
- D. Country clubs and/or banquet halls;
- E. Sawmills;
- F. Structures in association with a public roadside park or wayside;
- G. Structures for the bulk storage, processing, and distribution of local agricultural products;
- H. Governmental structures such as police and fire stations, libraries, and town hall;
- I. Structures utilized for religious purposes, including convents, parish houses and other buildings integral to the functioning of religious organization;
- J. Public and quasi-public utility structures not covered by Section 33 (Modifications, Exceptions and Special Requirements);
- K. Structures associated with game farms, feedlots, fisheries, and the commercial raising of fur-bearing animals in accordance with 15.030H;
- L. Structures associated with agriculturally related businesses, secondary to the use of premises as a farm or a residence and meeting the requirements of 15.030J.

15.040 Standards for Approval of Conditional Uses. When reviewing conditional use permit requests for the A-1 District, the Committee shall consider the following factors:

- A. The statements of purpose for the Zoning Ordinance and this Section;
- B. The compatibility with adjacent land uses and potential for conflict with agricultural use;
- C. The need for the proposed use in the A-1 District, and the availability of alternate locations;
- D. The productivity of the land involved and efforts to minimize the amount of productive land converted to non-agricultural use;
- E. The need for public services created by the proposed use;
- F. The effect of the proposed use on water and air pollution, soil erosion, sedimentation and other possible environmental damage.

15.050 Dimensional Requirements. The following lot, height, and yard requirements are established for the A-1 District:

- A. Yard Requirements.
 - 1. Lot Area. Lot area shall be a minimum of five (5) acres.
 - 2. The minimum lot width shall be two hundred fifty (250) feet.
- B. Maximum Height.
 - 1. The maximum height for the principal structure shall be thirty-five (35) feet.
 - 2. The maximum height for all other structures shall be one half (½) the distance to the nearest lot line.
- C. Maximum Density. The maximum allowable lot coverage by all structures shall be thirty-five percent (35%).
- D. Setbacks.
 - 1. The minimum highway setback shall be regulated under Section 20 (Highway Access and Setbacks).
 - 2. The minimum side-yard setback for all residential structures and private garages shall be twenty (20) feet, and for all other structures fifty (50) feet.
 - 3. The minimum rear-yard setback for all residential structures and private garages shall be twenty (20) feet, and for all other structures fifty (50) feet.
 - 4. No accessory structure may be located in a required front yard, except temporary roadside stand.
- E. Lot, Height, and Yard Requirements for Conditional Uses. Lot, height, and yard requirements for structures and uses under conditional use permits shall be incorporated into said permits.

15.055 Additional Requirements. The following regulations shall apply within the A-1 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.

15.060 Standards for Re-zoning the A-1 District. Re-zoning from the A-1 shall be based on findings which consider the following factors:

- A. The land is suitable for the proposed use by review of soil types, location and adjacent land uses;
- B. The potential for conflict with remaining agricultural uses;
- C. The availability of alternative locations;
- D. The productivity of the land involved;
- E. Adequate public facilities to serve the development are present or will be provided, without placing unreasonable burden on the Tribal government or other local government.
- F. The proposed development will not cause unreasonable air and water pollution, soil erosion or other adverse effects on rare or irreplaceable natural resources.

SECTION 16. (*RESERVED*)

RESERVED

SECTION 17. CONSERVANCY DISTRICT (CV-1)

17.001 Purpose. To protect the life, health, property, and environmental quality by prohibiting the development of areas which for reasons of slope or other terrain features that are not suited for development; or for reasons of protecting culturally sensitive areas; or for reasons of protecting environmental quality. The standards set out in this section shall apply in the district.

17.005 (Reserved).

17.010 Permitted Principal Uses. The following principal uses are permitted in the CV-1 District:

- A. Recreational uses, provided such uses do not require a structure.
- B. Wildlife habitat.

17.015 Permitted Principal Structures. NONE.

17.020 Permitted Accessory Uses. The following accessory uses are permitted in the CV-1 District: Uses customarily and clearly incidental to permissible uses, provided such uses do not require a structure.

17.025 Permitted Accessory Structures. NONE.

17.030 Conditional Uses. In the CV-1 District, the following uses are conditional, and are subject to the provisions of Section 26 (Conditional Use Permits): Uses which are accessory to permitted open space uses.

17.035 Structures Allowed Under Conditional Use Permits. The following structures may be allowed in the CV-1 District under the provisions of Section 26 (Conditional Use Permits):

- A. Public utilities;
- B. Streets, roads, and bridges.

17.040 Dimensional Requirements. There are no dimensional requirements in this district.

17.045 Additional Requirements. The following regulations shall apply within the CV-1 District:

- A. Section 29 as pertaining to parking;
- B. Section 30 as pertaining to the placement and use of signs.

SECTION 18. PLANNED UNIT DEVELOPMENT DISTRICT (PUD)

18.001 Purpose. To establish areas for planned development and to encourage quality and desirable development by allowing for greater flexibility and design standards for projects conceived and implemented as comprehensive and cohesive developments. These regulations are established to permit and encourage diversification, variation, and imagination in the relationship of uses, structures, and heights of structures; to encourage the preservation of open space; and to encourage more rational, economic development with respect to the provisions of public services.

18.005 (Reserved).

18.010 General Regulations.

- A. Planned Unit Development District shall only utilize the principal uses and structures designated in the following districts: R-1, R-2, R-3, R-4, R-R, C-1, C-2, UID-1, and TI-1.
- B. Planned unit developments within districts shall meet the regulations of Section 26 (Conditional Use Permits). They shall constitute conditional uses in the following districts: R-1, R-2, R-3, R-4, R-R, C-1, C-2, UID-1, and TI-1.
- C. Minimum size of a planned development shall be two (2) acres.
- D. Fees shall be assessed according to Section 35 (Fee Schedule) for a Site Plan Review and any Conditional Use Permits required.
- E. Structures and uses in a PUD shall conform with the requirements of the respective zoning districts.
- F. The number of principal structures which may be constructed within a PUD shall be determined by dividing the net acreage of the PUD tract by the required lot area per structure required within the respective zoning district. "Net acreage" is defined as the gross area less land dedicated for public streets.
- G. The PUD shall be of such size, composition and arrangement that in construction, marketing and operation is feasible as a complete unit. All elements of the PUD shall be so arranged that they will achieve a unified scheme of distribution of structures, uses, and open spaces.
- H. Land to be set aside as open space or common area shall be clearly indicated on the plan. Provisions for the continued maintenance of common open space, recreational facilities, parking facilities, or other common property, shall be guaranteed by the leaseholders association articles of incorporation, covenants, and/or lease restrictions in a form acceptable to the Tribal Legislature. Such guaranteeing instruments shall be recorded with the plat.
- I. The Committee may recommend to Tribal Legislature modifications to the requirements of density, off-street parking and loading, access, and signs.

18.020 Standards for Common Open Space. No open area may be accepted as common open space under the provisions of this subtitle unless it meets the following standards:

- A. The uses authorized for open space must be appropriate to the scale and character of the PUD, considering its density, expected population, topography, and number and type of structures.
- B. The open space must be improved to support its intended use, unless it contains natural features worthy of preservation, in which case it may be left in an unimproved state.
- C. The construction and provisions of open spaces and recreational facilities must proceed at the same rate as the construction of principal structures.

18.030 Conveyance and Maintenance of Common Open Space.

- A. Lands listed as common open space on the final development plan must be conveyed under one of the following alternatives:
 - 1. With the recommendation of the Committee and the consent of the Tribal Legislature for purposes of maintenance of the open space and any structures or improvements placed thereupon;
 - 2. To trustees provided for in an indenture establishing an association or similar organization for the maintenance of the PUD project, subject to conveyances recommended by the Committee for approval by the Tribal Legislature which shall restrict the open space provided to the uses specified in the development plan and which provide for the maintenance of the open space in a manner insuring its continued use for the intended purposes. The interest in such open space shall be undivided and not transferable.
- B. No open space may be put to any use not specified in the final development plan unless the plan has been amended through the conditional use permit process.

18.040 Required Covenants, Easements and Provisions.

- A. The development plan shall contain such covenants, easements and other provisions relating to the bulk, locations and density of permitted structures, accessory uses thereto, and public facilities and utilities, as may be necessary for the PUD and surrounding areas.
- B. The developer shall be required to dedicate land for public streets, roads, driveways, or other public purposes, as may be necessary for the welfare of the PUD and surrounding land.

18.050 Control of Planned Unit Development Following Acceptance. All changes in use or rearrangement of lots, blocks and building sites, and any changes in the approved plans, must be made through the Committee under the conditional use permit process.

18.060 Failure to Begin Planned Unit Development. If no construction has begun within one (1) year from the final approval of the development plan, the authorization of the development plan shall lapse and be of no further effect. At its discretion and for good cause, the Committee may recommend to the Tribal Legislature to extend for an indefinite period of time for beginning of construction.

SECTION 19. (*RESERVED*)

RESERVED

SECTION 20. HIGHWAY ACCESS AND SETBACKS

20.001 Purpose. To promote the public safety, welfare and convenience by easing congestion on the public highways through a system of standards and regulations for limiting access to public highways and establishing setbacks from highway right-of-way.

20.005 (Reserved).

20.010 Compliance. No structure shall be erected, constructed or moved within the setback lines established in this Ordinance, nor shall more frequent access points be permitted than allowed in this section along any class of highway described in 20.030.

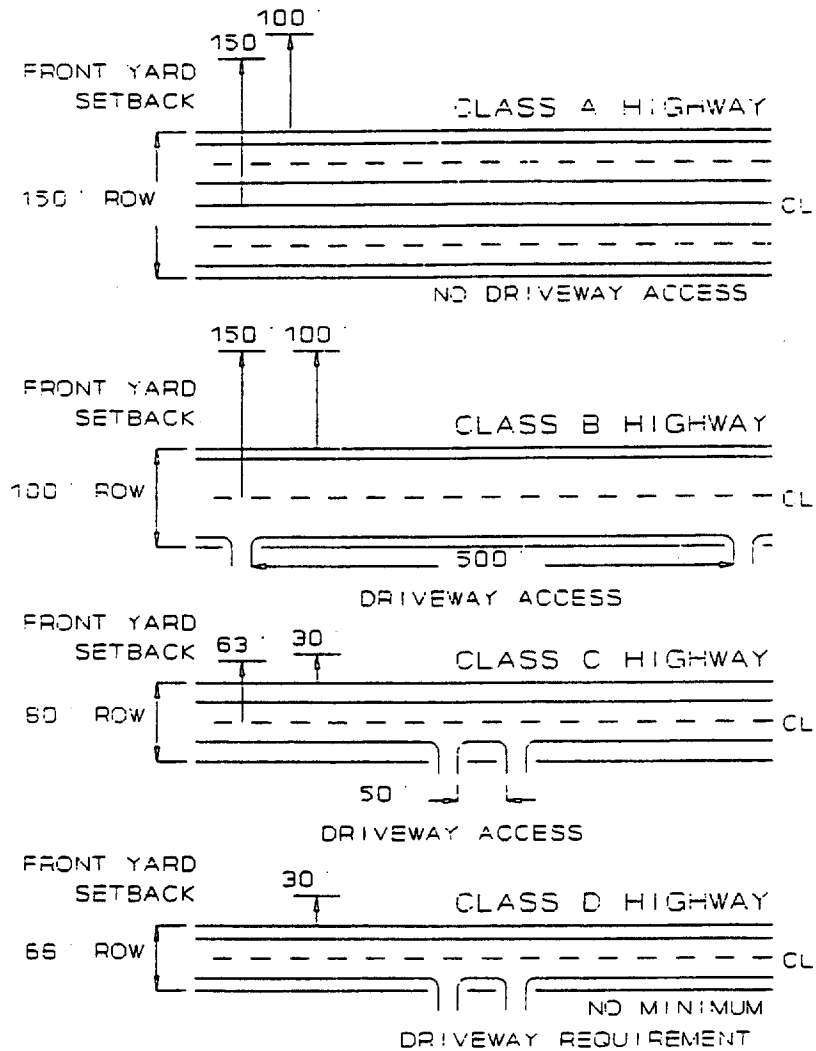
20.020 Structures Permitted within Setback Lines. The following structures and signs may be placed between the setback lines and the adjacent highway:

- A. Open fences that do not hinder visibility;
- B. Telephone, communications and power transmission lines, together with all attachments;
- C. Waste water and water distribution systems, and similar utilities;
- D. Wells, septic tanks and similar structures;
- E. Frontage and service roads constructed according to plans approved by the jurisdiction having authority over the highway;
- F. Signs, as regulated by Section 30 (Sign Regulation);
- G. Unless otherwise prohibited in 20.040, trees, shrubbery and field crops;
- H. Where buildings are proposed to be erected between existing buildings less than one hundred fifty (150) feet apart, the proposed building may be constructed at a setback no less than the average setback of the adjacent buildings on either side of the proposed building.

20.030 Highway Setbacks and Access Requirements.

- A. Class A Highways. All federal or state highways that are defined as limited access and/or four lane, divided highways are designated as Class A Highways.
 1. Setbacks. The setback for all structures for a Class A Highway shall be one hundred fifty (150) feet from the centerline or one hundred (100) feet from the right-of-way line, whichever is greater.
 2. Access Driveways. There shall be no direct access to Class A Highways.
- B. Class B Highways. All federal or state highways not designated as Class A Highways are designated Class B Highways.
 1. Setbacks. The setback for Class B Highway shall be one hundred fifty (150) feet from the centerline or one hundred (100) feet from the right-of-way line, whichever is greater.
 2. Access Driveways. A minimum distance of five hundred (500) feet shall be required between access driveways along the same side of a Class B Highway.

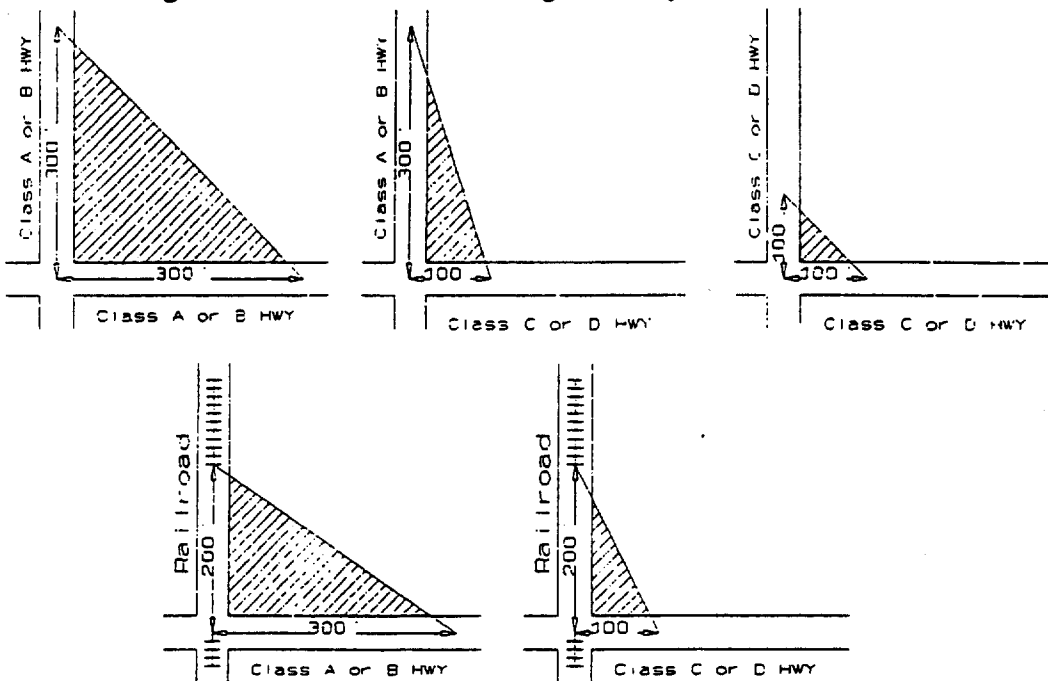
- C. Class C Highway. All through roads and all major and minor arterial roads that are not designated as Class A or B Highways are designated Class C Highways. Class C Highways may consist of lettered county highways, BIA routes, and town roads.
1. Setbacks. The minimum setback for a Class C Highway shall be sixty-three (63) feet away from the centerline or thirty (30) feet from the right-of-way line, whichever is greater.
 2. Access Driveways. A minimum of one (1) driveway access per fifty (50) feet of road frontage is permitted.
- D. Class D Highways. All roads located within subdivisions and are not designated as Class A, B or C Highways are designated as Class D Highways. Class D Highways may consist of BIA Routes and town roads.
1. Setbacks. The minimum setbacks from Class D Highways shall be thirty (30) feet from the right-of-way line.
 2. Access Driveways. There shall be no minimum distance for driveway access along Class D Highways.



SAMPLE HIGHWAY ACCESS & SETBACKS
 (NOTE: Right-of-Way dimensions are only examples typical of that highway class.)

20.040 Traffic Visibility.

- A. At every intersection of two public roads or a public road and a railroad right-of-way, there shall be a traffic-visibility triangle. Within the triangle, no obstructions such as structures, parking or vegetation shall be allowed between two and one-half (2.5) feet and ten (10) feet above the elevation of the roadway.
- B. Such traffic visibility triangles shall be formed by the intersecting centerlines and a line connecting points on the centerlines of the intersecting highways or railroad right-of-way at the following distances:
 - 1. On Class A and B Highways, three hundred (300) feet from the intersecting centerlines.
 - 2. On Class C and D Highways, one hundred (100) feet from the intersecting centerlines.
 - 3. On railway right-of-way, two hundred (200) feet from the center of the highway along the center of the railroad right-of-way.



20.050 Additional Requirements. The following regulations shall apply:

- A. **Access Permit.** A permit shall be obtained from the jurisdiction having control over the highway prior to issuance of a land use lease.
- B. **Driveway Permits.** The Wisconsin Department of Transportation and the Shawano County Highway Department require a permit, pursuant to Chapter 86.07, Stats., for construction or modifications on or across any highway right-of-way under their jurisdiction. Applications for these permits are available at the Wisconsin Department of Transportation - Division of Highways, 944 Vanderperren Way, Green Bay, WI 54304 for State Highways 47 and 55, and at the Shawano County Highway Department, 3035 E. Richmond Street, Shawano, WI 54166 for County Highway G. The Department shall process all other driveway permits.

SECTION 21. PROHIBITED DEVELOPMENT OVERLAY DISTRICT (PDO)

21.001 Purpose. To protect environmental and cultural resources by prohibiting the development in identified areas. The standards set out in this section shall apply in the district.

21.005 (Reserved).

21.010 Permitted Principal Uses. The following principal uses are permitted in the PDO District: Recreational uses, provided such uses do not require a structure.

21.015 Permitted Principal Structures. NONE, except those deemed necessary to protect the health and well-being of the natural and cultural resources, such as:

- A. Fire tower;
- B. Fire hydrant;
- C. Access road right-of-way.

21.020 Permitted Accessory Uses. The following accessory uses are permitted in the PDO District: Uses customarily and clearly incidental to permissible uses, provided such uses do not require a structure.

21.025 Permitted Accessory Structures. NONE.

21.030 Conditional Uses. In the PDO District, the following uses are conditional, and are subject to the provisions of Section 26 (Conditional Use Permits):

- A. Open space uses as defined in Section 2 (Rules and Definitions).
- B. Sustained yield activities.

21.035 Structures Allowed Under Conditional Use Permits. NONE.

21.040 Dimensional Requirements. There are no dimensional requirements in this district.

21.045 Additional Requirements. The following regulations shall apply within the PDO District:

- A. No parking areas permitted.
- B. Section 30 as pertaining to the placement and use of signs.

SECTION 22. SHORELAND OVERLAY DISTRICT

22.001 Purpose. To promote the public health, safety, convenience and general welfare; to protect, maintain, and enhance water quality characteristics; to prevent and control water pollution; to prevent erosion and sedimentation; to protect spawning grounds of fish and aquatic life; to control building sites, placement of structures and land uses and to preserve shoreland cover and natural beauty. The standards set out in this section shall apply in the district.

22.005 (Reserved).

22.010 Underlying Zoning. All shorelands within the boundaries set forth in section 1.030 (Purpose, Intent and Nature of the Ordinance; Jurisdiction) are included in one of the zoning districts created by this Ordinance and are subject to the applicable use provisions of this Ordinance as well as to the requirements of this section.

22.020 Jurisdiction. Areas regulated by this section shall include all lands which are:

- A. Within one thousand (1,000) feet of the ordinary high water mark of navigable lakes or ponds. Lakes or ponds within the boundaries set forth in section 1.030 (Purpose, Intent and Nature of the Ordinance; Jurisdiction) shall be presumed to be navigable. If evidence to the contrary is presented to the Department, the Department shall make the initial determination whether or not the lake or pond in question meets the definition of navigable waters of this Ordinance, and the Department shall make the initial determination of the location of the normal high water mark.
- B. Within five hundred (500) feet of the ordinary high water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams within the boundaries set forth in section 1.030 (Purpose, Intent and Nature of the Ordinance; Jurisdiction) shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey Quadrangle Maps or other zoning base maps which have been incorporated by reference and made a part of this Ordinance. If evidence to the contrary is presented, the Department shall make the initial determination whether the river or stream in question meets the definition of navigable waters of this Ordinance. The Department shall also make the initial determination of the location of the ordinary high water mark. Flood hazard boundary map (or soil maps or other existing Tribal or county maps used to delineate floodplain areas) which have been adopted by the Tribe shall be used to determine the extent of the floodplain of navigable waters.

- C. Locating shoreland-wetland boundaries. Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory and actual field conditions at the time the maps were adopted, the zoning administrator shall contact the appropriate district office of the Army Corps of Engineers and the director of the Environmental Services Department to determine if the shoreland-wetland district boundary as mapped is in error. If the Department staff concur with the zoning administrator that a particular area was incorrectly mapped as a wetland, the zoning administrator shall have the authority to immediately grant or deny a land use or building permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors shown on the Wisconsin Wetland Inventory Maps, the zoning administrator shall be responsible for initiating a shoreland-wetland map amendment within a reasonable period of time.

22.030 Compliance.

- A. The use of any land or water, and location of structures on lots, the installation and maintenance of water supply and waste disposal facilities, the filling, grading, lagooning, or dredging of any land, the cutting of shoreland vegetation, the subdivision of lots, shall be in full compliance with the terms of this Ordinance and other applicable regulations. Structures, signs, private water systems and sewage disposal systems shall require a permit unless otherwise expressly excluded by the requirements of this Ordinance.
- B. Unless specifically exempted by law, all cities, villages, towns and persons are required to comply with this section and obtain all necessary permits.

22.040 Shoreland-Wetland District.

- A. Designation. This district shall include all shorelands within the jurisdiction of this section which are wetlands of five (5) acres or more and are designated as wetlands on the Wetlands Inventory Maps, stamped "FINAL" on December 17, 1985 for Menominee County and labelled "Revised" on December 6, 1984 for Shawano County. The Wetlands Inventory Maps are hereby adopted and made part of this Ordinance and are on file in the Department.
- B. Permitted Uses. The following uses shall be allowed, subject to general provisions to this Ordinance, the provisions of other applicable codes of the Menominee Indian Tribe, and the provisions of applicable federal laws:
1. Activities and uses which do not require the issuance of a construction permit under this section, but which must be carried out without filling, flooding, draining, dredging, ditching, tilling, or excavating:
 - a. Hiking, fishing, trapping, hunting, swimming, and boating;
 - b. The harvesting of wild crops, such as marsh hay, ferns, moss, wild berries, wild rice, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
 - c. The practice of silviculture, including the planting, thinning and harvesting of timber;
 - d. Waste water treated effluent.
 - e. The construction and maintenance of duck blinds.

2. Uses which do not require the issuance of a construction permit, and which may involve filling, flooding, draining, dredging, ditching, tilling, or excavating to the extent specifically provided below:
 - a. Temporary water-level stabilization measures, in the practice of silviculture, which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silviculture activities if not corrected;
 - b. Limited excavating and filling necessary for the construction and maintenance of piers, docks and walkways built on pilings;
 - c. Ditching, tilling, dredging, excavating, or filling done to maintain or repair existing drainage systems necessary for the cultivation of agricultural crops;
 - d. Soil conservation practices such as terraces which are used for sediment retardation and water quality and approved by the Soil Conservation Service.
3. Uses which are allowed upon the approval of a conditional use permit by the Committee and Tribal Legislature or conditional use contract by the Department as outlined in 22.060:
 - a. The construction and maintenance of roads which are necessary to conduct silviculture activities or are necessary for agriculture cultivation, provided that:
 - i. An ACOE - 404 permit is attained, if required.
 - ii. The road cannot as a practical matter be located outside the wetland;
 - iii. The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland and meets the following standards:
 - (A) The road shall be designed and constructed as single-lane roadway with only such depth and width to accommodate the machinery required to conduct agriculture and silviculture activities;
 - (B) Road construction activities are to be carried out in the immediate area of the roadbed only;
 - (C) Any filling, flooding, draining, dredging, ditching, tilling, or excavating that is to be done must be necessary for the construction or maintenance of the road.
 - b. The construction and maintenance of nonresidential buildings used solely in conjunction with raising waterfowl, minnows or other wetland or aquatic animals used solely for some other purpose which is compatible with wetland preservation, if such building cannot as a practical matter be located outside the wetland, provided that:
 - i. Any such building does not exceed five hundred (500) square feet in area;
 - ii. No filling, flooding, draining, dredging, ditching, tilling, or excavating is to be done.

- c. The establishment and development of public and private parks and recreational areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves, and private wildlife habitat areas, provided that:
 - i. Any private recreation area or wildlife habitat area must be used exclusively for that purpose;
 - ii. No filling is to be done;
 - iii. Ditching, excavating, dredging, dike and dam construction may be done in wildlife refuges, game preserves and private wildlife habitat areas, but only for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
 - d. The construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power, or water to their members, provided that:
 - i. The transmission and distribution lines and related facilities cannot as a practical matter be located outside the wetland;
 - ii. Any filling, excavating, ditching, or draining that is to be done must be necessary for such construction or maintenance and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetlands.
 - e. The construction and maintenance of railroad lines, provided that:
 - i. The railroad lines cannot as a practical matter be located outside the wetland;
 - ii. Any filling, excavating, ditching, or draining that is to be done must be done must be necessary for such construction or maintenance, and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland;
 - f. The maintenance, repair, replacement, and reconstruction of existing roads, highways, and bridges.
- C. Prohibited Uses. Any use not listed in 22.040B is prohibited, unless the wetland has been re-zoned by amendment of this Ordinance.

22.050 Outhouse Regulation.

- A. Purpose. To regulate outhouses in order to protect water quality and neighboring properties from conditions that threaten the public health and safety.
- B. Setbacks. The following outhouse setback requirements are established for the Shoreland Overlay District:
 - 1. The minimum setback from the ordinary high water mark shall be one hundred (100) feet.
 - 2. The minimum side-yard setback shall be twenty-five (25) feet.
 - 3. The minimum rear-yard setback shall be twenty-five (25) feet.
 - 4. No outhouse shall be permitted within thirty (30) feet from the right-of-way.
 - 5. No outhouse shall be permitted in the required front yard for lots requiring a structure.
- C. Nothing in this section shall be construed as to prohibit the establishment of performance standards for outhouses. On or before the Year-2000, chemical toilets and approved on-site sewage disposal systems shall be the only allowable sewage treatment.

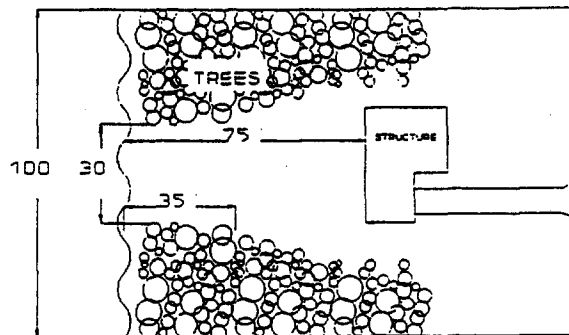
22.060 Filling, Dredging, Grading, Lagooning, Ditching, and Excavating.

- A. Filling, dredging, grading, lagooning, ditching, and excavating may be permitted only in accordance with the provisions of additional Tribal codes and ordinances, and other federal laws where applicable and only if done in a manner designed to minimize erosion, sedimentation, pollution, and impairment of fish and wildlife habitat.
- B. The following activities require approval by the Department by the issuance of a conditional use contract by which the applicant and the Department agree to the methods to prevent erosion, sedimentation, and pollution of the water body. If the applicant is unsatisfied with the terms of the contract or the Department deems that a Committee hearing should be held, the application shall be handled as a conditional use permit.
 - 1. Creation or alteration of a water body.
 - 2. Alteration of the land surface having a slope exceeding six percent (6%).
 - 3. Alteration of the bank of a waterbody.
- C. A conditional use shall be approved based upon:
 - 1. A construction plan shall be submitted to the Department based upon the "Wisconsin Construction Site Best Management Practice Handbook." The Environmental Services Department and the Community Development Department shall review and make written recommendations on the proposed construction plan;
 - 2. Permits issued by state, federal, and local agencies;
 - 3. Findings that the activity will not result in:
 - a. Impairment of natural wetland functions;
 - b. Erosion, sedimentation, or pollution;
 - c. Impairment of aquatic life;
 - d. Unnecessary loss of native appearance or natural beauty of the shoreland;
 - e. Restricting flood flows;
 - f. Impact on adjacent or nearby navigable waters, floodplains and floodways;
 - g. Reducing the storage capacity of the floodplain.

- D. The Department, departments, Committee, or Tribal Legislature may attach conditions to their approval to assure compliance, including but not limited to:
1. Time limits for exposure of bare ground;
 2. Hours of operation, including seasonal and weather restrictions;
 3. Use of temporary ground cover;
 4. Use of sediment traps such as diversion terraces and silting basins;
 5. Use of riprap or other bank stabilization techniques;
 6. Erosion control measures.

22.070 Cutting Shoreland Vegetation.

- A. Within thirty-five (35) feet of the normal high water mark, no more than thirty (30) feet in any one hundred (100) feet shall be clear cut, in conjunction with the Menominee Urban Forestry Management Plan. In the remaining seventy (70) feet, selective cutting of vegetation may be allowed that would not result in shoreland erosion and leave sufficient cover to prevent sedimentation and preserve natural appearance.
- B. In the remainder of the shoreland area, vegetation cutting shall be accomplished using forestry and soil conservation practices in compliance with the Menominee Forest Management Plan.
- C. Dead, diseased or dying vegetation may be removed with proper discretion in regard to the hazard (i.e. Oak Wilt Disease, etc.).
- D. Commercial harvesting of timber shall follow guidelines established in the Menominee Forest Management Plan.



22.080 Setbacks from the Water, building elevations and exclusions.

- A. Structures shall be set back seventy-five (75) feet from the ordinary high water mark except as specified in 22.080D.
- B. Without supporting documentation, septic systems shall be require a set back of one hundred (100) feet from the ordinary high water mark. Otherwise septic systems shall be handled on a case by case basis and are subject to Tribal Legislature approval upon recommendation from the Committee.
- C. In zoning districts where residences are permitted, a dwelling unit may be located within the required water setback provided that:
 - 1. The reduced setback shall be the average of the setbacks for dwelling units on adjacent lots on each side of the proposed site; or
 - 2. The reduced setback shall be the average of the setback for a dwelling unit on one side and the seventy-five (75) foot setback for a vacant site.
- D. Removable piers and docks, open stairways, boat tracks, boat shelters, bridges and walkways are exempt from setback requirements. Steps, landings, and walkways shall not exceed forty-eight (48) inches in width. Landings on a stairway cannot exceed forty (40) square feet in area and must be separated a minimum of ten (10) feet horizontally. Canopies, roofs, benches, seats, and tables are prohibited.
- E. Boathouses are a conditional use subject to Section 26 (Conditional Use Permits) and cannot be constructed any closer than ten (10) feet from the ordinary high water mark. No boathouse shall be used for human habitation or be constructed or placed below the ordinary high water mark of any navigable water.

22.090 Lot Dimensions.

- A. Minimum area and width shall be the same as the underlying district provided that the following requirements are met:
 - 1. Lots served by public sewer have a minimum width of sixty-five (65) feet and a minimum area of ten thousand (10,000) square feet;
 - 2. Lots not served by public sewer have a minimum width of one hundred (100) feet and a minimum area of twenty thousand (20,000) square feet.
- B. Substandard Lots.
 - 1. Substandard Lots Not Served by Public Sewer. A lot which does not contain the minimum area and width of this subsection and is a lot of record may be developed if it meets the following requirements:
 - a. It has a minimum width of seventy-five (75) feet at the waterline and at the building site, and has a minimum area of ten thousand (10,000) square feet;
 - b. The use is permitted in the Shoreland Overlay District;
 - c. The lot has not been separated from an adjoining parcel after the effective date of this Ordinance;
 - d. All yard and height requirements of both the Shoreland Overlay District shall be met.
 - 2. Substandard Lots Served by Public Sewer. A lot which is substandard and served by public sewer must conform to the provisions of 22.090B.1.b through 22.090B.1.d above and, in addition thereto, have a minimum lot width of fifty (50) feet at the building line and at the waterline.
- C. The lot requirements of yard, height, and density of the underlying zoning district shall be met.

22.100 Re-zoning of Land in the Shoreland - Wetland District. The shoreland district shall not be re-zoned if such re-zoning results in a significant adverse impact upon any of the following:

- A. Storm and floodwater storage capacity;
- B. Maintenance of dry-season stream flow, the discharge of groundwater to wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
- C. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- D. Shoreline protection against soil erosion;
- E. Spawning, breeding, nursery or feeding grounds for aquatic life;
- F. Wildlife habitat;
- G. Areas of special recreational, scenic, or scientific interest, including scarce wetland types.
- H. Not in compliance or consistent with Tribal ordinances.

SECTION 23. FLOODPLAIN OVERLAY DISTRICT

23.001 Purpose. To protect life, health, and property; to minimize expenditures of public monies for costly flood control and flood control projects; to minimize rescue and relief efforts generally undertaken at the expense of the general public; to minimize damage to public facilities such as sewer and water facilities and, streets and bridges; to maintain floodwater storage capacity; and to discourage the victimization of unwary residents. The standards set out in this section shall apply in this overlay district.

23.005 Warning and Disclaimer of Liability. The degree of flood protection intended to be provided by this Ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or flood height may be increase by man-made or natural causes such as ice jams and bridge openings restricted by debris. This section does not imply that areas outside floodplain zoning district boundaries or land uses permitted within such districts will always be totally free from flooding or flood damages; nor shall this section create liability on the part of or cause of action against the Tribe or any officer or employee thereof for any flood damage that may result from reliance of this section.

23.010 General Provisions.

- A. Areas to be Regulated. Areas regulated by this Ordinance include all lands within the boundaries set forth in section 1.030 (Purpose, Intent and Nature of the Ordinance; Jurisdiction) that would be inundated by the "regional flood," as defined in Section 2 (Rules and Definitions).
- B. Boundaries.
 1. The boundary of the floodplain districts and, where shown, the floodway and the floodfringe districts shall be those areas designated as "A-Zones" on the Flood Insurance Rate Maps or Flood Hazard Boundary Maps dated October 14, 1977 and revised November 15, 1985 for the part of the Reservation within Township 28 North, Range 14 East of the State of Wisconsin.
 2. Where Flood Insurance Rate Maps, Flood Hazard Boundary Maps, or any other maps adopted by the Tribal Legislature determining flood boundaries are unavailable, the boundaries established in Section 22.020 (Shoreland Overlay District; Jurisdiction) shall govern.
 3. These are the official floodplain maps for the Menominee Indian Reservation and are on file in the Department's office. If more than one map is referenced, the regional flood profiles govern boundary discrepancies according to 23.040B.

23.020 Establishment of Districts. The floodplain areas within the jurisdiction of this section shall be one (1) main district entitled "General Floodplain District (GFP)" and shall be, as data becomes available, subdivided into two (2) districts:

- A. Floodway District (FW);
- B. Floodfringe District (FF).

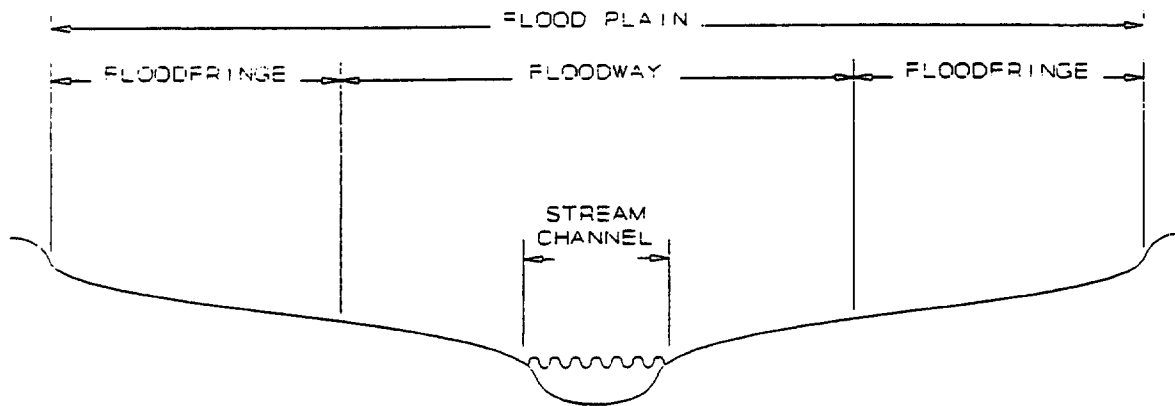
23.030 (Reserved).

23.040 Special Provisions Applicable to All Floodplain Districts.

- A. No development shall be allowed in the floodplain areas which will cause an obstruction to flow, or cause an increase in regional flow height due to floodplain storage area lost, which is equal to or exceeding one-one hundredth of a foot (0.01 feet). Obstructions and increases equal to or greater than one-one hundredth of a foot (0.01 feet) may be permitted only after amendments to the ordinance and/or the official floodplain map, which includes the floodway lines and water surface profiles, in accordance with 23.110, but only if the accumulative effect of the proposed development will not increase the height of the regional flood more than one (1) foot for the hydraulic reach of the stream, as defined in Section 2 (Rules and Definitions).
- B. Located Floodplain Boundaries. Where an apparent discrepancy exists between the location of the outermost boundary of the Floodfringe District/General Floodplain District shown on the official floodplain zoning map and actual field conditions, the location shall be initially determined by the Zoning Administrator using the criteria in 23.040B.1 and 23.040B.2. Where the Zoning Administrator finds that there is a significant difference between the map and the actual field conditions, the map shall be amended using the procedures established in 23.110. Disputes between the Zoning Administrator and an applicant over the location of the district boundary line shall be settled according to 23.100.
1. Where flood profiles exist, the location of the district boundary line shall be estimated by the Zoning Administrator using both the scale appearing on the map and the elevations shown on the water surface profile of the regional flood. Where a discrepancy exists between the map and the actual field condition, the regional flood elevations shall govern. A map amendment is required where there is a significant discrepancy between the map and actual field conditions. The Zoning Administrator shall have the authority to grant or deny a land use lease on the basis of a district boundary derived from elevations shown on the water surface profile of the regional flood, whether or not a map amendment is required. The Zoning Administrator shall be responsible for initiating any map amendments required under this section.
 2. Where flood profiles do not exist, the location of the district boundary line shall be estimated by the Zoning Administrator using the scale appearing on the map, visual on-site inspection, and any available information provided by the Department. Where there is a significant difference between the map and actual field conditions, the map shall be amended. When a map amendment has been drafted by the departments, recommended by Committee, and approved by Tribal Legislature, the Zoning Administrator shall have the authority to grant or deny a land use lease.
- C. Compliance with the provisions of this section shall not be grounds for the removal of lands from the floodplain district unless:
1. Such lands are filled to a height of at least two (2) feet above the elevation of the regional flood for the particular area;
 2. Such lands are contiguous to other lands lying outside the floodplain district;
 3. Where required, an official letter of map amendments has been issued by the Flood Insurance Administration [FIA] of the Federal Emergency Management Agency [FEMA].

- D. Utility facilities such as dams, storm sewers and related structures, flowage areas, transmission lines, pipelines, water monitoring devices, and waste water treatment facilities are conditional uses subject to Tribal regulations and applicable federal regulations.
- E. Navigational and drainage aids such as channels, channel markers, buoys, and other such devices are permitted, provided that prior to any alteration or relocation of watercourse the Department shall notify adjacent communities, the Department of Natural Resources, the office of FIA of FEMA and require the applicant to secure necessary permits. The flood-carrying capacity within the altered or relocated portion on any watercourse shall be maintained.
- F. Other water related uses such as docks, piers, wharves, bridges, culverts and river crossings of utilities are permitted subject to any pier or dockline regulations, or any other regulations that are required pursuant to Tribal codes or ordinances and any applicable federal regulation.
- G. Filling in the floodplain requires review by the Committee for recommendation to the Tribal Legislature and the issuance of a conditional use permit or the permit may be issued as a conditional use contract as per section 22.060B.
- H. Within these districts, all uses not listed as permitted or conditional uses shall be prohibited.

23.050 General Floodplain District (GFP). Applicability. The provisions for the GFP district shall apply to all floodplains listed as "A-Zones" on the official floodplain zoning map for which regional flood data is not available, or where regional flood data is available but floodways have not been delineated. As adequate regional flood information becomes available and floodways are delineated for portions of this district, such portions shall be placed in the floodfringe or floodway district, as appropriate.



FLOODPLAIN DISTRICTS

23.060 Procedures for Determining Floodway and Floodfringe Limits.

- A. Applicability. When any developments are proposed within a general floodplain district, a determination shall be made to establish the boundaries of the floodway and determine whether floodway or floodfringe uses apply and, where applicable, to determine the regional flood elevation.
- B. Upon receiving an application for development, the Department shall:
 - 1. Require the applicant to submit at the time of application two copies of an aerial photograph or a plan which accurately locates the floodplain developments, together with all pertinent information such as, but not limited to, the nature of the proposal, legal description of the property, fill limits and elevations, building flood elevations, and floodproofing measures.
 - 2. Require the applicant to furnish any of the following additional information as is deemed necessary by the Department to evaluate the effects of the proposal upon flood flows and determine the boundaries of the floodway and, where applicable, the regional flood elevation:
 - a. A typical valley cross-section, showing the channel of the stream, the floodplain adjoining each side of the channel, the cross-sectional area to be occupied by the existing structures on the site, location and elevations of streets, water supply, sanitary facilities, soil types and other pertinent information;
 - b. Site plan, showing elevations or contours of the ground, pertinent structures, fill or storage elevations, size, location and spacial arrangement of all proposed and existing structures on the site, location and elevations of streets, water supply, sanitary facilities, soil types and other pertinent information;
 - c. Profile, showing the slope of the bottom of the channel or flow line of the stream;
 - d. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage of materials, water supply, and sanitary facilities;
 - 3. Transmit one copy of the information described in 23.060B to the Environmental Services Department with a written request to have that department provide technical assistance to establish floodway boundaries and, where applicable, provided regional flood elevation as fixed within the Tribal Official Floodplain Zoning Map. Where the provisions of 23.040C apply, the applicant shall provide all required information and computations.

23.070 Floodfringe District (FF).

- A. **Applicability.** The provisions of this section shall apply to all areas within the regional floodfringe district, as shown to be in the general floodplain district, and are determined to be in the floodfringe area pursuant to 23.060.
- B. **Permitted Uses.** The following uses shall be allowed by permit within the floodfringe district and floodfringe portions of the general floodplain district: Any structures, land uses or developments may be permitted to the extent that they are not prohibited by this Ordinance or any other Tribal code or ordinance or any applicable federal regulation, and provided that a land use lease has been issued by the Department.
- C. **Standards for Development in Floodfringe Areas.**
 1. All of the provisions of 23.040 shall apply;
 2. **Residential Uses.** Any structure or building used for human habitation, which is to be erected, constructed, reconstructed, altered, or moved into the floodfringe area shall meet or exceed the following standards:
 - a. The lowest floor excluding the basement or crawlway shall be placed on fill at or above the flood protection elevation (which is a point two (2) feet above the regional flood elevation) except where 23.070C.2.b is applicable. The fill elevation shall be one (1) foot or more above the regional flood elevation extending at least fifteen (15) feet beyond the limits of the structure. The Department may authorize other floodproofing measures where existing streets or sewer lines are at elevations which make compliance impractical provided the Tribal Legislature grants a variance due to dimensional restrictions.
 - b. The basement or crawlway floor may be placed at the regional flood elevation providing it is floodproofed to the flood protection elevation. No permit or variance shall allow any floor, basement or crawlway below the regional flood elevation.
 - c. Contiguous dryland access shall be provided from a structure or building to land which is outside of the floodplain, except as provided in 23.070C.2.d.
 - d. In existing developments where existing streets or sewer lines are at elevations which make compliance with 23.070C.2.c impractical, the Tribal Legislature may permit new developments and substantial improvements where access roads are at or below the regional flood elevations, provided:
 - i. The Department has written assurance from the appropriate local units of police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles, considering the anticipated depth, duration and velocity of the regional flood event; or
 - ii. The local Emergency Planning Commission has an adequate natural disaster plan concurred with the Division of Emergency Government.

3. Commercial and Tribal Institutional Uses. In commercial and institutional areas, any structure or building which is to be erected, constructed, reconstructed, altered or moved into the floodfringe area shall meet the requirements of 23.070C.2. Storage yards, parking lots and other accessory structures or land uses may be at lower elevations, subject to the requirements of 23.070C.5. However, no such area in general use by the public shall be inundated to a depth greater than two (2) feet or subjected to flood velocities greater than four (4) feet per second during the regional flood. Inundation of such yards or parking areas exceeding two (2) feet may be allowed provided an adequate warning system exists to protect life and property.
4. Manufacturing, Agriculture, and Industrial Uses. Any manufacturing, agricultural, or industrial structure or building (i.e. waste water treatment facility) which is to be erected, constructed, reconstructed, altered, or moved into the floodfringe area shall be protected to the flood protection elevation utilizing fill, levees, floodwalls, adequate floodproofing measures in accordance with 23.090, or any combination thereof. On streams or rivers having prolonged flood durations, greater protection may be required to minimize interference with normal operations of the facility. A lesser degree of protection, compatible with the criteria in 23.070C.3 and 23.070C.5 may be permissible for storage yards, parking lots and other accessory structures or uses.
5. The storage or processing of materials that are buoyant, flammable, explosive, or which in times of flooding could be injurious to human, animal, or plant life (i.e. propane tanks, etc.), shall be at or above the flood protection elevation for the particular area, or floodproofed in compliance with 23.090.
6. Public utilities, streets and bridges should be designed to be compatible with the local emergency government plans; and
 - a. When failure or interruption of public utilities, streets or bridges would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area, construction of and substantial improvements to such facilities may only be permitted if they are floodproofed, in compliance with 23.090, to the flood protection elevation.
 - b. Minor or auxiliary roads or nonessential utilities may be constructed at lower elevations providing they withstand flood forces to the regional flood elevation.
7. Wells. All wells, whether public or private, shall be floodproofed to the flood protection elevation pursuant to 23.090, and shall meet the applicable provisions of other Tribal codes and ordinances.
8. Solid Waste Transfer and Disposal Sites. All solid waste disposal sites, whether public or private, are prohibited in floodfringe areas.
9. Accessory Uses. An accessory structure not connected to a principal structure shall meet all the applicable provisions of 23.080C.2.a through 23.080C.2.e. A lesser degree of protection, compatible with these criteria and the criteria in 23.070C.3 for commercial development, is permissible.

23.080 Floodway District (FW).

- A. Applicability. The provisions of this section shall apply to all areas within the regional floodway district, as shown on the official floodplain zoning maps, and to the floodway portion of the General Floodplain District, as determined pursuant to 23.060.
- B. Permitted Uses. The following open-space uses have a low flood damage potential and, not obstructing flood flows, shall be allowed by permit within the floodway district, and in the floodway portion of the General Floodplain District, provided they are not prohibited by any other district or ordinance, and provided further that they meet all of the standards contained in 23.080 below, and a land use lease has been issued by the Department:
1. Commercial agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, and sod farming;
 2. Nonstructural, industrial or commercial uses, such as loading areas, parking areas;
 3. Private and public recreational uses, such as golf courses, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails;
 4. Uses or structures accessory to open space uses, or essential for historic areas, that are not in conflict with the provisions in 23.070C.3 and 23.070C.4;
 5. Extraction of sand, gravel, or other materials;
 6. Marina, docks, piers, and wharves;
 7. Railroads, streets, bridges, pipelines and other water related uses, such as culverts and river crossings of utilities;
 8. Any uses subject to Tribal regulations and applicable federal laws.
- C. Standards for Development in Floodway Areas.
1. Any development in floodway areas shall meet all of the provisions of 23.040 and the Department shall be provided the following data:
 - a. A cross-section elevation view of the proposal, perpendicular to the watercourse, indicating whether the proposed development will obstruct flow;
 - b. An analysis calculating the effects of this proposal on regional flood height.
 2. Structures which are accessory to permitted open space may be permitted, providing the structures:
 - a. Are not designed for human habitation;
 - b. Have a low flood damage potential;
 - c. Are to be constructed and placed on the building site so as to offer minimum obstruction to the flow of floodwaters. Whenever possible, structures will be constructed with the longitudinal axis parallel to the direction of flow of floodwaters, and will be placed with the longitudinal axis approximately on the same line as those of adjoining structures;
 - d. Are firmly anchored to prevent them from floating away and restricting bridge openings or other restricted section of stream or river; and
 - e. Have all service facilities, such as electrical and heating equipment, at or above the flood protection elevation.

3. Public utilities, streets and bridges. provided that:
 - a. Adequate floodproofing measures are provided to the flood protection elevation;
 - b. Construction does not cause an increase in the regional flood height according to 23.040, except where the water surface profiles, floodplain zoning maps and floodplain zoning ordinances are amended as needed, to reflect any changes resulting from such construction.
4. Fills or deposition of materials may be permitted, upon Tribal Legislature approval, provided that:
 - a. Fill or deposition of materials does not encroach on the channel area between the ordinary high water mark on each side of the stream unless a permit has been granted by the Department and a permit pursuant to Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and the other requirements of this section are met; and
 - b. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling and/or bulkheading sufficient to prevent erosion;
 - c. The provisions of 23.040 are met to assure that the special provisions applicable to all floodplains are applied whenever filling or the deposition of materials in the floodplains is considered.
- D. Prohibited Uses. The following uses shall be prohibited in the floodway district:
 1. The storage of any materials that are buoyant, flammable, explosive, or injurious to human, animal, plant, fish or other aquatic life (i.e. propane tanks, etc.);
 2. Uses which are not allowed in the underlying districts of this Ordinance;
 3. All private or public on-site sewage disposal systems; except portable latrines that are removed during flooding, the systems associated with public recreational areas and campgrounds;
 4. All public or private wells which are used to obtain water.
 5. Any solid and/or hazardous waste transfer or disposal site, public or private;
 6. Structures designed for human habitation, permanent or seasonal;
 7. All wastewater treatment ponds and facilities;
 8. All sanitary sewer or water lines except those to service existing or proposed development outside the floodway which complies with the regulations for the floodplain area occupied.

23.090 Floodproofing.

- A. Where floodproofing measures are required, they shall be designed to:
 - 1. Withstand the flood pressures, depths, velocities, uplift and impact forces, and other factors associated with the regional flood;
 - 2. Assure protection to the flood protected elevation;
 - 3. Provide anchorage of structures to foundations to resist flotation and lateral movement;
 - 4. Insure that the structural walls and floors are watertight and completely dry without human intervention during flooding, to the flood protection elevation;
- B. Other floodproofing measures may include:
 - 1. Installation of watertight doors, bulkheads and shutters;
 - 2. Reinforcement of walls and floors to resist pressures;
 - 3. Use of paints, membranes or mortars to reduce seepage of water through walls;
 - 4. Additional mass or weight to structures to prevent flotation;
 - 5. Placement of essential utilities above the flood protection elevation;
 - 6. Pumping facilities and/or subsurface drainage systems for buildings to relieve external foundation wall, and basement floor pressures, and to lower water levels in structures;
 - 7. Construction of water supply and waste treatment systems to prevent the entrance of floodwaters;
 - 8. Construction to resist rupture or collapse caused by water pressure or floating debris;
 - 9. Cutoff valves on sewer lines, or the elimination of gravity-flow basement drains.
- C. No permit or variance shall be issued until the applicant submits, to the Department, a plan or document certified by a registered professional engineer or architect that floodproofing measures are adequately designed to protect the structure or development to the flood protection elevation for the particular area.

23.100 Mapping Disputes. The following procedure shall be used by the Committee for recommendation to the Tribal Legislature in disputes of a floodplain zoning district boundary:

- A. A flood district boundary is established by flood maps or engineering studies pursuant to 23.010B; the flood elevation or flood profiles for the point in question shall be the governing factor in locating the district boundary. If no elevation or profiles are available to the Committee for recommendation to Tribal Legislature, any other available evidence may be examined.
- B. In all cases, the person contesting the location of the district boundary shall be given a reasonable opportunity to present the case to the Committee for recommendation to the Tribal Legislature and, if so chooses, submit technical evidence. Where it is determined that the district boundary as mapped is incorrect, the Committee shall proceed to recommend the Tribal Legislature for a map amendment pursuant to 23.110.

23.110 Amendment Procedures.

- A. General Provisions. The Tribe can, from time to time, alter, supplement or change the boundaries of use districts and the regulations contained in this section in the manner provided by law.
- B. Actions which require an amendment include, but are not limited to the following:
 - 1. Any change in the official floodway lines or in the boundary of the floodplain area;
 - 2. Settlement of conflicts between the water surface profiles and floodplain zoning maps;
 - 3. Any fill in the floodplain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;
 - 4. Any fill or encroachment that will cause a change equal to or greater than one-one hundredth of a foot (0.01 feet) in the water surface profile of the regional flood;
 - 5. Any upgrading of Section 23, the Floodplain Overlay District, required by law.
- C. Amendment petitions shall be submitted as prescribed in section 34.050 (Administration; Amending the Zoning Ordinance).

23.120 Other Permits. It is the responsibility of the leaseholder or leaseholder's agent to secure all other necessary permits from all appropriate federal, Tribal, local agencies, including those required under Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344.

SECTION 24. WELLHEAD PROTECTION OVERLAY DISTRICT (WPO)

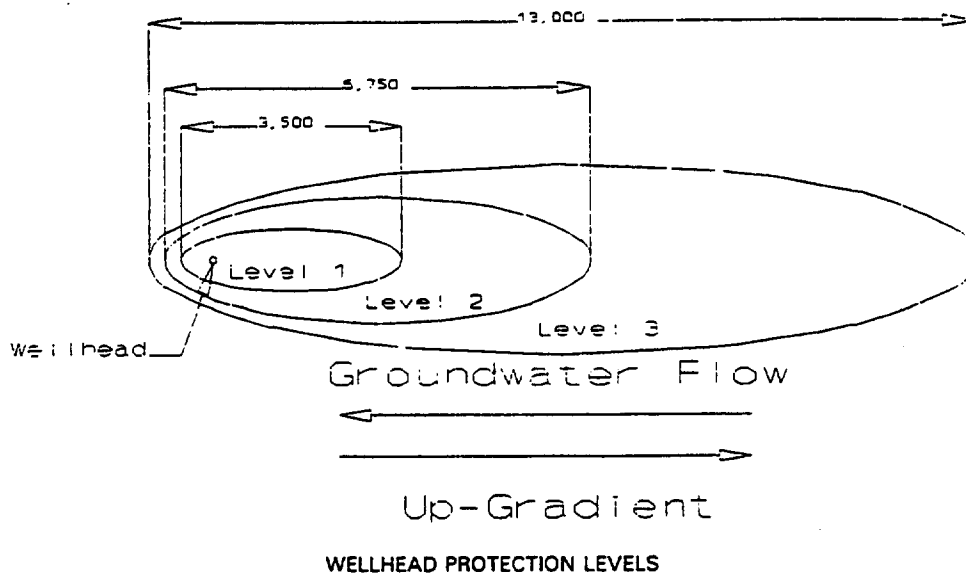
24.001 Purpose. To institute land use regulations and restrictions to protect the Reservation's municipal water supply and well fields, and to protect the public health, safety, and general welfare of the residents of the Menominee Indian Reservation. The standards set out in this section shall apply in the district.

24.005 (Reserved).

24.010 Jurisdiction. The total area to be regulated by this section shall include all lands which are within (either or):

- A. An ellipse with one focal point located on the municipal water system wellhead and the second focal point located eleven thousand (11,000) feet from the wellhead and up-gradient of the groundwater flow. The sum of the distances from the focal points to any point on the ellipse edge shall equal thirteen thousand (13,000) feet; or
- B. As adequate time of travel information becomes available and a twenty (20) year is delineated for a municipal water system wellhead, maps of which shall be kept on file in the Department.

This section is not applicable to private, individual wells.



24.020 Establishment of Protection Levels. The areas within the jurisdiction of this section are divided into three (3) protection levels:

- A. "Protection Level 1" shall incorporate (either or):
 1. An elliptical area with one focal point located on the wellhead and the second focal point located two thousand five hundred (2,500) feet from the wellhead and up-gradient of the groundwater flow. The sum of the distances from the focal points to any point on the ellipse edge shall equal three thousand five hundred (3,500) feet; or
 2. As adequate time of travel information becomes available and a five (5) year is delineated for a municipal water system wellhead, maps of which shall be kept on file in the Department.

- B. "Protection Level 2" shall incorporate (either or):
 - 1. An elliptical area with one focal point located on the wellhead and the second focal point located five thousand two hundred fifty (5,250) feet from the wellhead and up-gradient of the groundwater flow. The sum of the distances from the focal points to any point on the ellipse edge shall equal six thousand seven hundred fifty (6,750) feet; or
 - 2. As adequate time of travel information becomes available and a ten (10) year is delineated for a municipal water system wellhead, maps of which shall be kept on file in the Department.
- C. "Protection Level 3" shall incorporate the area as defined in 24.010.

24.030 Protection Level 1.

- A. Intent. Protection Level 1 is based on the approximate five (5) year time of travel for ground water. Protection Level 1 is the primary area of the municipal well recharge area to be protected. These lands are subject to the most stringent land use and development restrictions because of their close proximity of the well field and the corresponding high threat of contamination.
- B. Permitted Uses and Structures. The following uses and structures are permitted uses within Protection Level 1:
 - 1. Any permitted primary use and structure identified in the R-1, R-2, R-3, R-4, C-1, TI-1 and CV-1 districts provided that the following are met:
 - a. No underground fuel storage tanks are associated with the use or structure;
 - b. The structure is connected to the municipal waste water treatment facility.
 - 2. Roads, provided that such roads have curbside drainage which leads away from the well.
 - 3. Silviculture activities, provided no pesticide or herbicide is used.
 - 4. Open space uses as defined in Section 2 (Rules and Definitions), provided such uses do not require motorized vehicles, such as snowmobiles.
- C. Performance Standards. The following standards and requirements shall apply to all uses within Protection Level 1:
 - 1. All residential, commercial, and institutional uses shall not use pesticides or herbicides to maintain a manicured lawn or grass.
 - 2. All above ground liquid petroleum storage tanks shall provide leak-proof containment equal to one hundred twenty-five percent (125%) of the tank volume.
 - 3. The Environmental Services Department shall assure that all abandoned wells shall be properly backfilled and sealed to using bentonite or other suitable materials approved by the U.S. Environmental Protection Agency guidelines within one (1) month of abandonment.

- D. Prohibited Uses and Structures. Prohibited uses and structures within Protection Level 1 shall include, but not limited to, the following:
1. Dwellings not connected to the municipal waste water treatment facility;
 2. On-site, private sewage systems, such as septic systems;
 3. Underground storage tanks;
 4. Basement storage tanks without containment basins;
 5. Agricultural activities;
 6. Pesticide and/or fertilizer storage;
 7. Septage and/or sludge spreading;
 8. Manure spreading;
 9. Animal waste confinement;
 10. Livestock, kennels, or similar animal confinement;
 11. Gas stations;
 12. Automotive repair establishments, including municipal maintenance garages;
 13. Printing and duplicating businesses;
 14. Any manufacturing or industrial businesses;
 15. Bus and/or truck terminals;
 16. Landfills or solid waste transfer sites;
 17. Waste water treatment facilities;
 18. Junk yards and/or automobile salvage yards;
 19. Asphalt products manufacturing;
 20. Dry cleaning business;
 21. Salt storage;
 22. Electroplating facilities;
 23. Exterminating businesses;
 24. Paint and coating manufacturing;
 25. Hazardous and toxic waste facilities;
 26. Radioactive waste facilities;
 27. Tire and battery services;
 28. Automotive towing service and storage.

24.040 Protection Level 2.

- A. Intent. Protection Level 2 is based on the approximate ten (10) year time of travel for ground water. Protection Level 2 is the intermediate area of the municipal well recharge area to be protected. Land use restrictions within Protection Level 2 are less restrictive than in Protection Level 1 because of longer flow time and a greater opportunity for containment dilution and attenuation potential.
- B. Permitted Uses and Structures. The following uses are permitted within the Protection Level 2:
 - 1. All uses and structures listed as permitted uses and structures in 24.030B.
 - 2. Dwellings not connected to the municipal waste water treatment facility.
 - 3. Commercial and industrial uses connected to the municipal waste water treatment facility provide that such uses are not itemized in 24.040D.
- C. Performance Standards. The following standards and requirements shall apply to all uses and structures within Protection Level 2:
 - 1. All residential, commercial, institutional, and industrial uses shall be limited in using pesticide and fertilizers to establishing a new manicured lawn or grass. Such use of pesticide and fertilizers shall not exceed two (2) years.
 - 2. All above ground liquid petroleum storage tanks shall provide leak-proof containment equal to one hundred twenty-five percent (125%) of the tank volume.
- D. Prohibited Uses and Structures. Prohibited uses and structures within Protection Level 2 shall include, but not limited to, the following:
 - 1. Underground storage tanks;
 - 2. Basement storage tanks without containment basins;
 - 3. Agricultural activities;
 - 4. Pesticide and/or fertilizer storage greater than a total of one hundred (100) pounds in weight;
 - 5. Septage and/or sludge spreading;
 - 6. Manure spreading;
 - 7. Animal waste confinement;
 - 8. Livestock, kennels, or similar animal confinement;
 - 9. Gas stations;
 - 10. Automotive repair establishments, including municipal maintenance garages;
 - 11. Printing and duplicating businesses;
 - 12. Bus and/or truck terminals;
 - 13. Landfills or solid waste transfer sites;
 - 14. Waste water treatment facilities;
 - 15. Junk yards and/or automobile salvage yards;
 - 16. Asphalt products manufacturing;
 - 17. Dry cleaning business;
 - 18. Electroplating facilities;
 - 19. Exterminating businesses;
 - 20. Paint and coating manufacturing;
 - 21. Hazardous and toxic waste facilities;
 - 22. Radioactive waste facilities;
 - 23. Tire and battery services;
 - 24. Automotive towing service and storage.

24.050 Protection Level 3.

- A. Intent. Protection Level 3 is based on the approximate twenty (20) year time of travel for ground water. Protection Level 3 is the largest area of the municipal well recharge area to be protected. Land use restrictions within Protection Level 3 are less restrictive than either Protection Level 1 or Protection Level 2 because of longer flow time and an even greater opportunity for containment dilution and attenuation potential.
- B. Permitted Uses and Structures. The following uses are permitted within the Protection Level 3:
 - 1. All uses and structures listed as permitted uses and structures in 24.030B.
 - 2. Dwellings not connected to the municipal waste water treatment facility.
 - 3. Commercial and industrial uses connected to the municipal waste water treatment facility provide that such uses are not itemized in 24.050D.
- C. Performance Standards. The following standards and requirements shall apply to all uses and structures within Protection Level 3:
 - 1. All residential, commercial, institutional, and industrial uses shall be limited in using pesticides and fertilizers to only one (1) time per year to maintain a manicured lawn or grass.
 - 2. All above ground liquid petroleum storage tanks shall provide leak-proof containment equal to one hundred twenty-five percent (125%) of the tank volume.
- D. Prohibited Uses and Structures. Prohibited uses and structures within Protection Level 3 shall include, but not limited to, the following:
 - 1. Underground storage tanks;
 - 2. Basement storage tanks without containment basins;
 - 3. Pesticide and/or fertilizer storage greater than a total of one hundred (100) pounds in weight;
 - 4. Septage and/or sludge spreading;
 - 5. Gas stations;
 - 6. Automotive repair establishments, including municipal maintenance garages;
 - 7. Any manufacturing or industrial businesses;
 - 8. Landfills or solid waste transfer sites;
 - 9. Junk yards and/or automobile salvage yards;
 - 10. Asphalt products manufacturing;
 - 11. Dry cleaning business;
 - 12. Electroplating facilities;
 - 13. Exterminating businesses;
 - 14. Paint and coating manufacturing;
 - 15. Hazardous and toxic waste facilities;
 - 16. Radioactive waste facilities;
 - 17. Tire and battery services;
 - 18. Automotive towing service and storage.

24.060 Extending the WPO District. If future technical research reveals that the time of travel data is insufficient to a particular municipal water system wellhead, the Protection Levels may be extended no more than an additional ten percent (10%) without a map amendment.

SECTION 25. (*RESERVED*)

RESERVED

SECTION 26. CONDITIONAL USE PERMITS

26.001 Purpose.

- A. **Conditional Uses.** Within each district certain uses which are deemed mutually compatible are permitted. In addition to such uses, it is recognized that there are other uses which may be desirable within a given district, but because of their influence upon neighboring uses, public facilities or the environment, these uses need to be carefully evaluated and regulated with respect to their location and operation. Such uses are classified as conditional uses, and are governed by this section.
- B. **Conditional Use Permitting Process.** The conditional use permitting process should inform public decision makers and private individuals on the environmental and economic effects of actions that have been proposed, increase the exchange of information among interested parties, lead environmentally and economically sound projects, and be used as a planning tool for aspects of decision making.

26.010 Permit Required. The Committee shall approve or deny a conditional use permit in accordance with the substantive and procedural rules set forth in this section prior to the establishment and maintenance of a conditional use of the types cited in the previously described zoning districts and overlays as well as the following:

- A. Any subdivision consisting of ten (10) lots or more.
- B. Any resort, condominium, planned unit development, motel, hotel, or high density multi-unit dwelling.
- C. Any mobile home park, campground, or camping resort.
- D. Any other use not identified in the zoning districts. Refer to section 3.090 (General Provisions; Determination of Uses Not Listed).

26.020 Initial Project Meeting. The applicant and the Zoning Administrator or designee shall hold an informal, initial project meeting to discuss the suitability of the project.

26.030 Application. If an Impact Evaluation is deemed appropriate during the initial project meeting identified in 26.020, the applicant shall work with the Department to supply the following information:

- A. **Introductory Information.**
 - 1. Name and address of applicant, leaseholder of the site, architect, professional engineer and contractor;
 - 2. Legal description of the property;
 - 3. Current zoning district.

- B. Nature of the Site and Surrounding Area.
1. Characteristics of the local and regional topography and geology, especially those factors pertinent to the proposed development.
 2. Description of the soil types of the area to be developed, including a soils map from the Soil Conservation Service.
 3. The results of percolation tests and core samples and list of all foreseen limitations for streets and roads, dwellings, and foundations.
 4. Description of water resources in the region, including pertinent information on lakes (i.e. size, shape, location, important chemical-physical data if requested) streams and groundwater.
 5. Characteristics of the existing vegetation of the area to be developed, showing the distribution of the vegetation types on an attached map.
 6. Summarization of present land use patterns, indicating both nature and the extent of land use in the proposed site and in the surrounding area.
- C. Proposed Development and Planned Alterations.
1. Site plan drawn to scale, showing boundaries, parcel and building dimensions, driveways, access roads, easements, parking areas, off-street loading areas and sidewalks, etc.;
 2. Detailed descriptions of all proposed land alterations including:
 - a. A large scale topographic map [contour interval of ten (10) feet or less, preferably two (2) feet] of those proposed alterations.
 - b. Vegetation.
 - i. Description of proposed alterations of the existing vegetation, including any provisions being made to preserve or supplement existing vegetation.
 - ii. Landscape and screening plans.
 - c. Erosion and stormwater control plans which must be based upon the "Wisconsin Construction Site Best Management Practice Handbook."
 - d. When applicable, the provisions set forth in Section 22 (Shoreland Overlay District) and Section 23 (Floodplain Overlay District).
 3. Drainage plans, including engineering plans for hookup to storm sewers, if available;
 4. Description of proposed water system.
 - a. Type and location of water system.
 - i. Central water system.
 - ii. Individual wells.
 - b. Estimated water demands.
 5. Description of proposed sanitary sewer system.
 - a. Type and location of waste water treatment system.
 - i. Central treatment system.
 - ii. Individual septic systems.
 - b. Volume of sewage to be generated.
 6. Description of solid waste disposal.
 - a. Operational plan for solid waste disposal.
 - b. Volume of solid waste to be generated.

- D. Environmental Impact Analysis.
1. List of species of plants, fish and other aquatic life, fowl, or land animals common to the area and their required habitats, including measures that will be taken to preserve these habitat areas.
 2. List of endangered or threatened species of plants, fish and other aquatic life, fowl, or land animals known to be within a one thousand (1,000) foot radius of the proposed site.
 3. Direction of surplus run-off water from the property.
 4. List of any irreversible or irretrievable commitments of resources that would be involved.
 5. Where applicable, assessment of a site with frontage on navigable water.
 - a. Allowances for natural erosion processes.
 - b. Provisions to retard shoreline or bank erosion.
 - c. Provisions to avoid enrichment of the water bodies due to non-point source pollution (i.e. run-off).
 - d. Provisions set forth in Section 22 (Shoreland Overlay District) and Section 23 (Floodplain Overlay District).
- E. Social-Economic Impact.
1. Population.
 - a. Estimated maximum anticipated population of the development.
 - b. Estimated total user days per year.
 2. Economic Benefits. Assessment of the expected economic benefits the community will receive, such as:
 - a. Nature of use.
 - b. Number of employees.
 - c. List products manufactured or sold.
 - d. Inputs to the construction trade.
 - e. Anticipated tax revenue.
 - f. Increased retail sales.
 3. Services. Assessment of the costs and consequences of servicing the proposed development:
 - a. Total length of proposed roads.
 - b. Estimated annual cost of snow plowing.
 - c. Estimated traffic generation.
 - d. Estimated annual cost for schools and/or bussing.
 - e. Distance from the nearest hospital, responsible fire department, and full time police headquarters.
 - f. Assessment of potential pressure placed on public recreational facilities and any provisions for reducing such pressure within the development itself.
 4. Assessment of effects resulting from changing of present land use patterns.
- F. Alternatives to Proposed Action. Possible alternatives to potentially problem causing aspects of the project should be discussed. The feasibility of the alternatives should also be brought out.

26.040 Referral to the Committee.

- A. Upon receiving the Conditional Use Permit application from the applicant, the Department shall have at least thirty (30) days, but no more than sixty (60) days, to conduct a review and generate comments. The department shall identify the comments, proposed conditions, and recommendations to the applicant at least ten (10) days prior to the Committee meeting .
- B. The Department may request review of a Conditional Use Permit by other programs, departments, or agencies within the thirty (30) day review period.
- C. The Department shall refer the application for a Conditional Use Permit to the Committee for recommendation to the legislature. The Committee shall hold at least one (1) committee hearing on the proposed conditional use permit. Public notice of the hearing shall be given in accordance to the Bylaws of Community Development and published in the appropriate local newspaper (i.e. Menominee Tribal News). In addition, the following interested parties shall be notified in writing by the applicant at the same time as the public notices are posted:
 - 1. All property owners and leaseholders within eight hundred (800) feet of the property;
 - 2. Incorporated lake districts in which the proposed conditional use is located;
 - 3. The director of the Environmental Services Department.
- D. Copies of the fore-mentioned written notices shall be submitted to the Department as a part of the application.
- E. Failure of 26.040C.1 through 26.040C.3 to receive the notice or attend the hearing shall not invalidate the proceedings.

26.050 Action by the Committee. Within forty five (45) days of the committee hearing, the Committee shall act upon the application for a conditional use permit. The Committee act on the application by:

- A. Approval of the issuance of a conditional use permit as presented by the applicant, provided the standards of 26.060 are met;
- B. Approval of the issuance of a conditional use permit with the conditions as deemed necessary by the Committee;
- C. Denial of the conditional use permit. In the case of denial, the reasons therefore shall be stated in the minutes of the meeting and the applicant shall be notified in writing. The applicant may appeal according to section 34.020B (Administration; Committee; Appeals).

26.060 Standards for Conditional Use Permit Approval. Standards for conditional use permit approval are:

- A. The proposed use is in conformance with the purpose of the zoning district in which it is located;
- B. The use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted;
- C. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided;
- D. Adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use;

- E. Adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result;
- F. Soil conditions are adequate to accommodate the proposed use;
- G. Proper facilities and access points are provided which would eliminate any traffic congestion or hazard which may result from the proposed use.

26.070 Authority to Impose Conditions.

- A. The Committee in order to achieve the standards of 26.060, may attach certain conditions to the permit. These conditions include, but are not limited to, changes in building design, lot or building setback lines in excess of district regulations, landscaping, screening, hours of operation, number of employees, sign and lighting limitations, increased parking and sedimentation and erosion control measures.
- B. Any time after the issuance of a Conditional Use Permit, the Department may re-review the Conditional Use Permit and recommend additional or enhanced conditions to the Committee if, in the opinion of the Department, member of the Committee or Tribal Legislature, or a Tribal community member, that the conditions placed on the site were insufficient. The Committee shall hold a committee hearing on the reevaluation of the permit. Such a committee hearing shall be held in accordance with 26.040 through 26.060. If, upon finding that the conditions of the permit were insufficient, the Committee may enhance, modify, or leave the permit unchanged.

26.080 Lapse of Conditional Use Permit. A conditional use permit shall lapse and become void one (1) year after approval of the Committee unless a certificate of occupancy or a building permit has been issued.

26.090 Revocation of Conditional Use Permit. If, in the opinion of the Department or a member of the Committee or Tribal Legislature, the terms of a conditional use permit have been violated, or that the use is substantially detrimental to persons or property in the neighborhood, the Committee shall hold a committee hearing on the revocation of the permit. Such a committee hearing shall be held in accordance with 26.040 through 26.060. If, upon finding that the terms of the permit have been violated, the Committee may revoke, modify or leave the permit unchanged.

26.100 Terms of a Conditional Use Permit.

- A. Unless otherwise specified in the permit, a conditional use permit issued under this section shall remain in effect as long as the authorized use continues. Any use which is discontinued for twelve (12) consecutive months shall be deemed to be abandoned. Prior to the reestablishment of an abandoned use, a new conditional use permit shall be obtained under the terms of this section.
- B. Any major alterations of a site plan or established conditions of an approved conditional use permit shall require the approval of the Committee. However minor alterations can be approved by the Department with notification sent to the Committee.

SECTION 27. HOME OCCUPATIONS

27.001 Purpose. To establish and initiate standards under which home occupations may be conducted so that such occupations do not undermine the purpose and intent of this Ordinance or the purposes of the residential districts.

27.005 (Reserved).

27.010 Standards for Home Occupations. As deemed appropriate by Tribal Legislature, home occupations shall be allowed without permit in select residential districts, and all agricultural districts where applicable, provided they conform to the following performance standards:

- A. The occupation shall be conducted entirely within a dwelling unit or an accessory structure customarily located with a dwelling unit, or farm;
- B. The floor area devoted to the occupation shall not exceed five hundred (500) square feet, except as a conditional use under 27.015;
- C. No person other than a resident of the dwelling shall be employed therein; except that one non-resident full-time employee can be approved as a conditional use excluding motor vehicle and small engine repairs under 27.015C;
- D. No inventory of a commodity shall be sold on a regular basis on the premises except as a conditional use permit granted under Section 26 (Conditional Use Permits);
- E. The occupation shall not be objectional to neighboring uses due to noise, dust, odors, hours of operation, traffic generation or electrical interference;
- F. There shall be no signs other than those permitted in the district in which the home occupation is located;
- G. There shall be no outside storage or display of products, materials, or equipment except:
 1. In a home occupation for repairing motor vehicles, no more than two motor vehicles may be stored outside under the following conditions:
 - a. The vehicle(s) shall be stored within an enclosed area approved by the Department which may include appropriate landscaping.
 - b. The vehicle(s) stored must be customer vehicles only, not those of the holder of the permit or relatives of the permittee.
 - c. The vehicle(s) must be repaired immediately and in no event shall be on the premises for longer than four (4) weeks.
 - d. The vehicle(s) shall be allowed as limited by proximity to neighbors.
 2. Seasonal products (i.e. Christmas trees, etc.) may be displayed outside but not to exceed eight (8) weeks.
 3. Animal boarding facilities and kennels which shall provide adequate screening for noise reduction as deemed necessary by the Committee with proper respect placed upon the distance to any neighboring or nearby property.

27.015 Home Occupations as Conditional Uses. The following uses may be permitted as a home occupation, provided the requirements of Section 26 (Conditional Use Permits) are followed and the standards of 27.010 are met:

- A. Professional offices, including but not limited to physicians, chiropractors, dentists, lawyers, real estate brokers, insurance agents, and contractors;
- B. Beauty and barber shops;
- C. Repair of motor vehicles and small engines including the construction and operation of racing machines such as stock cars, snowmobiles, and tractors;
- D. Animal boarding facilities and kennels;
- E. Taxidermy;
- F. Catering services.

SECTION 28. NONCONFORMING USES, STRUCTURES, AND LOTS

28.001 Purpose.

- A. Within the districts established by this Ordinance or amendments thereto, there exists uses, structures or lots which were lawful prior to the adoption of this Ordinance but would be prohibited or more greatly restricted under terms of this Ordinance. These uses, structures, and lots are declared legal nonconformities.
- B. It is the intent of this section to permit legal nonconformities until they are removed, but not to encourage their continuation. Such uses, structures and lots are declared by this Ordinance to be incompatible with permitted uses in the district in which they are located.

28.010 Nonconforming Uses. A nonconforming use of land or structure which existed at the time of adoption of this Ordinance, or amendments thereto, may be continued, but shall comply with the following provisions:

- A. Only that portion of the land in actual use may be continued to be used. The nonconforming use shall not be extended, enlarged, substituted, or moved in a manner to increase the nonconformity, except when required by law or order or to bring the use into conformity with the provisions of this Ordinance.
- B. Once a nonconforming use has been changed to a conforming use, it shall not revert to nonconforming status.
- C. If the nonconforming use has been discontinued for a period of twelve (12) months, it shall be considered abandoned. Any future use shall conform with the provisions of this Ordinance.
- D. Uses which are nuisances shall not be permitted to continue as a nonconforming uses.
- E. No nonconforming use in the floodplain shall be modified or added to unless they are made in conformance with Section 23 (Floodplain Overlay District). For the purpose of Section 23, the words "modify" and "added to" shall include, but not limited to, any alteration, addition, modification, rebuilding, or replacement of any such existing structure or accessory use. Ordinary maintenance repairs are not considered structural repairs, modifications, or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other structural components.

28.015 Nonconforming Structures. A structure which does not conform to the yard, height, parking, loading, and access requirements of this Ordinance may be continued to be used but shall comply with the following provisions:

- A. Normal maintenance is allowed;
- B. Structural repairs, alterations, and expansions are allowed, provided that they do not intensify the nonconforming nature of the structure;
- C. Nonconforming structures which are damaged or destroyed by fire, flood, explosion, or other acts of god are exempt from the provisions of this Ordinance, provided reconstruction does not increase the structures' previous nonconformity and the structure is not situated within the shoreland or floodplain overlay district;
- D. Once a nonconforming structure has been moved or altered to comply with the provisions of this Ordinance, it shall not revert to nonconforming status;
- E. In the shoreland and floodplain overlay districts, a nonconforming structure which is destroyed or damaged more than fifty percent (50%) by fire, flood, explosion, or other acts of god shall not be replaced, reconstructed or rebuilt unless the structure meets the provisions of Sections 22 (Shoreland Overlay District) and 23 (Floodplain Overlay District).
- F. Nonconforming structures within the floodway district shall not be modified or added to unless they meet the requirements of 28.010.
 1. In the floodway district, any modification or addition shall meet the following criteria:
 - a. The modification or addition will not increase the amount of obstruction to the floodway pursuant to section 23.060 (Floodplain Overlay District; Special Provisions Applicable to all Floodplain Districts);
 - b. Any addition to a structure shall be floodproofed, pursuant to section 23.090 (Floodplain Overlay District; Floodproofing) by means other than the use of fill to the flood protection elevation;
 - c. No structural repairs, modifications, or additions to a structure, which exceeds, over the life of a structure, fifty percent (50%) of its present equalized value, based on the accumulation of percentages of all structural repairs, additions, or modifications shall be allowed unless the entire structure is permanently changed to a conforming use;
 - d. If any nonconforming structure is destroyed or is so seriously damaged that it cannot be practically restored, it cannot be replaced, reconstructed, or rebuilt unless the entire structure meets the provisions of section 23.090 (Floodplain Overlay District; Floodproofing);
 - e. Has been granted a permit or a variance;
 - f. No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair, or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the requirements of all applicable Tribal ordinances.
 - g. No potable water shall be allowed in a floodway area. Any replacement, repair, or maintenance of an existing well in a floodway area shall meet the requirements of all applicable Tribal ordinances.

2. In the floodfringe district, any modification or addition shall meet the following conditions:
 - a. Any additions or modifications which do not exceed fifty percent (50%) of its present equalized assessed value shall be protected by floodproofing measures pursuant to section 23.090 (Floodplain Overlay District; Floodproofing).
 - b. When compliance with the above paragraph would result in an unnecessary hardship, and only where the structure is not designed for human habitation or is associated with high flood potential, the Committee may recommend the Tribal Legislature to grant a variance using the criteria listed below:
 - i. Human lives are not endangered;
 - ii. Public facilities, such as water or sewer, are not to be installed;
 - iii. Flood depths shall not exceed four (4) feet;
 - iv. Flood velocities will not exceed two (2) feet per second;
 - v. The structure will not be used for storage of materials described in subsection 23.070C.5 (Floodplain Overlay District; Floodfringe District);
 - vi. No floor is allowed below the regional flood elevation.
 - c. Flood depth and velocities under subsection 23.070C.3 (Floodplain Overlay District; Floodfringe District) shall be determined by standards established by the U.S. Army Corps of Engineers.
 - d. Any addition or modification which exceeds fifty percent (50%) of a structure's present equalized assessed value shall require the entire structure to be floodproofed pursuant to sections 23.070 (Floodplain Overlay District; Floodfringe District) and 23.090 (Floodplain Overlay District; Floodproofing).
 - e. If neither the provisions of 28.015F.2.a and 28.015F.2.b can be met, an addition to an existing room in a nonconforming building of a building with a nonconforming use may be allowed in the floodfringe on a one-time basis only, if the addition:
 - i. Meets all other ordinances and will be granted by permit or variance;
 - ii. Does not exceed sixty (60) square feet in area; and
 - iii. In combination with other previous modifications or additions to the building, does not exceed fifty percent (50%) of the present equalized assessed value of the building.
 - f. All new private sewage disposal systems, or additions to, replacement, repair, or maintenance of a private sewage disposal system shall meet all the applicable provisions of all Tribal ordinances.
 - g. All new wells, or additions to, replacement, repair, or maintenance of a well shall meet the applicable provisions of all Tribal ordinances.
- G. Nonconforming structures in the shoreland district shall not be modified, structurally repaired, or added to when the cost over the life of the structure exceeds fifty percent (50%) of its equalized value based on the accumulation of percentages of repairs, additions or modifications unless the entire structure is permanently changed to a conforming use.

28.020 Nonconforming Lots. A lot of record may be used for any use or structure allowed in the district in which it is located, provided it complies with the following:

- A. All structures shall meet the setback, yard, height, parking, loading, and access requirements of this Ordinance.
- B. No structure shall be constructed on a lot which has less than fifty percent (50%) of the required width or area until a conditional use permit has been granted.

28.030 Existing Conditional Uses. Existing conditional uses shall be treated in the following manner:

- A. An existing conditional use which, under the terms of this Ordinance, is a permitted use in the district in which it is located, shall be deemed a permitted use, provided the use and structures meet the regulations of the district in which it is located.
- B. An existing conditional use which, under the terms of this Ordinance, is a conditional use in the district in which it is located, may be continued, provided the terms of the conditional use permit are being followed.
- C. An existing conditional use which is listed as neither a permitted use nor a conditional use, under the terms of this Ordinance, shall be deemed to a nonconforming use and shall be subject to the provisions of this chapter.

28.040 Record of Nonconforming Uses. A current file of all nonconforming uses shall be kept by the Department, listing the leaseholder's name and address, property description, nature and extent of the nonconforming use, and the date the use was established or became nonconforming. The file shall be used by the Department to document changes or expansions of such uses and for issuance of violation notices.

SECTION 29. ON-SITE PARKING AND LOADING

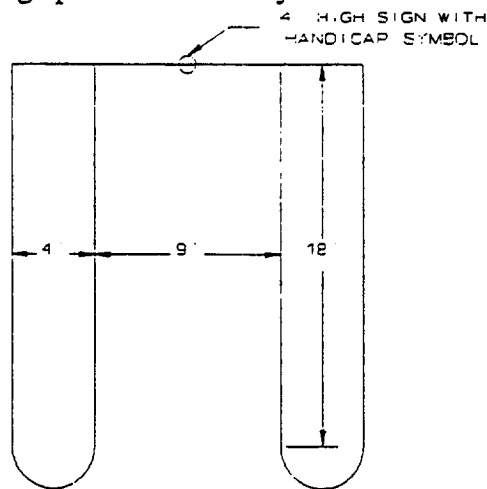
29.001 Purpose. To promote public safety and welfare by reducing congestion on public streets and roads, by requiring, on each lot, sufficient parking and loading space to accommodate the traffic generated by the use of the lot.

29.005 (Reserved).

29.010 General Provisions.

A. Minimum Regulations.

1. A minimum of one hundred eighty (180) square feet is required for each parking space. Parking spaces shall be not less than nine (9) feet in width and eighteen (18) feet in length, plus adequate access and maneuvering area. NOTE: The minimum dimensions create less than the minimum area, therefore an increase in length and/or width shall be required for compliance.
2. Required Disabled Parking Spaces.
 - a. The number of parking spaces allocated for disabled parking shall be four percent (4%) of the total number spaces required.
 - b. The minimum number of disabled parking spaces shall be one (1) for facilities with twenty five (25) or less spaces.
 - c. Disabled parking spaces shall be located adjacent to and/or closest to the facility's entrance and shall be barrier free to the entrance.
 - d. Disabled parking spaces shall be identified by a sign, at least four (4) feet high, at the face of the stall.
 - e. The minimum dimensions for a disabled parking space shall be the same as 29.010A.1 with the addition of a minimum four (4) foot buffer from the adjacent parking space or accessway.



MINIMUM DIMENSIONS FOR A DISABLED PARKING SPACE
(NOTE: Minimum area still required)

3. All parking spaces shall have direct access to a street or alley. Loading spaces shall be sufficient for the uses they are designed to serve and shall provide space for maneuvering.
 4. Required parking and loading spaces shall not be used for storage of goods or storage of vehicles that are inoperable or for sale or rent.
- B. Reduction and Use of Parking and Loading Space.
1. On-site parking facilities existing upon the date of the adoption of this ordinance shall not be reduced to an amount less than required herein.
 2. If an existing structure or use with less than the number of parking and loading spaces required under this section is expanded to an amount less than fifty percent (50%) of its gross area, then additional parking shall be required only for the addition.
 3. If an existing structure or use with less than the number of parking and loading spaces required under this section is expanded to greater than fifty percent (50%) of the original structure or use, then the number of parking stalls required shall meet the total number required under this section.
- C. Computing Requirements. In computing the number of spaces required, the following rules shall govern:
1. "Floor Space" means the gross floor area of the specific use.
 2. For structures containing more than one use, the required number of spaces shall be computed by adding the spaces required by each use.
 3. Where parking spaces are calculated according to the number of employees, the number of employees on the main shift, or the greatest number of employees present at one time, shall be used to compute the number of stalls required.
 4. In the case of fractional parking spaces, the number of required spaces shall be rounded up to the next whole number.
 5. Parking space requirements for uses not specifically mentioned herein shall be the same as required for a use of similar nature, as determined by the departments.
- D. Location of Parking Facilities. Unless included as part of a Conditional Use Permit, required off-street parking facilities shall be located on the same lot as the use they are intended to serve, provided that combined or joint parking facilities may be provided for uses in the C-1, C-2, UID-1, I-2, and TI-1 districts if the total number of spaces equals the total spaces required. In the case of joint facilities, no parking space shall be more than four hundred (400) feet from the use it is intended to serve.
- E. Screening. All open automobile parking areas containing more than five spaces shall be effectively screened on each side abutting a residential district by a wall, fence, or densely compact hedge of not less than four (4) feet in height. This requirement may be waived if the parking area is at least seventy-five (75) feet from the nearest residential property line.
- F. Lighting. Lighting used to illuminate on-site parking areas shall be directed away from residential properties and public right-of-ways.

- G. Yards.
 - 1. In the C-1, C-2, UID-1, I-2, and TI-1 districts, on-site parking is allowed in all yards, provided that in the front yard a five (5) foot setback is maintained. When abutting a residential district, side and rear yard setbacks shall be ten (10) feet from the property lines.
 - 2. In residential districts, parking in a required front yard is prohibited except for improved driveway areas.
- H. Construction and Maintenance. In the C-1, C-2, TI-1, UID-1, I-2, and R-4 districts all parking areas and access drives shall be covered with a dust free, all-weather surface (i.e. concrete, bituminous blacktop, etc.), with proper surface drainage. All areas containing five (5) or more spaces shall be hardsurfaced, and have aisles and spaces clearly marked by leaseholder and/or owner.
- I. Parking Limitations.
 - 1. No commercial vehicles or equipment exceeding nine thousand (9,000) pounds gross weight shall be stored in a residential district unless it is stored in a completely enclosed building.
 - 2. Inoperable or unlicensed vehicles of any kind shall not be stored in any district other than in an enclosed building or where allowed as a permitted conditional use.

29.020 Required Minimum Number of On-Site Parking Spaces. The required minimum number of parking spaces shall be in accordance with the following schedule:

- A. Residential dwelling units.
 - 1. Single-family and mobile homes: one (1) stall per dwelling.
 - 2. Low density residential: two (2) stalls per dwelling unit.
 - 3. High density residential: one and one-half (1.5) stalls per dwelling unit.
 - 4. Elderly multi-family units: three-quarters (0.75) stalls per dwelling unit.
- B. Hotels, motels, lodging houses, boarding houses: one (1) stall per guest room plus one (1) stall per employee on the major shift;
- C. Hospitals, convalescent and nursing homes, and similar institutions: one (1) stall per four (4) beds, plus one (1) stall per employee on the major shift;
- D. Business or professional offices, medical or dental clinics, animals hospitals, government buildings, and financial institutions: one (1) stall per three hundred (300) square feet of floor area;
- E. Churches, theaters, community centers, auditoriums and similar places of assembly: one (1) stall per five (5) seats or one (1) per one hundred (100) square feet;
- F. Elementary and junior high schools: two (2) stalls per classroom;
- G. High schools: one (1) stall per ten (10) students, plus one (1) stall per two (2) employees;
- H. Colleges, trade, vocational and technical schools: one (1) stall per five (5) students, plus one (1) stall per two (2) employees;
- I. Nursery school or day care center: one (1) stall per ten (10) children, plus one (1) stall per two (2) employees;
- J. Manufacturing and processing plants, warehouses, wholesale establishments, research laboratories, and similar uses: one (1) stall per two (2) employees on the major shift, plus one (1) stall for every business vehicle normally kept on the premises;

- K. Restaurants (except drive-in) and fast food establishments: one (1) stall per fifty (50) square feet of floor area, plus one (1) stall per employee;
- L. Retail stores and service establishments: one (1) stall per two hundred (200) square feet of floor area, except for furniture, appliance, and home improvement products (i.e. carpets, paint, wallpaper, etc.) which require one stall per four hundred (400) square feet of floor area;
- M. Bowling alleys: five (5) stalls per lane;
- N. Funeral homes: twenty (20) stalls per visitation room, plus one (1) stall per vehicle normally kept on the premises;
- O. Recreation facilities, including golf courses, archery ranges, softball fields and tennis courts: one (1) stall per three (3) users (participants and spectators) at maximum capacity, plus one (1) stall per two (2) employees;
- P. Automobile service stations: one (1) stall per each employee on the major shift, plus three (3) stalls per service bay;
- Q. Drive-in restaurants: five (5) stalls per employee on the major shift;
- R. Shopping centers: five and one-half (5.5) stalls per one thousand (1,000) square feet of gross leasable area;
- S. Bingo parlors, casinos, and other gaming establishments: one (1) stall per every one hundred fifty (150) square feet, plus appropriate parking accommodations for recreational vehicles, buses, and other large vehicles.
- T. Convenience stores with gas sales: one (1) stall per two hundred (200) square feet of retail area; each parking area adjacent to a pump island or fuel area may count as a parking stall.

29.030 On-Site Loading Requirements.

- A. In C-1, C-2, UID-1, and I-2 districts, adequate loading berths and areas shall be provided and so located that all vehicles loading, maneuvering or unloading are completely off the public right-of-way.
- B. All C-1, C-2, UID-1, and I-2 uses shall have at least one (1) loading berth for every thirty thousand (30,000) square feet of floor area, with a maximum of three (3) berths required.

SECTION 30. SIGN REGULATION

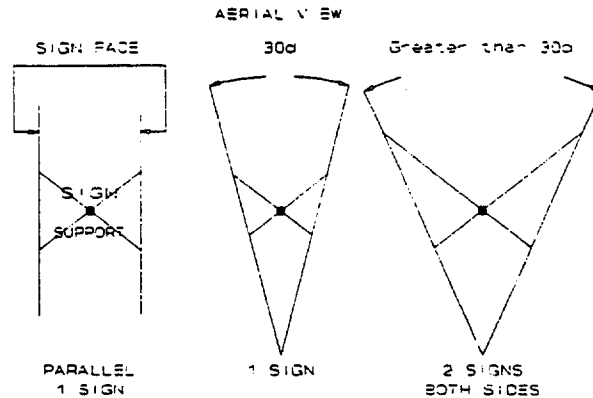
30.001 Purpose. To protect and promote health, safety, general welfare and order through the establishment of comprehensive, uniform standards and procedures governing the construction, use, and style of signs or symbols serving as a visual communication media, aimed at persons upon public right-of-way or private properties. It is intended that the opportunity for effective, aesthetically compatible and orderly communications be encouraged by reducing confusion and hazards resulting from unnecessary or indiscriminate use of signs. Hereafter, no sign shall be erected, constructed, altered, or modified except as regulated herein.

30.005 (Reserved).

30.010 General Sign Provisions.

- A. **Hazardous Signs.** No sign shall, by reason of its shape, location, lighting, size, color, or intensity, create a hazard to the safe, efficient movement of vehicular or pedestrian traffic. No private sign shall contain words which might be construed as traffic controls, such as "stop," "caution," or "warning" unless such sign is intended to direct traffic on the premises.
- B. **Sign Maintenance.** All signs and sign structures shall be properly maintained in a safe, orderly condition, and parts and supports shall be properly painted at all times. Signs or sign structures which are rotted, unsafe, or which have otherwise deteriorated or have been defaced shall be repainted, repaired, or replaced by the leaseholder of the property upon which the sign is located.
- C. **Interference.** No signs, nor any guides, stays or attachments thereto shall be erected, placed, or maintained upon rocks, fences, or trees, or in such a manner as to interfere with fire-fighting equipment or personnel, or any electric light, power, telephone or cable, wires or supports thereof.
- D. **Signs Within Right-of-Way.** No signs other than governmental signs shall be erected or temporarily placed within any public right-of-way.
- E. **Portable Signs.** The temporary use of portable signs shall be allowed in commercial districts, provided that the total signage areas does not exceed one hundred twenty percent (120%) of the size allowed in 30.030. A portable sign may be placed within a front yard.
- F. **Clearance.** All signs located over a public or private access route (sidewalk, mall, etc.) shall be located a minimum of twelve (12) feet above grade level.
- G. **Display of Information.** All signs requiring a permit shall display in a conspicuous manner the permit number as required by ordinance.
- H. **Safe Ingress and Egress.** No sign or sign structure shall be erected or maintained so as to prevent or deter free movement from any door, window, walkway, fire escape, nor shall be attached to a standpipe or fire escape. No sign or sign structure shall impede the vision triangle of a driveway access to a property based on the type of public road being accessed.
- I. **Signs Required by Ordinance.** All signs required by ordinance shall be permitted in all districts.

- J. **Parallel Signs.** If a freestanding sign or sign structure is constructed so that the faces are not parallel, the angle shall not exceed thirty degrees (30°). If the angle is greater than thirty degrees (30°), the total area of both sides is added together shall be the calculated area and considered two (2) signs. If the angle is less than thirty degrees (30°), only one (1) sign, the larger if different size, shall be used for calculating square footage and number of signs.



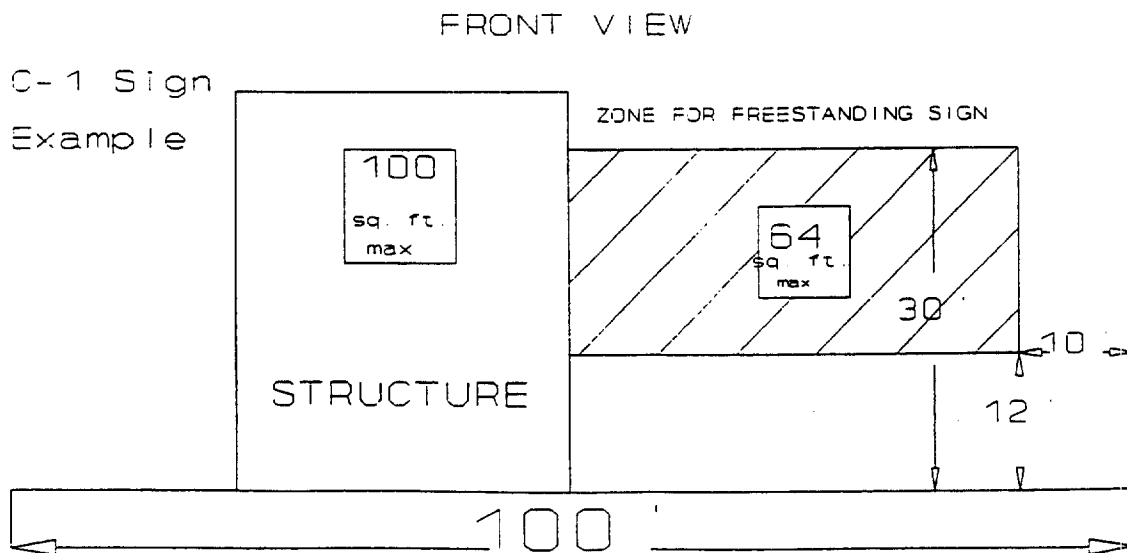
- K. **Front yard Signs.** One (1) business freestanding sign may be placed within the front yard.
- L. **Obsolete Signs.** An obsolete sign or a sign which advertises an activity, product or service which is no longer being produced or conducted shall be removed within ninety (90) days from the last date upon which the activity or service was produced or conducted. Responsibility for the removal shall be vested in the leaseholder of the property. If the lease is canceled, then the Department may remove any obsolete signs.
- M. **Illumination.** All externally illuminated signs shall direct the source of light away from adjacent properties.
- N. **Double Frontage Lots.** Lots having frontage on two streets or on a street and an alley shall be permitted to provide the maximum number and square footage of signs on each footage.
- O. **Copy Area.** In the C-1, C-2, UID-1, and I-2 districts the maximum square footage for an on-site freestanding sign can be increased to double the allowable sign area by approval of a Conditional Use Permit.
1. The permit shall be recommended for approval only if the Committee finds that such a sign:
 - a. Will be compatible with surrounding signs and the street setting in which it is to be located;
 - b. Will not create or add to an excessive number of signs relative to the area in which it is located;
 - c. Will not interfere with or confuse motorists or pedestrians; and
 - d. Is consistent and compatible with the scale of the buildings on the premises.
 2. In evaluating the permit application, the Committee shall consider such factors as:
 - a. Proximity of the proposed sign to other freestanding signs;
 - b. Size of the other signs in the area;
 - c. Square footage, location, amount of street frontage, proposed setback for the sign, etc.

30.020 Permitted Signs. The following signs shall be allowed without a permit; in the front yard, excluding visual triangle areas; and as regulated in the subsections listed below:

- A. **Government Uses.** Signs of a public, non-commercial nature, including but not limited to safety signs, trespassing signs, traffic control devices, scenic or historical signs, memorial plaques, and community service signs the Department approves.
- B. **Directional Signs.**
 - 1. On-site directional and parking signs, intended to facilitate the movement of vehicles and pedestrians upon the premises shall not exceed six square (6) feet and shall not be illuminated.
 - 2. Off-site directional signs directing the public to a business shall not exceed six (6) square feet; shall name only the business, distance, and direction to the business; and are limited to one sign in either direction of the business.
- C. **Integral Signs.** Signs attached to buildings or structures which name the building, date of construction, and commemorative actions.
- D. **Campaign Signs.** Election campaign or referendum signs, not exceeding six (6) square feet in area, may be placed on the first day for circulation of nomination papers or the period beginning on the day on which the questions to be voted upon are submitted to the electorate and shall be removed fourteen (14) days after the day of election or vote on a referendum. In residential districts, no such sign may be electrical, mechanical, or have an audio auxiliary.
- E. **Nameplates.** One (1) sign which states the name of the occupant, and a home occupation or farm related business.
- F. **Holiday Signs.** Signs or displays which contain or depict only a message pertaining to a national or Tribally recognized holiday, displayed for a period not to exceed sixty (60) days.
- G. **Construction Signs.** Non-illuminated signs naming the architects, engineers, contractors, and other individuals or firms involved with the construction, alteration, or repair of a structure and the future use of the site. Such signs shall be confined to the construction site and shall be removed when the project is completed or occupancy of the structure, whichever comes first. No sign shall exceed sixty-four (64) square feet.
- H. **Occasional Yard/Garage Sale Sign.** One (1) sign is allowed; shall not exceed six (6) square feet; and shall not be placed more than two (2) days prior to the sale and removed at the end of the sale.
- I. **Motor Fuel Pricing Signs.** One (1) freestanding or canopy sign displaying the type of service offered, grade of fuel, and price of the motor fuel sold is allowed. Each type of service offered is allowed a maximum of twelve (12) square feet. If, in the determination of the Department, one sign is not sufficient to convey the above information, two (2) single faced signs may be displayed at the appropriate points along the pump island in lieu of provisions set forth above.

30.030 District Regulations.

- A. Signs in All Districts. Signs are regulated or prohibited in particular zoning districts according to their size, height, number, and location on the lot.
- B. Permits Required.
 - 1. Except as allowed in 30.020, no sign shall be erected, constructed, enlarged or otherwise modified without first receiving a sign permit.
 - 2. A written notice, letter, or memorandum requesting a sign permit shall be made to the Department. Permits shall be issued if the proposed sign meets the requirements of this section and if in accordance with section 34.040A.4 (Administration; Leases and Permits Required; Land Use Lease).
 - 3. A sign design and site plan shall be submitted prior to the issuance of the sign permit.
 - 4. A permit fee is required under Section 35 (Fee Schedule) shall be paid prior to issuance of a sign permit.
- C. All Residential and Agricultural Districts. One freestanding sign of not more than thirty-two (32) square feet is permitted, providing that the sign be located not less than fifteen (15) feet from a property line or right-of-way line, nor shall it extend higher than ten (10) feet from grade level.
- D. C-1, C-2, and TI-1 Districts.
 - 1. The gross area of a sign in square feet shall not exceed the lineal frontage of the lot. Two (2) signs are allowed per lot.
 - 2. One (1) freestanding sign is allowed, after issued a sign permit, and shall not exceed sixty-four (64) square feet. The sign may be in the front yard but cannot be located closer than ten (10) feet to any other property line and shall not extend below twelve (12) feet and above thirty (30) feet from final grade.
 - 3. Wall and roof signs shall not exceed one hundred (100) square feet nor extend more than five (5) feet above the roof or parapet wall.

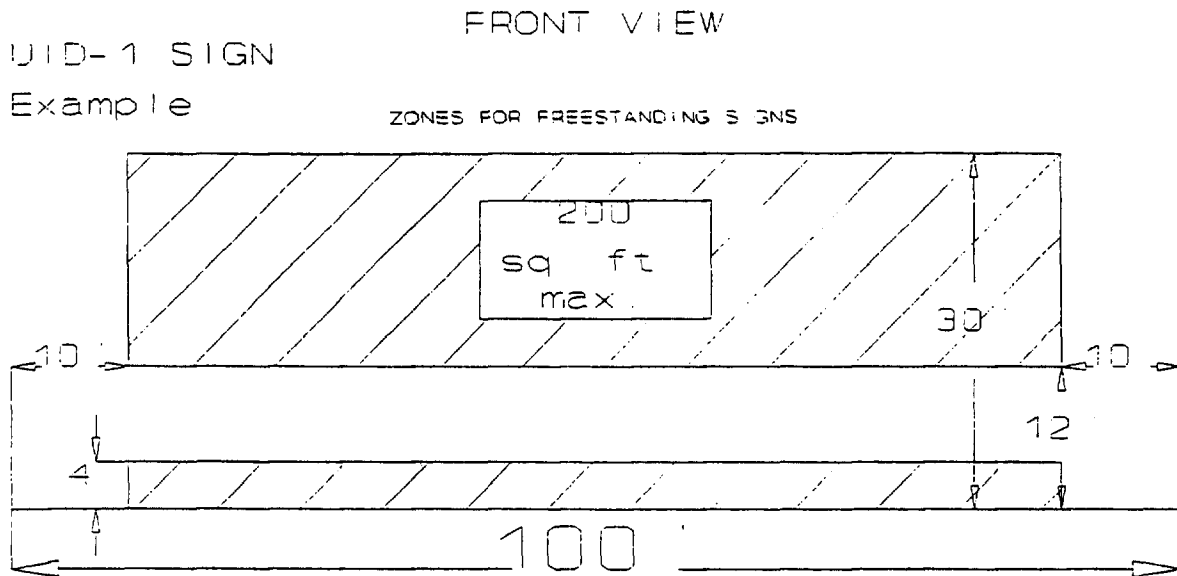


DISTRICT REGULATIONS FOR SIGNS

District	Max. # Total	Max. # Freestanding	Max. Size	Min. Distance from Adjacent Property	Min. Height Bottom of Sign	Max. Height Top of Sign	Other Restrictions
R-1	1	1	32 ft ²	15 ft.	-	10 ft.	-
R-2	1	1	32 ft ²	15 ft.	-	10 ft.	-
R-3	1	1	32 ft ²	15 ft.	-	10 ft.	-
R-4	1	1	32 ft ²	15 ft.	-	10 ft.	-
R-R	1	1	32 ft ²	15 ft.	-	10 ft.	-
A-1	1	1	32 ft ²	15 ft.	-	10 ft.	-
C-1 & C-2	2	1	64 ft ² Freestanding 100 ft ² Wall/Roof	10 ft.	12 ft.	30 ft.	1. Square footage of a sign cannot exceed lineal frontage of the lot. 2. Wall/Roof signs may not extend higher than 5 feet above roof.
TI-1	2	1	64 ft ² Freestanding 100 ft ² Wall/Roof	10 ft.	12 ft.	30 ft.	1. Square footage of a sign cannot exceed lineal frontage of the lot. 2. Wall/Roof signs may not extend higher than 5 feet above roof.
UID-1 & I-2	4	2	200 ft ² Freestanding & Projecting	10 ft.	Ground Level or 12 ft.	4 ft. or 30 ft.	1. Square footage of all signs cannot exceed 4 times the lineal frontage of the lot. 2. Attached signs may not extend higher than the roof. 3. Attached sign may not extend more than 72 inches from building or into a public right-of-way.

E. UID-1 and I-2 Districts.

1. Area and Number. The area in square feet of all signs shall not exceed four times the lineal front footage of the lot; the area of all illuminated signs shall not exceed two times the lineal front footage. Four (4) signs are allowed per lot, two (2) of which may be freestanding.
2. Freestanding Signs. The area of a freestanding sign shall not exceed two hundred (200) square feet. No part of the sign shall be located closer than ten (10) feet to a property line. The sign shall not extend into an area between four (4) and twelve (12) feet above grade, and the sign shall not be higher than thirty (30) feet above grade.
3. Attached Signs. Attached signs shall not project more than seventy-two (72) inches from the building, nor extend higher than the roof of the building or into a public right-of-way. Projecting signs shall not exceed two hundred (200) square feet in area.



F. Integrated Shopping Centers.

1. Shopping centers with several separate businesses are allowed two and two tenths (2.2) square feet per lineal front footage for wall and roof signs.
2. One freestanding area identification sign shall be permitted with a maximum of two hundred (200) square feet. The content of the sign shall be limited to the name of the shopping center and the businesses contained therein. The sign may be located in the front yard but not within ten (10) feet of a side property line. The sign shall not extend below twelve (12) feet nor above thirty (30) feet from final grade.

30.040 Advertising (off-premises) Signs. Off-premises advertising signs are permitted in the UID-1 and I-2 Districts, subject to the following provisions:

- A. Spacing. There shall be a minimum of three hundred (300) feet of separation between advertising signs of the same street facing traffic flow.
- B. Parallel Signs. Advertising signs may be doublefaced, with each side considered as facing traffic flowing in the opposite direction. Such signs shall be considered one (1) when calculating sign area.
- C. Size, Height, and Length. Advertising signs shall not exceed seven hundred fifty (750) square feet in total area including all faces, except parallel signs, nor shall the height exceed the permitted height of other freestanding signs in the district in which it is located. No advertising sign shall exceed fifty-five (55) feet in length.
- D. Setbacks. No part of an advertising sign shall be closer than the building setback lines of the district in which it is located.
- E. Exclusionary Areas. No advertising sign shall be erected or maintained within one hundred (100) feet of a residential, agricultural, or conservancy district boundary, or within five hundred (500) feet of a public park.

30.050 Nonconforming Signs.

- A. Legal nonconforming signs may not be structurally altered or enlarged except in accordance with this section or reestablished after being brought into compliance.
- B. Nothing in this section shall be construed as relieving the owner of a legal nonconforming sign from the provisions of this section regarding safety, maintenance, and repair of signs. However, no change in the sign structure or copy shall be made which makes the sign more nonconforming.

30.060 Inspection. All signs for which a permit is required shall be subject to inspection by the Department. The Department may enter any property during normal business hours to ascertain whether the provisions of this section are being obeyed. The Department shall order the removal of any sign that is not maintained in accordance with the provisions of this section.

SECTION 31. SAND, GRAVEL, AND SOIL EXTRACTION

31.001 Purpose. To provide for sand, gravel, and soil extraction uses which are located by geological considerations in conjunction with the planning and zoning processes; to provide environmentally sound extraction practices; to promote aesthetic values; to provide for environmentally sound reclamation of land disturbed by extraction activities through an impartial series of standards and regulations governing extraction; and to protect public health, safety and general welfare.

31.005 Determinations Regarding Extraction.

- A. The Tribal Legislature has determined that within this Ordinance and section "Extraction" means the removal of specifically sand, gravel, and soil. The removal of any surface or subsurface material other than specified above is not "Extraction" and therefore prohibited.
- B. The Tribal Legislature has determined that sand, gravel, and soil are natural resources of the Menominee Indian Tribe of Wisconsin and shall be shared by all members of the Tribe. The Zoning Administrator shall be responsible for managing, regulating, and maintaining any extraction sites.

31.010 Extracting from Approved Sites.

- A. Extraction shall occur only at the specified sites located on the Official Current Zoning Maps and approved by the Zoning Administrator. Extraction sites shall be identified on the Official Current Zoning Maps by the crossed pick-axe symbol - X.
- B. Any Tribal member requesting extraction shall do so in accordance with the extraction policies and procedures located in the Department.
- C. The Zoning Administrator shall have authority to impose reasonable restrictions to assure a properly managed extraction site.
- D. Extraction shall be subject to the regulations and restrictions of this section as well as any other Tribal ordinance or Federal regulation.

31.020 Requirements.

- A. Any person or entity desiring to pursue extraction activities shall file for a permit with the Department in accordance with the extraction policies and procedures located in the Department.
- B. All new extraction sites shall be established by the Zoning Administrator and shall be subject to section 34.050 (Administration; Amending the Zoning Ordinance).
- C. Exempt Activities. The following are exempt from this section:
 - 1. Excavations or grading by a leaseholder for personal use on the same leased land.
 - 2. Preparation of a construction site as long as extracted materials are neither imported or exported from the construction site.
 - 3. Restoration of land following a natural disaster.

31.030 Inspections.

- A. Since all extraction sites are Tribally managed, the Zoning Administrator or any other authorized department, such as the Environmental Services Department or Conservation Department, can inspect any extraction site or permittee at any time with or without notice.
- B. Approved agents of the Department or departments may inspect any required records of any person or business that has extracted material to determine compliance with the provisions of this section. Any public or private complaint against a person or business that has extracted material may result in an inspection of the extracting operation to determine the validity of the complaint. Such inspections shall be at reasonable times and with reasonable notice.

31.040 Penalties.

- A. Whenever the Department or departments finds a violation of this section, the violation shall be recorded, and the Department shall send the violator, by certified mail, an order specifying the nature of the violation, time of violation, and corrective measures necessary to achieve compliance of this section.
- B. The Department shall cancel the permit held by the person or business who fails to comply with the order within thirty (30) days after the order is served, unless the person or business named therein, within ten (10) days after notice, requests in writing a hearing before the Committee. Failure to show just cause for the continued violation and lack of compliance with the order shall result in permit cancellation and immediate cessation of all extraction activities on the affected property.
- C. Any person, firm, corporation, operator, or any other group of persons convicted in a court of law of engaging in an extraction operation without a valid or with a canceled permit shall be required to forfeit not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000.00) per day for each and everyday the operation is found to be in violation of this section.
- D. Any person, firm, corporation, operator, or any other group of persons convicted in a court of law of engaging in an extraction operation in violation of a permit shall be required to forfeit not less than two hundred fifty dollars (\$250.00) nor more than ten thousand dollars (\$10,000.00) per day for each and everyday the operation is found to be in violation of this section.
- E. Compliance herewith may also be enforced by injunctive order at the discretion of the Committee. Nothing in this section shall be construed to infringe upon the Zoning Administrator's authority to withhold permits for cause or to order cessation of all extraction activities for cause.

SECTION 32. (*RESERVED*)

RESERVED

SECTION 33. MODIFICATIONS, EXCEPTIONS & SPECIAL REQUIREMENTS

33.001 Purpose. To enumerate those special instances where the terms of this Ordinance may be waived or modified without variance or conditional use permit, or where special requirements are placed upon use, property, or structure.

33.005 (Reserved).

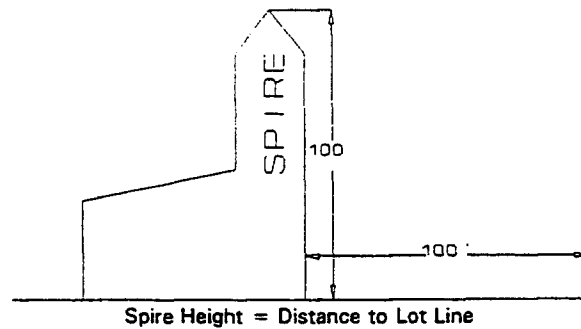
33.010 Yard Regulations. Measurements shall be taken from the nearest point of a building to the lot line in question, subject to the following:

- A. Cornices, canopies, and eaves may extend into the required front yard a distance not to exceed four (4) feet.
- B. Open fire escapes may extend into the required front yard a distance not to exceed four (4) feet.
- C. A landing place or uncovered porch may extend into the required front yard a distance of eight (8) feet provided the floor is not higher than three (3) feet above grade. An open railing of no higher than four (4) feet may be placed around the structure.
- D. Heat pumps, air conditioning units or similar equipment may extend into the required front yard a distance not to exceed four (4) feet.
- E. Solar collection units may extend into the required front yard a distance not to exceed eight (8) feet.
- F. The above architectural features may also extend into any side or rear yard to the same extent; however steps or uncovered porches may not extend into the side yard or the shoreland setback distance from the ordinary high water mark of navigable water as regulated by Section 22 (Shoreland Overlay District).
- G. On double frontage lots, the required front yard shall be provided on both street sides.
- H. In subdivided areas within residential districts, whenever block frontage is more than half developed with residences having less setback than required, the setback shall be determined by the following rule: the front setback line of a proposed structure shall be the line between principal structures on adjacent lots. If within the block no principal structure exists to one side of the proposed structure, a structure is assumed to exist at the required setback lines.

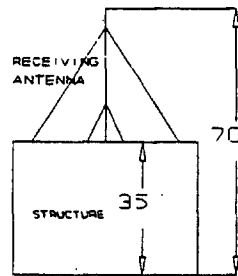
33.020 Area Requirements. No lot shall be so reduced that the area of the lot or the dimensions of a required open space shall be smaller than herein prescribed.

33.030 Height Regulations. The district height limitations stipulated elsewhere in this Ordinance may exceeded as follows:

- A. Uninhabited architectural projections such as spires, belfries, parapet walls, cupolas, domes, flues and chimneys shall not exceed in their height the distance from the nearest lot line.

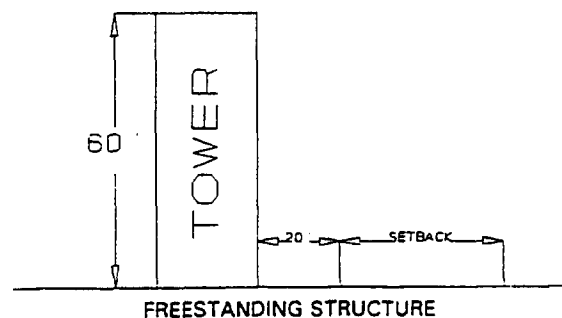
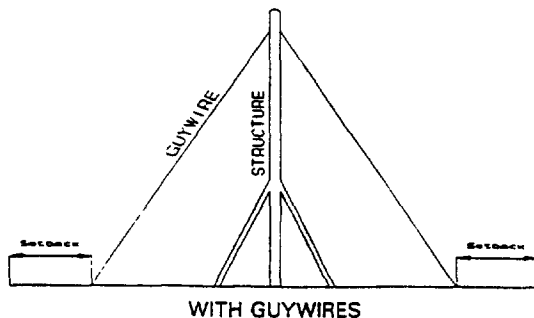


- B. Special structures, such as elevators, radio and television receiving antennas, cooling towers and smoke stacks may be extended one hundred percent (100%) of the district limitations.



Example: District Max Height = 35 feet
therefore Antenna Max Height = 70 feet

- C. Communication structures, such as radio and television transmission towers or microwave relay towers shall meet the following requirements:
1. Structures that use guywires for support shall meet the district setback requirements from the ground anchors.
 2. Freestanding structures shall meet the district setback requirements plus one-third ($\frac{1}{3}$) the height of the tower.



- D. Essential services, utilities, water towers, electrical power and communication transmission lines are exempt from the height limitations of this Ordinance.

33.040 Fences.

- A. For reasons of suitability, aesthetics, and public safety, conditional use permits shall be required for all fences except for those listed below:
 - 1. Simple chain link (i.e. without barbed wire or plastic inserts);
 - 2. Split rail/decorative rail;
 - 3. Picket.
- B. Fences in residential districts shall not exceed six (6) feet in height on the side and rear yards, nor exceed forty-two (42) inches in height in the front yard except as indicated in 33.060A and 33.060B.
- C. In addition to the requirements set forth in Section 20 (Highway Access and Setbacks), the setback for fences in:
 - 1. Side and rear yards shall be at least six (6) inches from the property line.
 - 2. The front yard shall be at least six (6) inches from the road right-of-way and shall not impede any driveway or sidewalk.
- D. Fences in the shoreland and floodplain districts are allowed within seventy-five (75) feet of the normal high water mark if they are open such as chain-link fences.
- E. The leaseholder shall be required to maintain:
 - 1. The fence in a safe and suitable condition;
 - 2. The yard from the fence to the property line.

33.050 Essential Services Regulations.

- A. Since essential services, as defined in Section 2 (Rules and Definitions), may affect urbanizing area of the development, the location of all such essential services in any zoning district shall be filed with the Department prior to actual construction or condemnation action.
- B. Applications for essential services not located within highway and street right-of-way shall require a conditional use permit as regulated in Section 26 (Conditional Use Permits), and shall be governed by the following procedures:
 - 1. The applicant shall file with the Department such maps indicating location, alignment, and type of service proposed, together with the status of any applications made or required to be made under Tribal, state, or federal laws.
 - 2. The maps and accompanying data shall be submitted to the Department for review and recommendation regarding their relationship to urban growth, land use, highways, and recreation area policies and plans.
 - 3. Following departmental review, when necessary or requested by the Committee, the Department shall report its findings and recommendations on the proposed essential services and file the report with the Committee.
 - 4. Upon receipt of the above report, the Committee shall consider the maps and accompanying data and shall recommend to the Tribal Legislature its approval or modifications considered desirable to carry out the policies of this Ordinance.

5. In the case of pipelines, the Department may require modifications to protect existing agricultural drainage systems, tiles or ditches, whether public or private. The Department may also require the applicant to modify the depth or routing of the pipeline to accommodate future agricultural drainage systems, tiles or ditches, whether public or private, if such information is provided by the owner or leaseholder of the agricultural land to the applicant within sixty (60) days of the start of construction.
6. Maintenance structures serving local distribution lines are exempt from this section if they meet the following conditions:
 - a. Structures of forty (40) square feet or less can be placed in the front yard if not in a vision triangle or impair the vision at a driveway intersection.
 - b. Structures greater than forty (40) square feet if placed at the front yard setback or greater.
 - c. All structures shall be screened and be compatible with surrounding land uses. Compatibility shall be determined by the Department.

33.060 Private Recreational Facilities. The following rules and regulations shall apply to private recreational facilities allowed as accessory uses and structures in the R-1, R-4, R-R, A-1, and TI-1 districts:

- A. Private swimming pools, provided that:
 1. The pool, pump, and filter are not located closer than ten (10) feet to any property line or fifty (50) feet from a street right-of-way;
 2. No electrical power lines are located over or under the pool, pump, and filter;
 3. A wall or fence of a height of four (4) feet or more is installed around the pool or yard at time of or before pool completion;
 4. All swimming pools in the applicable residential districts shall meet the requirements of 33.060A.3 within sixty (60) days of adoption of this Ordinance.
- B. Within only the R-4 and TI-1 districts, tennis courts and full basketball courts, provided that:
 1. No part of the court(s) is located closer than twenty (20) feet to a property line;
 2. If lights are installed for night play, they must be turned inward to minimize glare on the road or adjacent property;
 3. The playing area shall be properly fenced to prevent misguided balls from going out into roads or adjacent property.
- C. Nothing in this section shall be construed as to prohibit the installation of basketball equipment in a driveway area within the R-1, R-R, and A-1 district in accordance with district requirements.

33.070 Travel Trailers, Recreational Vehicles, and Buses for Habitation. Travel trailers, recreational vehicles, buses, and similar mobile recreational shelters shall not be used for habitation in any district unless such use is permitted as a permitted or conditional use. The storage of travel trailers, recreational vehicles or buses is not permitted unless there is a principal structure and use on the property. Other than the driveway area, such vehicles shall not be stored within the front yard or road right-of-way.

33.080 Exemptions for Accessory Structures. Certain accessory structures (i.e. storage sheds, dog houses, etc.) shall be exempt from conditions of section 34.040 (Administration; Permit Required), provided that all of the following conditions are satisfied:

- A. Structure area shall be limited to one hundred (100) square feet;
- B. Structure height shall be limited to six (6) feet;
- C. Structure location must meet all setbacks for the district in which it is located;
- D. Use must be compatible to district as a permitted accessory use;
- E. There shall be no telephone, water or sewer service to the structure;

33.090 Accessory Structure in the Absence of a Principal Use. The placement of a private garage in the absence of a principal residence is allowed under the following conditions:

- A. A residence shall be constructed on the property within two (2) years.
- B. The use of the structure is permitted as an accessory use such as storage of lumber and supplies for the construction of the residence, motor vehicles, or maintenance machinery for the lot.
- C. Sanitary and building permits have been issued.

33.100 Community Living Arrangements. The placement of group homes or community living arrangements not located within the TI-1 district shall be provided for as described below:

- A. Density and spacing.
 - 1. Community living arrangements not located within TI-1 district shall not be immediately adjacent to an existing community living arrangement.
 - 2. Total capacity of a community living arrangement not located within R-4 or TI-1 district shall not exceed eight (8) persons.
- B. In all residential districts and the A-1 district, foster homes for four (4) or fewer children are permitted without meeting density or spacing requirements.
- C. Community living arrangements licensed for eight (8) or fewer persons are permitted in all residential districts and A-1 district.
- D. Community living arrangements licensed for nine (9) or more persons are permitted in the R-4 district.

33.110 Family Day Care Homes. The placement of day care homes in the R-1, R-3, R-R and A-1 districts are allowed as permitted uses where licensed by the Department of Health and Social Services and where care is provided for not more than eight (8) children. Centers with more than eight (8) children shall require a conditional use permit.

33.120 Bed and Breakfast Establishments and Boarding Houses. Bed and breakfast establishments and boarding houses are conditional uses in the R-1, R-R and A-1 District and shall meet the following requirements:

- A. Site plan showing location of home, garage and parking for guests' vehicles. Plan should indicate distance to nearby homes.
- B. A six (6) square foot sign showing only name of establishment, name of manager/entrepreneur, and address is allowed.

33.130 Truck Bodies, Mobile Homes, Buses, and Semi-Trailers as Accessory Structures.

- A. Truck bodies and semi-trailers are allowed in only the UID-1 and I-2 district as a permitted accessory structure when properly screened from adjacent properties.
- B. Mobile homes are allowed as accessory structures in the C-1, C-2, TI-1, UID-1, and I-2 districts and shall not be used as a residence.
- C. Buses are not allowed as an accessory structure in any district or for permanent human habitation.

33.140 Screening for the C-1, C-2, UID-1 and I-2 Districts. Any property being developed or expanded in a C-1, C-2, UID-1 or I-2 district shall have effective solid screening along all lot lines adjoining any residential district except where waived by the Committee after recommendation from the Department. All outside storage areas shall be effectively screened from public road right-of-ways.

A. Screening Requirements:

- 1. Front yard screening shall be made of natural screening, or of man-made materials five (5) feet in height.
- 2. Side and rear yard screening shall be made of natural screening, or of man-made materials six (6) feet in height.
- 3. Natural screening shall not be less than three (3) feet in height at time of planting.

B. Waiver Conditions:

- 1. A reasonable probability that the adjoining properties will be re-zoned for commercial or industrial use.
- 2. There is an existing natural topographic or vegetative screen.
- 3. If written agreements are arrived at with the affected property owners or leaseholder

33.150 Solid Waste and Recycling Facilities. Recycling drop-off stations, resource recovery facilities, and resource recovery processing facilities shall meet the following requirements:

- A. Recycling drop-off stations are permitted uses in the UID-1 and I-2 districts and conditional in the C-1 and C-2 districts. A recycling drop-off station must meet the following requirements:
 - 1. The area for the station shall not exceed one thousand five hundred (1,500) square feet. It may be an accessory use on the property.
 - 2. The site shall be screened from residential uses by either a fence of six (6) feet in height or by natural vegetation. The site cannot be closer than one hundred (100) feet from a residential use.
 - 3. There shall be parking for at least two (2) vehicles and adequate space for the vehicles to turn around for exiting.
 - 4. All driveways and travelled portions on the site shall be of dust free material.
 - 5. There shall be no outside storage of materials on the site and the station must be attended on a minimum of a weekly basis.
 - 6. The facility shall meet all applicable Tribal and federal laws and regulations.

- B. Resource recovery facilities are permitted uses in the I-2 district and conditional uses in the UID-1 district. A resource recovery facility shall meet the following requirements:
1. The facility shall not be sited within one hundred fifty (150) feet of a residential district or use.
 2. All collection, processing, and storage shall take place within a building. No power driven equipment in the excess of fifteen (15) horsepower is allowed for the processing of recyclables.
 3. Noise shall be limited to sixty (60) decibels at the property line utilizing an hourly average.
 4. All driveways and travelled areas must be made of dust free materials. All vehicles waiting to unload must be located on the property.
 5. No dust, fumes, smoke, or vibration above ambient levels at the property line.
 6. Within two hundred fifty (250) feet of a residential district, hours of operation are limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday.
 7. Access must be from a Class B or Class C highway as defined in section 20.030 (Highway Access and Setbacks; Highway Setbacks and Access Requirements) and must be gated after business hours.
 8. The facility shall meet all applicable Tribal and federal laws and regulations.
- C. Resource recovery processing facilities are permitted uses in the I-2 district and conditional uses in the UID-1 district. A resource recovery processing facility shall meet the following requirements:
1. The facility shall not be sited within two hundred fifty (250) feet of a residential district or one hundred fifty (150) feet of a residential use.
 2. All outside storage and processing of recyclables must be behind a site obscuring fenced area equal to the height of the machinery or eight (8) feet whichever is greater. All wind born materials shall be collected daily.
 3. All driveways and travelled areas shall be of dust free materials. All vehicles waiting to unload must be located on the property.
 4. Within five hundred (500) feet of a residential district, the hours of operation shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday; and noise levels shall be limited to seventy (70) decibels at the property line.
 5. Access must be from a Class B or Class C highway as defined in section 20.030 (Highway Access and Setbacks; Highway Setbacks and Access Requirements) and must be gated after business hours.
 6. The facility shall meet all applicable Tribal and federal laws and regulations.

- D. Solid waste transfer sites are permitted in the I-2 district and conditional uses in the UID-1 district. A solid waste transfer site shall meet the following requirements:
1. The facility shall not be sited within two hundred fifty (250) feet of a residential district or one hundred fifty (150) feet of a residential use.
 2. All outside storage and processing of materials must be behind a site obscuring fenced area equal to the height of the machinery or eight (8) feet whichever is greater. All wind born materials shall be collected daily.
 3. All driveways and travelled areas shall be of dust free materials. All vehicles waiting to unload must be located on the property.
 4. Within five hundred (500) feet of a residential district, the hours of operation shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday; and noise levels shall be limited to seventy (70) decibels at the property line.
 5. Access must be from a Class B or Class C highway as defined in section 20.030 (Highway Access and Setbacks; Highway Setbacks and Access Requirements) and must be gated after business hours.
 6. The facility shall meet all applicable Tribal and federal laws and regulations.

33.160 Works of Art.

- A. Purpose. To provide the opportunity of artistic communication with a minimum of restrictions while protecting the public interest in aesthetics as well as public safety and welfare.
- B. Setbacks. Works of art shall be exempt from front yard setbacks, however a work of art shall not be placed within a right-of-way or a visibility triangle, or create a hazard to public safety.

33.170 Satellite Signal Receiving Equipment (Satellite Dishes). Satellite dishes shall be exempt from front yard setbacks, however a satellite dish shall not be placed within a right-of-way or a visibility triangle, or create a hazard to public safety.

SECTION 34. ADMINISTRATION

34.001 Purpose. To outline the procedures for the administration and enforcement of the Ordinance.

34.010 Community Development Department. The Department shall have the following duties in the administration of this Ordinance:

- A. Advise applicants for permits and leases concerning the provisions of this Ordinance, and assist applicants in preparing applications;
- B. Receive and forward to the Committee for recommendation to the Tribal Legislature all applications, petitions, amendments, and other matters for conditional use permits and to this Ordinance;
- C. Issue land use permits, leases, and certifications of occupancy and maintain record thereof upon recommendation of Committee and approval of Tribal Legislature;
- D. Inspect all construction requiring land use permits and leases to ensure that the standards of this Ordinance are followed;
- E. Provide public information relative to this Ordinance of departmental activity;
- F. Review and approve site plans as required by this Ordinance;
- G. Maintain permanent and current records of matters pertaining to this Ordinance, including all original and current zoning district maps, text and map amendments, permits and variances issued, status of nonconforming uses and structures, inspections made, all water surface profiles, and a list of all documentation of certified floodplain elevations;
- H. Investigate, prepare reports, and issue initial notices of violations to this Ordinance. Copies of violation reports and notice of violations shall be forwarded to the Prosecuting Attorney's Office and any other appropriate departments or agencies.

34.020 Committee.

- A. Powers and Duties. The Committee shall conduct business according to the Bylaws established by the Tribal Legislature and the provisions of this Ordinance.
- B. Appeals. The Committee shall hear and make recommendations to the Tribal Legislature regarding appeals where it has been alleged there is an error in any order, requirement, decision, or determination made by the Committee or Department in the enforcement or administration of this Ordinance.
 - 1. Appeals to the Committee for recommendation to Tribal Legislature may be taken by any person aggrieved, or by any office, department, or Committee of the Tribe affected by the decision of the Committee or the Department. Such appeal shall be taken by filing with the Department a notice of appeal specifying the grounds thereof. The Department shall forthwith transmit to the Committee all the papers constituting the record upon which the action appealed was taken to make a knowledgeable recommendation to the Tribal Legislature;
 - a. If the applicant elects to withdraw the appeal any time before a final recommendation is made by the Committee, this fact shall be noted on the application, with the signature of the applicant attesting withdrawal.
 - b. If the appeal is not withdrawn, the Committee may require the applicant to provide such additional information as may be needed to determine the case, and shall instruct the Department to proceed with the notice of the hearing.
 - 2. An appeal shall stay all legal proceedings of the action appealed unless the Department certifies to the Committee that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such cases, proceedings shall not be stayed except by a restraining order from the Tribal Legislature or a court of law;
 - 3. The Committee shall hear the appeal and make a recommendation to the Tribal Legislature.
 - 4. The final disposition of an appeal shall be in the form of a resolution by the Tribal Legislature. Such resolution shall state the specific facts which are based on the Committee's recommendation, and shall either affirm, reverse, vary, or modify the order, requirement, decision, or determination appealed, in whole or part, or shall dismiss the appeal for lack of jurisdiction or prosecution.

C. Variances.

1. The Committee shall recommend variances to the Tribal Legislature from the terms of this Ordinance where, owing to special conditions, the literal enforcement of this Ordinance would result in unnecessary hardship. For the purposes of this section, "unnecessary hardship" is defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district, caused by facts such as rough terrain or soil conditions uniquely applicable to that particular piece of property, as distinguished from those conditions applicable to most or all other property in the same zoning district. Recommendations that variances be granted shall only be done so that the spirit of this Ordinance is observed and substantial justice done. Variances may be granted:
 - a. To permit a yard of less dimension than required by this Ordinance;
 - b. To permit construction of a building or structure which will exceed the height and setback restrictions for the district in which it is located;
 - c. To permit off-street parking which does not conform in quantity or other particulars with the requirements of this Ordinance.
2. Application for Variance. Application for a variance shall be filed with the Department, and shall contain the following information:
 - a. Name and address of the applicant;
 - b. Statement that the applicant is the leaseholder of the property, or the authorized agent of the leaseholder;
 - c. Address and legal description of the property;
 - d. An accurate drawing of the site and surrounding area for a distance of one hundred (100) feet from all property lines, including buildings and other structures;
 - e. The specific section provision sought to be varied;
 - f. A statement detailing the need for the variance with supporting documentation including but not limited to plans, studies, maps, and photographs.
3. Disposition by the Committee.
 - a. The Committee shall hold at least one Committee Meeting on the proposed variance after notification according to the Bylaws of Community Development and notifying adjacent residents and/or leaseholders.
 - b. The Committee shall make a recommendation to the Tribal Legislature within thirty (30) days after the Committee Meeting. The concurring vote of a majority of the Tribal Legislature present and voting shall be necessary to authorize a variance. Decisions of the Committee shall be based on a finding of facts according to standards in 34.020C.4.

4. Standards for the Granting of Variances. The following are standards and principals to guide the Committee's recommendation to Tribal Legislature:
 - a. The burden is upon the appellant to prove the need for a variance.
 - b. Petty hardship, loss of profit, self-imposed hardships, such as that caused by ignorance, deed restrictions, proceeding without a permit, or illegal sales are not sufficient reasons for getting a variance.
 - c. The plight of the applicant must be unique, such as a shallow or steep parcel of land or situation caused by other than the applicant's actions.
 - d. The hardship justifying a variance must apply to the appellant's parcel or structure and not generally to other properties in the same district.
 - e. Variances allowing uses not expressly listed as permitted or conditional uses in a given zoning district shall not be granted.
 - f. The variance must not be detrimental to adjacent properties.
 - g. The variance must by standard be the minimum necessary to grant relief.
 - h. The variance will not be in conflict with the spirit of this Ordinance or other applicable ordinances.
 - i. The variance shall not permit any change in established flood elevations or profiles.
 - j. Variances shall not be granted for actions which require an amendment to Section 23 (Floodplain Overlay District).
 5. Conditions Attached to Variances. Within the recommendation to the Tribal Legislature, the Committee may prescribe appropriate conditions which are in conformity with the purposes of this Ordinance. In case of variances in the floodplain district, provisions of Section 23 (Floodplain Overlay District) shall be considered. Violations of such conditions, when made part of the terms under which the variance is granted, shall be deemed in violation of this Ordinance. A variance granted in a floodplain district shall advise the applicant that increased flood insurance premiums may result.
- D. The Committee shall perform such duties for the Tribal Legislature as are deemed necessary and appropriate.

34.030 Site Plan Approval.

- A. All applications for land use leases and permits for construction, reconstruction, expansion or conversion of use shall be accompanied by a site plan to be reviewed and approved by the Department for conformance with the requirement of this Ordinance.
- B. The site plan shall be drawn to scale and show the lot dimensions, the location of existing and proposed structures and other on-site improvements, parking and access, sanitary system, and any other information deemed necessary by the Department to insure conformance with this Ordinance and other applicable ordinances and regulations.
- C. The departments shall review the site plan per the following considerations:
 - 1. Compliance with the requirements of this Ordinance;
 - 2. The suitability of the location of buildings and structures to the physical character of the site and adjacent land uses;
 - 3. The layout of the site relative to public street access, arrangement and improvement of interior roadways, parking and loading;
 - 4. The adequacy of the proposed water supply and sanitary disposal;
 - 5. The adequacy of the drainage pattern or storm sewers to accommodate stormwater run-off both on-site and on nearby properties;
 - 6. The adequacy of erosion control plans to prevent construction erosion from leaving the site. The plans shall conform to the "Wisconsin Construction Site Best Management Practice Handbook."
- D. Upon approval of the site plan by the Tribal Legislature, the Department shall issue a land use lease and/or permit. A copy of the site plan shall be kept on file and become part of the lease or permit.
- E. In the case of rejection of a site plan by the departments or the Committee for recommendation to the Tribal Legislature, the applicant may:
 - 1. Appeal such decision to the Tribal Legislature.
 - 2. The Tribal Legislature may:
 - a. Approve the site plan as presented.
 - b. Approve the site plan but attach conditions within the parameters of this Ordinance and other applicable ordinances and regulations.
 - c. Reject the site plan.
 - 3. The Tribal Legislature's decision shall be the final administrative action, and therefore reviewable by Tribal Court.
- F. The applicant may be required to pay the cost of any extraordinary costs for site plan approval such as consultant fees or engineering studies.

34.040 Leases and Permits Required. The Department shall receive applications for the following leases and permits, and shall process the applications in the following manner, except as provided in section 33.080 (Modifications, Exceptions, and Special Requirements; Exceptions for Accessory Structures):

A. Land Use Lease.

1. When Required. A land use lease shall be issued before any potential leaseholder may conduct any land use activities including the use of natural resources.
2. Application.
 - a. The applicant shall fill out the "Application to Lease Land" form. The Department shall inform the applicant that application will not be presented to the Committee unless the appropriate processing fee and all other pertinent applications and information has been submitted.
 - b. The applicant shall supply any additional information as necessary including, but not limited to:
 - i. Any other name;
 - ii. Exact location of request;
 - iii. Previous requests.
 - c. The Department shall obtain other necessary information, such as:
 - i. Applicant's enrollment number;
 - ii. Legal description, if any, and/or certified survey;
 - iii. Determine if land is within forestry sustained yield;
 - iv. Obtain soil tests if not available;
 - v. Check if lease is in compliance with Land Use Plan.
3. Policies for Requests for a Land Use Lease. The Department shall handle each and every residential, recreational and/or commercial lease application according to the administrative policies and procedures located in the Department. Such policies may include, but not limited to:
 - a. The applicant must be an enrolled member of the Tribe.
 - b. A first come, first serve policy will be honored on ALL applications.
 - c. If utilities are not available, the applicant must agree, in writing, that only the Department can grant easements to utilities.
 - d. If no road service is available, applicant must agree, in writing, that only the Department can provide road service.
 - e. If bus service is not available, applicant must agree to make their own arrangements.
 - f. An individual may only lease one (1) residential lot and one (1) recreational lot. If person is applying for a different residential or recreational lot, he/she must relinquish any interest he/she has in his/her current residential or recreational lot.
 - g. An individual is not eligible for lake front property if he/she already owns or leases lake front property.
 - h. An individual is not eligible for residential property if he/she already owns or leases residential property.
 - i. If property is improved, evidence of ownership will be required.
 - j. Improvements must be shown on property in a specified time as required permitting process or the lease will be terminated.

- k. In a multi-use area, residential requests shall take priority over recreational, agricultural and/or commercial requests.
 - l. Only those lake lots which are developed will be considered for a lease application.
 - m. If an individual reverses the decision about wanting a lot, refunds will be made up to sixty (60) days after payment. After sixty (60) days, no refunds will be made, however, the payment can be applied to another lot if change is made within ninety (90) days of payment.
 - n. Tribal programs must follow the same procedures when requesting land and signing a lease.
4. Procedure for Issuance of a Land Use Lease.
- a. The Department shall submit the application to the Tribal Legislature.
 - b. The Department shall send the applicant a meeting notice.
 - c. The Tribal Legislature shall follow the appropriate policies and procedures to ratify the application by ordinance.
 - d. Upon final decision by the Tribal Legislature, the Department shall notify the applicant in writing if the application has been:
 - i. Approved;
 - ii. Denied; or
 - iii. Tabled.
 - e. In the case of denial or tabled, the reasons therefore shall be stated in the minutes of the meeting, as well as the written notification to the applicant.
 - f. In the case of approval, proceed to 34.040A.5.
5. Lease form and payment.
- a. The lease shall be drafted by the Department with the appropriate name, legal lot description and certified survey map, along with all other pertinent information.
 - b. The Department shall send a written notice advising the applicant of the current policies and procedure regarding an approved lease, such as:
 - i. The lease request received final approval.
 - ii. The applicant has thirty (30) days in which to sign lease.
 - iii. The applicant has thirty (30) days in which to make the initial payment (which is pro-rated from the date of approval to the end of the calendar year).
 - iv. If no response is made, lease will automatically be presented to the Committee for recommendation of cancellation.
 - v. Leaseholders are notified, in writing by the Department on or before December 1st, that lease fees are due, in full, on January 1st and payable by January 31st of each year.
 - c. The Department shall acquire the necessary signatures:
 - i. Leaseholder and spouse, if applicable.
 - ii. Witnesses.
 - iii. Tribal Chairperson and attest.

6. Processing. To expedite filing procedures, the Department shall handle the lease according to the administrative policies and procedures located in the Department. Such procedures may include, but not limited to:
 - a. Assign a lease number to the lease, which are given in chronological order as obtained from lease log.
 - b. Assign a computer number for yearly billing.
 - c. Chart the lease information for the leased lot.
 - d. Send original lease to the BIA for signatures of approving officer and recording at the Aberdeen title plant (residential leases only)
 - e. Retain original lease in file and send a copy of lease to leaseholder.
 7. Cancellation.
 - a. Leases are canceled by ordinance for the following reasons:
 - i. Failure to sign lease.
 - ii. Failure to pay lease fee.
 - iii. Voluntary relinquishment of lease.
 - iv. Non-compliance to lease terms and provisions.
 - b. List of leases to be canceled are sent to the Committee for recommendation to the Tribal Legislature for action.
 - c. Upon approval of cancellation, a letter is sent to leaseholder that the lease of land is canceled and the reason for cancellation is stated.
 - d. Before leaseholder can re-apply or be approved for any future lease, the leaseholder must pay any back lease fees which are owed to the Menominee Tribe. Once this is done, action can be taken on future requests.
- B. Construction Permit.**
1. When Required. A construction permit shall be issued before any of the following may occur:
 - a. Any building or structure is erected, moved or structurally altered;
 - b. Any use of a building, structure, or land is changed to another use, including the development or use of vacant land.
 2. Application and Issuance. Pursuant to additional Tribal ordinances requiring construction permits, applications for construction permits shall be made on forms furnished by the appropriate departments. If a construction permit is denied in regards to this Ordinance by the Department, the applicant shall be notified in writing the specific provisions which caused denial.
 3. Fees. The fee for a construction permit shall be as set according to Section 35 (Fee Schedule) and posted in the Department. A double fee shall be charged by the Department if construction or structural alteration is started or a use is changed prior to the issuance of a construction permit. Such a double fee shall not release the applicant from full compliance with this Ordinance nor from prosecution for violation of this Ordinance. There shall be no fees for accessory structures complying with section 33.080 (Modifications, Exceptions, and Special Requirements; Exceptions for Accessory Structures).
 4. The construction permit is valid for one (1) year or until construction is complete, whichever comes first. If construction has not commenced or been completed within one (1) year, the permit is null and void, and a new permit is required.

C. Certificate of Occupancy.

1. When Required. A certificate of occupancy shall be required in the R-4, C-1, C-2, UID-1, I-2, and TI-1 districts for all uses requiring a conditional use permit or a variance, and for all development in a floodplain. Certificates shall be issued whenever vacant land is occupied, structures erected, or a principal use is changed to a another principal use. Certificates are issued upon final inspection, and prior to occupancy of the land or establishment of a use.
2. In the floodplain district, before the Department issues a certificate of occupancy, the applicant shall submit to the Department certification by a registered engineer or architect that the finished fill and building flood elevations and other floodplain regulatory factors were accomplished in compliance with the appropriate floodplain zoning provisions and other floodplain regulations.
3. Notification. The Department shall inspect the premises within two (2) working days after notification by property leaseholder or agent, and issue or deny a certificate. If the certificate of occupancy is denied, the Department shall state the reasons for denial in writing. No certificate shall be issued until all objections have been corrected.

34.050 Amending the Zoning Ordinance.

- A. Authority. In order to meet the public necessity, convenience, general welfare, and promote good zoning practices, the Tribal Legislature may, by ordinance, amend the district boundaries or amend or supplement the regulations established herein.
- B. Initiation. A petition for amendment may be initiated by the leaseholder of any property to be affected by the change or amendment, by the Department or departments, by the Committee, or by any member of the Tribal Legislature.
- C. Petition. Petition for amendment shall be made to the Department on forms furnished by it. Amendments to the text of this Ordinance shall list the changes to be made and state reasons justifying the change. Petitions for map amendments shall contain the following information:
 1. Petitioner's name, address, and telephone number;
 2. Legal description and address of the property to be re-zoned;
 3. Existing zoning district;
 4. Proposed zoning district;
 5. Other relevant information as may be requested by the Department.
- D. Procedure. The procedure for adoption or denial of a petition for a change in district boundaries or text amendments to this Ordinance shall follow those set in 34.020C.3, except that notification to adjacent residents and/or leaseholders shall include those that are eight hundred (800) feet from all directions of the petitioner's property lines.
- E. Fees. A fee shall be charged for the amendment petition. Fees are listed in Section 35 (Fee Schedule).

34.060 Enforcement and Penalties.

- A. Investigation of Compliance, Notice of Violation.
1. The departments are responsible for conducting the necessary inspection and investigation to insure compliance with this Ordinance and through field notes, photographs and other means, documenting the presence of violations.
 2. If, upon initial investigation, the Department becomes aware of a condition it concludes to be unlawful under the terms of this Ordinance, it shall immediately notify responsible parties and those liable. Such notice shall include a demand that the condition that is alleged to constitute a violation be halted or remedied, and a statement that a complaint about the condition will be transmitted to other departments for recommendation to the Prosecuting Attorney's Office for prosecution if remedial action has not occurred within a minimum of ten (10) days or a maximum of thirty (30) days at the discretion of the Department. Responsible parties and those potentially liable shall include but not limited to the leaseholder, sub-leaseholder, tenants, and contractors.
 3. Allowed uses not requiring permits are subject to compliance and enforcement procedures.
 4. If a violation reoccurs within a one (1) year period, the ten (10) to thirty (30) day notification of violation may be waived by the departments or the Prosecuting Attorney's Office and immediate legal action can be commenced to prosecute the violation.
- B. Prosecution, Injunctions, and Penalties in Court Proceedings.
1. It shall be the duty of the Prosecuting Attorney's Office to expeditiously prosecute all violations of this Ordinance reported by departments.
 2. Subject to Prosecuting Attorney's Office discretion, for violation of this Ordinance, a forfeiture according to 34.060C shall be imposed upon conviction and adjudication.
 3. Upon failure to pay a forfeiture, the violator shall be confined in the Tribal jail until such forfeiture is paid, or a period not to exceed six (6) months.
 4. Each day a violation exists or continues shall be considered a separate offense.
 5. As a substitute for or in addition to forfeiture actions, the Prosecuting Attorney's Office may, on behalf of the Tribe seek enforcement of any and all parts of this Ordinance by court actions seeking injunctive orders or restraining orders.
 6. Nothing in this section shall be deemed to prevent private prosecutions.
 7. If due process through prosecution, injunctions, or penalties is not sufficient to remedy the violation, the Zoning Administrator may proceed with lease cancellation under 34.040A.7.a.iv (Non-compliance to lease terms and provisions).

- C. Forfeitures. Failure to comply with the following sections and/or subsections shall result in the accompanying forfeitures:
1. Section 3. General Provisions.
 - a. 3.080A.1 Excluded Uses; Manufacture, Distribution, or Sale of Alcoholic Beverages - not less than three thousand dollars (\$3,000.00) nor more than five thousand dollars (\$5,000.00).
 - b. 3.080A.2 Excluded Uses; Adult Bookstores and/or Adult Entertainment Facilities - three hundred dollars (\$300.00) nor more than five hundred dollars (\$500.00).
 2. Section 20. Highway Access and Setbacks - not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00).
 3. Section 22. Shoreland Overlay District.
 - a. 22.060 Filling, Dredging, Grading, Lagooning, Ditching, and Excavating - not less than one thousand dollars (\$1,000.00) nor more than two thousand dollars (\$2,000.00).
 - b. 22.070 Cutting Shoreland Vegetation - not less than one thousand dollars (\$1,000.00) nor more than two thousand dollars (\$2,000.00).
 - c. 22.080 Setbacks from the Water - not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00).
 4. Section 23. Floodplain Overlay District.
 - a. 23.070C Floodfringe District; Standards for Development in Floodfringe Areas - not less than one hundred fifty dollars (\$150.00) nor more than five hundred dollars (\$500.00).
 - b. 23.080C Floodway District; Standards for Development in Floodway Areas - not less than one hundred fifty dollars (\$150.00) nor more than five hundred dollars (\$500.00).
 - c. 23.080D Floodway District; Prohibited Uses - not less than two hundred dollars (\$200.00) nor more than three hundred fifty dollars (\$350.00).
 - d. 23.090 Floodproofing - not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00).
 5. Section 27. Home Occupations - not less than fifty dollars (\$50.00) nor more than one hundred fifty dollars (\$150.00).
 6. Section 28. Nonconforming Uses, Structures, and Lots - not less than one hundred fifty dollars (\$150.00) nor more than three hundred dollars (\$300.00).
 7. Section 29. On-Site Parking and Loading - not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00).
 8. Section 30. Sign Regulation - not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00).
 9. Section 31. Sand, Gravel, and Soil Extraction penalties shall be in accordance with section 31.040 (Sand, Gravel, and Soil Extraction; Penalties).

10. Section 33. Modification, Exceptions, and Special Requirements.
 - a. 33.010 Yard Regulations - not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00).
 - b. 33.030 Height Regulations - not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00).
 - c. 33.040 Fences - not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00).
 - d. 33.060 Private Recreational Facilities - not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00).
 - e. 33.070 Travel Trailers, Recreational Vehicles, and Buses for Habitation - not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00).
 - f. 33.080 Exemptions for Accessory Structures - not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00).
 - g. 33.090 Accessory Structure in the Absence of a Principal Use - not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00).
 - h. 33.130 Truck Bodies, Mobile Homes, Buses, and Semi-Trailers as Accessory Structures - not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00).
 - i. 33.140 Screening for the C-1, C-2, UID-1, and I-2 Districts - not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00).
 - j. 33.150 Solid Waste and Recycling Facilities - not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00).
 - k. 33.160 Works of Art - not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).
 - l. 33.170 Satellite Signal Receiving Equipment (Satellite Dishes) - not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).
11. District Requirements (i.e. setbacks from lot lines) not specifically mentioned above - not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00).
12. Any additional section or subsection not specifically mentioned above - not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00).

SECTION 35. FEE SCHEDULE

33.001 Purpose. To establish fees for permits, variances, re-zonings, special exceptions, signs, and land use.

33.005 Purpose for Fees. The uses for fees collected include, but not limited to, maintenance of lands, land acquisition, and defrayment of administrative costs.

33.007 Purpose for Deposits. The uses for deposits include collecting the required fee and, with the remainder of the deposit, assuring sincerity and diligence by the initiator in pursuing the requested administrative procedure. The latter shall be the refundable portion.

33.010 Fee Schedule for Construction Permits. As posted in the Department, the fee schedule shall apply per use/structure for the following categories:

- A. Principal Uses.
 - 1. Residential, A-1, and TI-1 Districts.
 - 2. Commercial, Industrial, and F-1 Districts.
 - a. 0-2,000 square feet.
 - b. greater than 2,000 square feet.
 - c. Maximum fee.
- B. Accessory Uses.
 - 1. Residential and A-1 Districts.
 - 2. TI-1 District.
 - a. 0-400 square feet.
 - b. greater than 400 square feet.
 - c. Maximum fee.
 - 3. Commercial, Industrial, and F-1 Districts.
 - a. 0-2,000 square feet.
 - b. greater than 2,000 square feet.
 - c. Maximum fee.
- C. Additions to Principal and Accessory Uses.
 - 1. Residential and A-1 Districts.
 - 2. TI-1 District.
 - a. 0-400 square feet.
 - b. greater than 400 square feet.
 - c. Maximum fee.
 - 3. Commercial, Industrial, and F-1 Districts - Use fee schedule for principal or accessory uses depended where the proposed addition is to take place.

33.020 Fee Schedule for Land Use Leases. As posted in the Department, the attached fee schedule shall apply per use/structure for the following categories:

- A. Land Use Lease Processing.
- B. Mobile Home Deposit.
- C. Leaseholder will pay yearly lease fees. Fees will be based on the land use categories and be posted in the Department.

33.030 Fee Schedule for All Additional Permits and Administrative Procedures. As posted in the Department, the fee schedule shall apply per use/structure or procedure for the following categories:

- A. Change of Use.
- B. Signs.
 - 1. All signs requiring a permit.
 - 2. Billboards.
- C. Variance.
- D. Appeals.
- E. Text Amendment.
- F. Re-zoning Amendment.
 - 1. 0-20 acres.
 - 2. greater than 20 acres.
- G. Conditional Use Permit.
- H. Site Plan Approval.

33.040 Double Permit and Application Fees. When construction begins prior to the issuance of a Construction Permit or when a use precedes the application for a re-zoning or conditional use permit, a double fee shall be assessed.

33.050 Guidelines for Partially Refundable Deposits. Where a partially refundable deposit is used to collect the fee, a refund shall be issued according to the fee schedule posted in the Department based on the following situations:

- A. When an outcome has been determined the refund shall be issued according to the decision and sent via certified mail, or other mutual agreement between the Zoning Administrator and the initiator.
- B. When an outcome cannot be reached due to the initiator's withdrawal of the request or negligence in pursuing an outcome, the refund shall be issued as if the decision was denied and sent via certified mail, or other mutual agreement between the Zoning Administrator and the initiator.

APPENDICES

- APPENDIX A: GUIDE TO OBTAINING A CONDITIONAL USE PERMIT
- APPENDIX B: CONDITIONAL USE PERMIT APPLICATION
- APPENDIX C: GUIDE TO OBTAINING A LAND USE LEASE
- APPENDIX D: LAND USE LEASE APPLICATION
- APPENDIX E: GUIDE TO OBTAINING A CONSTRUCTION PERMIT
- APPENDIX F: CONSTRUCTION PERMIT APPLICATIONS
- APPENDIX G: GUIDELINES FOR A CERTIFICATE OF OCCUPANCY
- APPENDIX H: GUIDE TO OBTAINING A SIGN PERMIT
- APPENDIX I: GUIDE TO OBTAINING A ZONING VARIANCE
- APPENDIX J: APPLICATION FOR A ZONING VARIANCE
- APPENDIX K: GUIDE TO OBTAINING A ZONING AMENDMENT
- APPENDIX L: PETITION FOR A ZONING AMENDMENT
- APPENDIX M: GUIDELINES FOR FILING AN APPEAL
- APPENDIX N: GUIDELINES FOR PLANNED UNIT DEVELOPMENTS
- APPENDIX O: GUIDELINES FOR THE SHORELAND OVERLAY DISTRICT
- APPENDIX P: GUIDELINES FOR THE FLOODPLAIN OVERLAY DISTRICT
- APPENDIX Q: QUICK REFERENCE CHART OF PERMITTED LAND USES

APPENDIX A

**GUIDE TO OBTAINING A
CONDITIONAL USE PERMIT**

GUIDE TO OBTAINING A CONDITIONAL USE PERMIT

1. Who Is Required To Obtain A Conditional Use Permit?

Anyone that wishes to pursue, conduct, or construct any of the following activities:

- a. Any conditional use cited in the zoning districts and overlays.
- b. Any subdivision consisting of ten (10) lots or more.
- c. Any resort, condominium, planned unit development, motel, hotel, or high density multi-unit dwelling.

2. Where Does The Applicant Initiate The Conditional Use Permitting Process?

The applicant must go to the Community Development Department, formally named the "Land Use Department," found within the Tribal Offices to request a Conditional Use Permit Application (Appendix B). Prior to filing the application with the Department, the applicant and the Zoning Administrator or designee will hold an preliminary conference to discuss the suitability of the project.

3. What Happens After Filing The Conditional Use Permit?

After a 30 to 60 day review period by the appropriate departments, the Community Development Department will refer the application to the Committee for recommendation to the legislature. The Committee will hold at least one (1) Committee meeting on the proposed conditional use permit.

In addition, the following interested parties will be notified in writing by the applicant prior to the meeting:

- a. All property owners and leaseholders within eight hundred (800) feet of the property;
- b. Incorporated lake districts in which the proposed conditional use is located;
- c. The director of the Environmental Services Department as to areas of subject to shoreland or floodplain districts.

Copies of the fore-mentioned written notices will be submitted to the Department as a part of the application. The Department and the Committee may request review of a conditional use permit by other programs, departments, or agencies.

4. When Will The Conditional Use Permitting Process Be Complete?

Within 45 days of the Committee meeting, the Committee will act by:

- a. Approving the issuance of a conditional use permit as presented by the applicant, provided the standards for approval are met;
- b. Approving the issuance of a conditional use permit with the conditions as recommended by the Committee;
- c. Denying the conditional use permit. In the case of denial, the reasons will be stated in the minutes of the meeting and the applicant will be notified in writing.

5. What Are The Standards For Conditional Use Permit Approval?

The Committee will make a decision based on the following stipulations:

- a. The proposed use is in conformance with the purpose of the zoning district in which it is located;
- b. The use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted;
- c. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided;
- d. Adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use;
- e. Adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result;
- f. Soil conditions are adequate to accommodate the proposed use;
- g. Proper facilities and access points are provided which would eliminate any traffic congestion or hazard which may result from the proposed use.

6. What Additional Modifications Could The Committee Attach?

The Committee, in order to achieve the standards for approval, may attach certain conditions to the permit. These conditions include, but are not limited to:

- a. Changes in building design;
- b. Lot or building setback lines in excess of district regulations;
- c. Landscaping;
- d. Screening;
- e. Hours of operation;
- f. Number of employees;
- g. Sign and lighting limitations;
- h. Increased parking;
- i. Sedimentation and erosion control measures.

Such conditions can even be placed anytime after the issuing the Conditional Use Permit.

7. When Would A Conditional Use Permit Expire?

A conditional use permit will lapse and become void one (1) year after approval of the Committee unless a certificate of occupancy has been issued or a building permit issued.

8. Could Conditional Use Permit Be Revoked?

Yes. If, in the opinion of the Department or a member of the Committee or Tribal Legislature, the terms of a conditional use permit have been violated, or that the use is substantially detrimental to persons or property in the neighborhood, the Committee can hold a Committee meeting on the revocation of the permit. The Committee meeting would be held in accordance with the zoning ordinance. If, upon finding that the terms of the permit have been violated, the Committee may act to revoke, modify or leave the permit unchanged.

9. What Are The Terms Of A Conditional Use Permit.

Unless otherwise specified in the permit, a conditional use permit issued will remain in effect as long as the authorized use continues. Any use which is discontinued for twelve consecutive months will be declared abandoned. Prior to the reestablishment of an abandoned use, a new conditional use permit is required to be obtained.

Any major alterations of a site plan or established conditions of an approved conditional use permit will require the approval of the Committee. However minor alterations can be approved by the Department with notification sent to the Committee.

10. How Can An Applicant Appeal A Decision?

An appeal can be filed with the Department within 30 days of the decision. The Department will then forward the appeal to the Committee for the next available monthly meeting.

11. Is Assistance Available?

Yes, the Community Development Department can provide assistance and direction for filling out the Conditional Use Permit Application.

APPENDIX B
CONDITIONAL USE PERMIT APPLICATION

CONDITIONAL USE PERMIT APPLICATION

NOTICE: Prior to receiving this application, an archeological survey is required on the proposed development site and the applicant is required to attend an informal meeting with the Community Development Department.

If the applicant has not done so prior to this date: _____, this application is void.
(Enter Today's Date Here)

DIRECTIONS:

1. Do not omit or leave blank any section or part of this application. If the section or part does not pertain to the proposed development, please enter "NOT APPLICABLE."
2. Identify attachments with section letter and part number.
3. Cite references for information obtained for attachments and estimations.
4. The applicant shall supply the following information:

SECTION A - INTRODUCTORY INFORMATION

Part 1.

NAME OF APPLICANT	NAME OF LEASHOLDER	NAME OF CONTRACTOR
COMPANY	COMPANY	COMPANY
STREET ADDRESS	STREET ADDRESS	STREET ADDRESS
CITY, STATE ZIP	CITY, STATE ZIP	CITY, STATE ZIP
DAY TIME TELEPHONE NUMBER	DAY TIME TELEPHONE NUMBER	DAY TIME TELEPHONE NUMBER
NAME OF ARCHITECT	NAME OF PROFESSIONAL ENGINEER	OTHER (PLEASE SPECIFY OCCUPATION)
COMPANY	COMPANY	COMPANY
STREET ADDRESS	STREET ADDRESS	STREET ADDRESS
CITY, STATE ZIP	CITY, STATE ZIP	CITY, STATE ZIP
DAY TIME TELEPHONE NUMBER	DAY TIME TELEPHONE NUMBER	DAY TIME TELEPHONE NUMBER

ATTACH ADDITIONAL NAMES AND ADDRESSES AS NEEDED

Part 2. Attach the legal description of the property.

Part 3. Current zoning district: _____

SECTION B - NATURE OF THE SITE AND SURROUNDING AREA

- Part 1. Attach characteristics of the local and regional topography and geology, especially those factors pertinent to the proposed development.**
- Part 2. Soils Attachments:**
- a) Soils map from the Soil Conservation Service.**
 - b) List the soil types.**
 - c) Describe the soil types of the area to be developed, include limitations.**
 - d) List the results of percolation test, core samples and any other pertinent soil tests.**
- Part 3. Attach a description of water resources in the region, including pertinent information on lakes, streams, and groundwater (i.e. size, shape, location, important chemical-physical data if requested).**
- Part 4. Attach characteristics of the existing vegetation of the area to be developed, showing the distribution of the vegetation types on an attached map.**
- Part 5. Attach a summarization of present land use patterns, indicating both nature and the extent of land use in the proposed site and in the surrounding area.**

SECTION C - PROPOSED DEVELOPMENT AND PLANNED ALTERATIONS

Part 1. Attach a site plan drawn to scale, showing boundaries, parcel and building dimensions, driveways, access roads, easements, parking areas, off-street loading areas and sidewalks, etc.

Part 2. Attach detailed descriptions of all proposed land alterations including:

- a) A large scale topographic map [contour interval of ten (10) feet or less, preferably two (2) feet] of those proposed alterations.
- b) Description of proposed alterations of the existing vegetation, including any provisions being made to preserve or supplement existing vegetation as well as additional landscaping and screening plans.
- c) Erosion and stormwater control plans which must be based upon the "Wisconsin Construction Site Best Management Practice Handbook."
- d) List all applicable provisions set forth in the Shoreland Overlay District and Floodplain Overlay District of the Zoning Ordinance and process to comply with those provisions.

Part 3. Attach drainage plans, including engineering plans for hookup to storm sewers.

Part 4. Description of proposed water system.

- a) Type water system: _____
- b) Estimated water demands: _____
- c) Attach map showing location of well(s) and water lines.

Part 5. Description of proposed sanitary sewer system.

- a) Type of waste water treatment system: _____
- b) Volume of sewage to be generated: _____
- c) Attach map showing location of waste water treatment system.

Part 6. Description of solid waste disposal.

- a) Volume of solid waste to be generated: _____
- b) Attach a operational plan for solid waste disposal.

SECTION D - ENVIRONMENTAL IMPACT ANALYSIS

- Part 1. Attach a list of species of plants, fish and other aquatic life, fowl, or land animals common to the area and their required habitats, including measures that will be taken to preserve these habitat areas.**
- Part 2. Attach a list of endangered or threatened species of plants, fish and other aquatic life, fowl, or land animals known to be within a fifteen (15) mile radius of the proposed site.**
- Part 3. Attach a map showing the direction of surplus run-off water from the property.**
- Part 4. Attach a list of any irreversible or irretrievable commitments of resources that would be involved.**
- Part 5. Attach the following maps and assessments for a site with frontage on navigable water:**
- a) Allowances for natural erosion processes.**
 - b) Provisions to retard shoreline or bank erosion.**
 - c) Provisions to avoid enrichment of the water bodies due to run-off.**
 - d) List all applicable provisions set forth in the Shoreland Overlay District and Floodplain Overlay District of the Zoning Ordinance and process to comply with those provisions.**

SECTION E - SOCIAL-ECONOMIC IMPACT

Part 1. Population.

- a) Estimate maximum anticipated population of the development: _____
- b) Estimate number of days of operation per year: _____
- c) Estimate number of users per day: _____

Part 2. Economic Benefits. Assess the expected economic benefits the community will receive:

- a) Nature of use. _____

- b) Number of employees. _____
- c) List of products manufactured or sold. _____

- d) Inputs to the construction trade. _____

- e) Anticipated tax revenue. _____
- f) Increased retail sales. _____

Part 3. Services. Assess the costs and consequences of servicing the proposed development:

- a) Total length of proposed roads. _____
- b) Estimate annual cost of snow plowing. _____
- c) Estimate traffic generation. _____
- d) Estimate annual cost for schools and/or bussing. _____
- e) Distance from the nearest hospital. _____
- f) Distance from the nearest responsible fire department. _____
- g) Distance form the nearest full time police headquarters. _____
- h) Attach an assessment of potential pressure placed on public recreational facilities and any provisions for reducing such pressure within the development itself.

Part 4. Attach an assessment of effects resulting from changing of present land use patterns.

SECTION F - ALTERNATIVES TO PROPOSED ACTION

Part 1. Attach a list of possible alternatives to potentially problem causing aspects of the project. The feasibility of the alternatives should also should be discussed.

Part 2. Attach all other pertinent information.

APPENDIX C

**GUIDE TO OBTAINING A
LAND USE LEASE**

GUIDE TO OBTAINING A LAND USE LEASE

1. Who Is Required To Obtain A Land Use Lease?

In short, a Tribal member wishing to conduct land use activities.

2. Where Does The Applicant File a Land Use Lease Request?

The applicant must go to the Community Development Department, formally named the "Land Use Department," found within the Tribal Offices to request a Land Use Lease Application (Appendix D).

3. What Is Required For The Land Use Lease Application?

The applicant will fill out the "Application to Lease Land" form. A \$10.00 processing fee must also be submitted. If applicant is placing mobile home, a copy of the title or application must be presented before application is processed. The applicant will supply any additional information as necessary:

- a. Any other name.
- b. Exact location of request.
- c. Previous requests.

4. What Happens After Filing A Land Use Application?

The Department obtains any other necessary information such as:

- a. Applicant's enrollment number.
- b. Legal description, if any, and/or certified survey.
- c. Determine if land is within forestry sustained yield.
- d. Obtain soil suitability tests if not available.
- e. Check if lease is in compliance with Land Use Plan.

The Department will submit the application to the Tribal Legislature. The Department will send the applicant a meeting notice.

Upon final decision by the Tribal Legislature, the Department will notify the applicant in writing if the application has been approved, denied, or tabled.

In the case of denial or tabled, the reasons will be stated in the minutes of the meeting, as well as in a written notification to the applicant.

5. What Happens After A Lease Request Has Been Approved?

A lease will be drafted by the Department with the appropriate name and lot description, along with all other pertinent information.

The Department will send a written notice advising the applicant:

- a. The lease request received final approval.
- b. The applicant has thirty (30) days in which to sign lease.
- c. The applicant has thirty (30) days in which to make the initial payment (which is prorated from the date of approval to the end of the calendar year).
- d. If the applicant does not respond, the lease will automatically be presented to the Menominee Tribal Legislature for cancellation.

6. What Happens After The Lease Has Been Signed?

The Department will process the lease according to its policies and procedures. Once the processing is complete, the Department will send copy of lease to leaseholder.

In December the leaseholders should be notified that lease fees are due, in full, on January 1st and payable by January 31st.

7. Can A Land Use Lease Be Canceled?

Yes. Leases can be canceled by ordinance for the following reasons:

- a. Failure to sign lease.
- b. Failure to pay lease fee.
- c. Voluntary relinquishment of lease.
- d. Non-compliance to lease terms and provisions.

Upon approval of the cancellation by the Tribal Legislature, a letter is sent to leaseholder that the lease of land is canceled and the reason for cancellation is stated.

Before leaseholders that have been canceled can re-apply or be approved for any future lease, they must pay any back lease fees which are owed to the Menominee Tribe. Once this is done, action can be taken on future requests.

APPENDIX D
LAND USE LEASE APPLICATION



MENOMINEE INDIAN TRIBE OF WISCONSIN

P.O. Box 910
Keshena, WI 54135-0910

APPLICATION TO LEASE LAND

Name: _____
(First) (Middle Initial) (Last) (Maiden)

Address: _____ City: _____ State: _____ Zip: _____

Telephone No.: _____ Enrollment No.: _____

Do you own or lease other property: Y or N If yes, please explain: _____

Please circle type of request: Residential Recreational Agricultural Commercial Other: _____
Type of Commercialism: _____ Building Plan or site plan submitted: Y or N

Location of Request: _____

SIGNATURE: _____ DATE: _____

FOR OFFICE USE ONLY

App rec'd: _____ @ _____ By Whom: _____ Processing fee paid: _____

Other lease fees paid: Y N Explain: _____ Mobile home deposit paid: Y

Residential documentation: Y or N Completed testing: Perk - Y or N Arch - Y or N

APPROVALS NEEDED: _____ Ordinance No: _____

Committee approved/denied: _____

Public Hearing approved/denied: _____

Menominee Tribal Legislature approved/denied: _____

Special Additions: _____

APPENDIX E
**GUIDE TO OBTAINING A
CONSTRUCTION PERMIT**

GUIDE TO OBTAINING A CONSTRUCTION PERMIT

Background

There are two Tribal Ordinances that require Construction Permits within the Menominee Indian Reservation. The first to be enacted was Ordinance 82-19 Use Tax on Construction Materials. This ordinance is administered by the Tax Commissioner's Office. The second ordinance is the Menominee Tribal Zoning Ordinance, which is administered by the Community Development Department (formerly named the Land Use Office) and processed by the Licensing and Permits Department (formerly named the Motor Vehicle Department). Separate applications are required due to different ordinances and therefore different fee schedules and files.

1. Who Is Required To Obtain A Construction Permit?

Anyone proposing to erect, move or structurally alter a building or structure as well as changing the use of a building, structure, or land to another use, including the development or use of vacant land.

2. Where Does The Applicant Initiate The Construction Permit Process?

The first place for the applicant to contact is the Tax Commissioner's Office to obtain the application for Tribal Ordinance 82-19 Use Tax on Construction Materials. The application for the Zoning Ordinance can be obtained at the Licenses and Permits Department or Community Development Department.

3. What Information Is Required For The Applications?

The information needed on the applications includes name and address of the applicant, scope of work, estimated cost, zoning district, setback of the structure from the right-of-way, center line and water baseline (if applicable), and the dimensions of both the structure and lot, with the total square footage. A site plan is also required for review by the Zoning Administrator.

4. What Is Required To File The Applications?

Prior to paying the required fees, the applicant submits the Zoning Ordinance application to the Community Development Department for approval and an authorized signature.

The required fees include a \$5.00 processing fee for Tribal Ordinance 82-19 and a fee according to the fee schedule for the Zoning Ordinance posted in the Licensing and Permits Department and Community Development Department.

5. What Happens After Filing The Applications?

The Licensing and Permits Department issues and records a Gold Seal Permit and permit number. The permit is to be posted and displayed throughout the duration of the construction.

6. How Long Is The Permit Valid?

The construction permit is valid for one (1) year or until construction is complete, whichever comes first. If construction has not commenced or been completed within one (1) year, the permit is null and void, and a new permit is required.

APPENDIX F
CONSTRUCTION PERMIT APPLICATION

MEMONINEE INDIAN TRIBE OF
WISCONSIN
P.O. Box 910
Kushena, WI 54135



Menominee Tribal
Building Permit
Application

(715) 799-5100

PERMIT REQUESTED:

STRUCTURE HVAC ELEC PLUMBING

PROPERTY OWNER'S NAME _____ MAILING ADDRESS _____ TELEPHONE _____

CONTRACTOR'S NAME _____ MAILING ADDRESS _____ TELEPHONE _____

PROJECT LOCATION

_____ % _____ % SECTION _____ T _____ N, R _____ E

BUILDING ADDRESS _____ SUBDIVISION MAP# _____ LOT NO _____ BLOCK NO _____

ZONING DISTRICT _____ LOT AREA _____ SQ. FT. SETBACKS: FRONT _____ FT. REAR _____ FT. LEFT SIDE _____ FT. RIGHT SIDE _____ FT.

1a. PROJECT <input type="checkbox"/> New <input type="checkbox"/> Addition <input type="checkbox"/> Raze <input type="checkbox"/> Alteration <input type="checkbox"/> Repair <input type="checkbox"/> Move <input type="checkbox"/> Other _____		3. TYPE <input type="checkbox"/> Single Family <input type="checkbox"/> Two Family <input type="checkbox"/> Other _____		6. ELECTRICAL Amps: _____ <input type="checkbox"/> Underground <input type="checkbox"/> Overhead		9. HVAC EQUIPMENT <input type="checkbox"/> Forced Air Furnace <input type="checkbox"/> Radiant Baseboard <input type="checkbox"/> Heat Pump <input type="checkbox"/> Boiler <input type="checkbox"/> Central Air Condition <input type="checkbox"/> Other _____		12. ENERGY SOURCE <table border="1"> <thead> <tr> <th></th> <th>Flat Gas</th> <th>L.P.</th> <th>Oil</th> <th>Elec</th> <th>Wind</th> <th>Solar</th> </tr> </thead> <tbody> <tr> <td>Space</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Water</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table> <p>For Elec: <input type="checkbox"/> Dwelling unit will have 2 kilowatt or more installed electrical space heating equipment. Infiltration control option: <input type="checkbox"/> Blower door test. <input type="checkbox"/> Extend an infiltration barrier</p>							Flat Gas	L.P.	Oil	Elec	Wind	Solar	Space	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Flat Gas	L.P.	Oil	Elec	Wind	Solar																												
Space	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																												
Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																												
1b. GARAGE <input type="checkbox"/> Attached <input type="checkbox"/> Detached		4. CONST. TYPE <input type="checkbox"/> Site Built <input type="checkbox"/> Manufactured		7. FOUNDATION <input type="checkbox"/> Concrete <input type="checkbox"/> Masonry <input type="checkbox"/> Treated Wood <input type="checkbox"/> Other _____		10. PLUMBING - SEWER <input type="checkbox"/> Municipal <input type="checkbox"/> Septic Permit No. _____		13. HEAT LOSS (Calculated) Envelope _____ BTU/HR Infiltration _____ BTU/HR																										
2. AREA Basement _____ SQ. FT. Living Area _____ SQ. FT. Garage _____ SQ. FT. Other _____ SQ. FT.		5. STORIES <input type="checkbox"/> 1 Story <input type="checkbox"/> 2 Story <input type="checkbox"/> Other _____		8. USE <input type="checkbox"/> Seasonal <input type="checkbox"/> Permanent <input type="checkbox"/> Other _____		11. WATER <input type="checkbox"/> Municipal Utility <input type="checkbox"/> Private on-site well		14. ESTIMATED COST \$ _____																										

SIGNATURE OF APPLICANT: _____

DATE: _____

CONDITIONS OF APPROVAL

This permit is issued pursuant to the following conditions. Failure to comply may result in suspension or revocation of this permit or other penalty.

1) Applicant shall be responsible for contacting "Diggers Hotline" three (3) working days before digging.

ZONING ADMINISTRATOR APPROVAL:

DATE: _____

FEES: Plan Review: \$ _____ Inspection: \$ _____ Permit Seal(s): \$ _____ Other: \$ _____ TOTAL : \$ _____		PERMIT(S) ISSUED <input type="checkbox"/> Construction <input type="checkbox"/> HVAC <input type="checkbox"/> Electrical <input type="checkbox"/> Plumbing <input type="checkbox"/> Other _____		DATE(S) ISSUED _____ _____		PERMIT ISSUED BY: NAME: _____ CERT NO: _____	
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APPENDIX G

**GUIDELINES FOR A
CERTIFICATE OF OCCUPANCY**

GUIDELINES FOR A CERTIFICATE OF OCCUPANCY

1. When Is A Certificate Of Occupancy Required?

A certificate of occupancy is required for:

- a. All uses requiring a conditional use permit or a variance in the R-4, C-1, C-2, TI-1, UID-1 and I-2 districts;
- b. All development in a floodplain; or
- c. Whenever vacant land is occupied, structures erected, or a principal use is changed to a another principal use.

2. When Does The Department Issue A Certificate Of Occupancy?

The Department will inspect the premises within two (2) working days after notification by property leaseholder or agent. At that time a certificate will be issued or denied. If the Certificate of Occupancy is denied, the Department will state the reasons for denial in writing. No certificate will be issued until all objections have been corrected. Certificates are issued upon final inspection, and prior to occupancy of the land or establishment of a use.

3. Are There Any Special Requirements That Need To Be Met?

Within the floodplain district, before the Department issues a certificate of occupancy, the applicant is required to submit to the Department certification by a registered engineer or architect that the finished fill and building flood elevations and other floodplain regulatory factors were accomplished in compliance with the appropriate floodplain zoning provisions and other floodplain regulations.

4. Is There A Fee Attached To Obtaining A Certificate Of Occupancy?

NO! All fees are assess during the permit stage of construction.

MENOMINEE INDIAN TRIBE of WISCONSIN

IN ACCORDANCE WITH THE

MENOMINEE TRIBAL ZONING ORDINANCE

SECTION 34 - ADMINISTRATION
SUB SECTION 34.040 - LEASES AND PERMITS REQUIRED
PARAGRAPH C - CERTIFICATE OF OCCUPANCY



ISSUES
A

CERTIFICATE OF OCCUPANCY

TO

ENTER NAME OF RECIPIENT AND TYPE OF BUILDING HERE

ZONING ADMINISTRATOR _____

DATE _____

APPENDIX H
GUIDE TO OBTAINING A
SIGN PERMIT

GUIDE TO OBTAINING A SIGN PERMIT

1. Which Signs Require A Permit?

Perhaps the best way to answer this question is to list the type of signs that do not require a permit, refer to Zoning Ordinance for greater details:

- a. Directional signs;
- b. Governmental signs;
- c. Integral signs (i.e. plaques);
- d. Campaign signs;
- e. Name plates;
- f. Holiday signs;
- g. Construction signs;
- h. Occasional yard or garage sale signs; and
- i. Motor fuel pricing signs.

Any other signs that are not listed above do require a sign permit.

2. Where Does The Applicant Initiate A Sign Permit?

The applicant must go to the Community Development Department, formally named the "Land Use Department," found within the Tribal Offices.

3. What Is Required For A Sign Permit?

The applicant must submit a written notice requesting a sign permit. Before a permit can be issued the applicant must also submit a sign design, site plan, and a \$25.00 permit fee.

4. Are There Any Dimensional Restrictions?

Yes. Size restrictions are based on the district in which the sign is located.

District	Max. # Total	Max. Size	Min. Distance from Adjacent Property Lines	Min. Height Bottom of Sign	Max. Height Top of Sign
All Residential	1	32 ft ²	15 ft.	-	10 ft.
A-1	1	32 ft ²	15 ft.	-	10 ft.
C-1 & C-2	2	100 ft ² Wall/Roof	10 ft.	12 ft.	30 ft.
TI-1	2	100 ft ² Wall/Roof	10 ft.	12 ft.	30 ft.
UID-1 & I-2	4	200 ft ²	10 ft.	12 ft.	30 ft.

Refer to the Zoning Ordinance for greater details

APPENDIX I
GUIDE TO OBTAINING A
ZONING VARIANCE

GUIDE TO OBTAINING A ZONING VARIANCE

1. When Is A Variance Appropriate?

A variance is used when the property cannot be used in accordance with the zoning district in which it is located, generally called an "unnecessary hardship."

Typical unnecessary hardships are a parcel too small for development or terrain or soil conditions which cause the ideal development site to be within mandatory setbacks. The major condition placed on an unnecessary hardship must be an uncommon occurrence throughout the remainder of the district, particularly the neighboring properties.

Generally a variance is a means to have the dimensional requirements and other figures waived. A variance is not used for constructing or installing a nonconforming structures within a district, such as moving a mobile home in an R-1 District. That type of action required a map amendment. For more information on amendment procedures, please refer to Appendix K and to the section 34.050 of the Zoning Ordinance.

2. What Variances May Be Granted?

Variances may be granted to permit:

- a. A yard smaller than required by the Zoning Ordinance.
- b. Construction of a building or structure which will exceed the height and setback restrictions for the district in which it is located.
- c. Off-street parking which does not conform in quantity or other particulars with the requirements of this Ordinance.

3. Where Does The Applicant Obtain A Zoning Variance Application?

The applicant must go to the Community Development Department, formally named "Land Use Department," found within the Tribal Offices to request an Application for a Zoning Variance (Appendix J).

4. What Is Required To File A Zoning Variance Application?

The application for a variance must contain the following information:

- a. Name and address of the applicant;
- b. Statement that the applicant is the leaseholder of the property, or the authorized agent of the leaseholder;
- c. Address and legal description of the property;
- d. An accurate drawing of the site and surrounding area for a distance of one hundred (100) feet from all property lines, including buildings and other structures;
- e. The specific section provision sought to be varied;
- f. A statement detailing the need for the variance.

The application must be accompanied by with \$125.00 deposit, which is partially refundable pending the outcome.

5. What Happens After Filing The Application?

The Committee will hold at least one Committee meeting on the proposed variance after notification according to the Bylaws of Community Development and notifying adjacent residents and/or leaseholders.

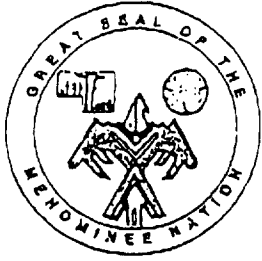
The Committee will then make a recommendation to the Tribal Legislature within 30 days. A majority vote from the Tribal Legislature is necessary to authorize a variance.

6. What Are The Standards For Granting A Variance?

The following are standards and principals to guide the Committee's recommendation to Tribal Legislature:

- a. The burden is upon the appellant to prove the need for a variance.
- b. Petty hardship, loss of profit, self-imposed hardships, such as that caused by ignorance, deed restrictions, proceeding without a permit, or illegal sales are not sufficient reasons for getting a variance.
- c. The plight of the applicant must be unique, such as a shallow or steep parcel of land or situation caused by other than the applicant's actions.
- d. The hardship justifying a variance must apply to the appellant's parcel or structure and not generally to other properties in the same district.
- e. Variances allowing uses not expressly listed as permitted or conditional uses in a given zoning district cannot be granted.
- f. The variance must not be detrimental to adjacent properties.
- g. The variance must by standard be the minimum necessary to grant relief.
- h. The variance will not be in conflict with the spirit of this Ordinance or other applicable ordinances.
- i. The variance shall not permit any change in established flood elevations or profiles.
- j. Variances shall not be granted for actions which require an amendment to the Floodplain Overlay District.

APPENDIX J
APPLICATION FOR A ZONING VARIANCE



MENOMINEE INDIAN TRIBE OF WISCONSIN

P.O. Box 910
Keshena, WI 54135-0910

APPLICATION FOR A ZONING VARIANCE

NAME OF APPLICANT

NAME OF LEASER/OWNER (IF DIFFERENT FROM APPLICANT)

ADDRESS

ADDRESS

CITY, STATE

ZIP

CITY, STATE

ZIP

DAY TIME TELEPHONE NUMBER

DAY TIME TELEPHONE NUMBER

Legal Description of Property: _____

Current Zoning District: _____

Specific Section of Ordinance to be Varied: _____

Describe the Need for the Variance: _____

Attach accurate scale drawing of the site and 100 feet from all property lines. Include property lines, buildings, driveways, parking areas, and other structures.

APPENDIX K
GUIDE TO OBTAINING A
ZONING AMENDMENT

GUIDE TO OBTAINING A ZONING AMENDMENT

1. Who Can Petition To Amend The Zoning Ordinance?

A petition for amendment may be initiated by the leaseholder of any property to be affected by the change or amendment, by the any Tribal department or program, by the Committee, or by any member of the Tribal Legislature.

2. Where Does The Petitioner Initiate An Amendment?

Petition for amendment is made to the Community Development Department, formerly named the Land Use Department, on forms furnished by it. (Appendix L).

3. What Is Required For Filing The Petition?

Petitions for amendments should contain the following information:

- a. Petitioner's name, address, and telephone number;
- b. Legal description and address of the property to be re-zoned;
- c. Existing zoning district;
- d. Proposed zoning district;
- e. Other relevant information as may be requested by the Department.

In the case of petitions made by individuals, there is also a deposit required for filing a petition. If the total area for proposed re-zoning is 20 acres or less, the deposit is \$100.00. If the total area for proposed re-zoning is greater than 20 acres, the deposit is \$200.00. The deposit is partially refundable pending the outcome.

4. What Happens After Filing The Petition?

The Committee will hold at least one Committee meeting on the proposed amendment after notification according to the Bylaws of Community Development and the Department notifies the residents or leaseholders that are 800 feet from of the petitioner's property lines.

The Committee shall make a recommendation to the Tribal Legislature within 30 days. A majority vote from the Tribal Legislature is necessary to authorize an amendment.

APPENDIX L
PETITION FOR A ZONING AMENDMENT



MENOMINEE INDIAN TRIBE OF WISCONSIN

P.O. Box 910
Keshena, WI 54135-0910

PETITION FOR A ZONING AMENDMENT

Name of Petitioner: _____

Address: _____

Telephone Number: _____

Legal Description of Property: _____

Current Zoning District: _____

Proposed Zoning District: _____

Describe the Need for the Amendment: _____

Additional Information and/or Comments: _____

Attach copies of notices to residents within 800 feet.

APPENDIX M

**GUIDELINES FOR FILING AN APPEAL
TO THE ZONING ORDINANCE**

GUIDELINES FOR FILING AN APPEAL TO THE MENOMINEE TRIBAL ZONING ORDINANCE

1. When Is An Appeal Appropriate?

When it has been alleged there is an error in any order, requirement, decision, or determination made by the Committee or Department in the enforcement or administration of the Zoning Ordinance.

2. Who Can File An Appeal?

Any person aggrieved, or any office, department, or committee of the Tribe affected by a decision of the Committee or the Department.

3. Where Is The Appeal Initiated?

The Community Development Department, formerly named "Land Use Department," is the office to file an appeal.

4. What Is Needed To File An Appeal?

All that is needed to file an appeal is a written notice, letter, or memorandum specifying the grounds for the appeal. In the case of appeals made by individuals, a \$125.00 deposit is required and is partially refundable pending the outcome.

5. What Happens After An Appeal Has Been Filed?

The Department sends all the documents regarding the action appealed to the Committee.

If the applicant elects to withdraw the appeal any time before a final recommendation is made by the Committee, this fact is noted on the application, with the signature of the applicant attesting withdrawal.

If the appeal is not withdrawn, the Committee can require the applicant to provide additional information to determine the case, and will instruct the Department to proceed with the notice of the Committee meeting.

The Committee will then hear the appeal and make a recommendation to the Tribal Legislature.

The final disposition of an appeal shall be in the form of a resolution by the Tribal Legislature. Such resolution shall state the specific facts which are based on the Committee's recommendation, and shall either affirm, reverse, vary, or modify the action appealed, or dismiss the appeal for lack of jurisdiction.

APPENDIX N

GUIDELINES FOR PLANNED UNIT DEVELOPMENTS

GUIDELINES FOR PLANNED UNIT DEVELOPMENTS (PUD)

1. What Is A Planned Unit Development?

A Planned Unit Development, or PUD, is a form of a subdivision that is planned, developed, operated, and maintained as a single entity and contains more than one land use. Usually a PUD involves residential development in conjunction with one or more public, institutional, or commercial uses, all of which are supplemented by an appropriate amount of common open space.

2. Can A PUD Be Developed Outside The Planned Unit Development District?

Yes, a PUD outside of the Planned Unit Development District is a conditional use and can be developed in only the R-1, R-2, R-3, R-4, R-R, C-1, C-2, UID-1, or TI-1 districts.

3. What Are The Principal Uses And Structures For A PUD?

PUD's can only utilize the principal uses and structures designated in the R-1, R-2, R-3, R-4, R-R, C-1, C-2, UID-1 and TI-1 districts.

4. What Is Required For A PUD?

The developer must follow the procedures for both a conditional use permit and a land use lease.

5. Is There A Minimum Size For A PUD?

The minimum size for a PUD is two (2) acres.

6. What The Standards For Developing Open Space Within a PUD?

No open area may be accepted as common open space unless it meets the following standards:

- a. The uses authorized for open space must be appropriate to the scale and character of the PUD, considering its density, expected population, topography, and number and type of structures.
- b. The open space must be improved to support its intended use, unless it contains natural features worthy of preservation, in which case it may be left in an unimproved state.
- c. The construction and provisions of open spaces and recreational facilities must proceed at the same rate at the construction of principal structures.

7. Who Maintains the Common Open Space?

Common open space is conveyed to the Tribal Legislature for maintenance purposes unless the developer has made separate arrangements which have been approved by the Tribal Legislature.

8. How Can Changes be Made In An Approved PUD?

All changes in use or rearrangement of lots, blocks and building sites, and any changes in the approved plans, must be made through the Committee under the conditional use permit process.

9. When Can Authorization For Constructing A PUD Lapse?

If no construction has begun within one (1) year from the final approval of the development plan, the authorization of the development plan will lapse and be of no further effect, provided that at its discretion and for good cause, the committee may recommend to the Tribal Legislature to extend for an indefinite period of time for beginning of construction.

10. Is There A Fee Attached To A PUD?

Yes. A \$35.00 is assessed for a Site Plan Review. A \$50.00 fee can be attached for each Conditional Use Permit that is required, plus all construction permit fees.

APPENDIX O

**GUIDELINES FOR THE
SHORELAND OVERLAY DISTRICT**

GUIDELINES FOR THE SHORELAND OVERLAY DISTRICT

1. What Is The Jurisdiction Of The Shoreland Overlay District?

The areas regulated by the Shoreland Overlay District are lands 1,000 feet from lakes and ponds and 500 feet from rivers and streams.

2. What Are The Permitted Uses Within The Shoreland Overlay District?

Activities and uses which do not require the issuance of a construction permit, but which must be carried out without filling, flooding, draining, dredging, ditching, or excavating, such as:

- a. Hiking, fishing, trapping, hunting, swimming, and boating;
- b. The harvesting of wild crops, such as marsh hay, ferns, moss, wild berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
- c. The practice of silviculture, including the planting, thinning and harvesting of timber.

Or, uses which do not require the issuance of a construction permit, and which may involve filling, flooding, draining, dredging, ditching, or excavating to the extent specifically provided below:

- a. Temporary water-level stabilization measures, in the practice of silviculture, which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silviculture activities if not corrected;
- b. Limited excavating and filling necessary for the construction and maintenance of piers, docks and walkways built on pilings;
- c. Ditching, tilling, dredging, excavating, or filling done to maintain or repair existing drainage systems necessary for the cultivation of agricultural crops;
- d. Soil conservation practices such as terraces which are used for sediment retardation and water quality and approved by the Soil Conservation Service.

Or, uses requiring a Conditional Use Permit and other special provisions, such as road and utilities, non-residential buildings, ditching, tilling, dredging, excavating, or filling, and public parks.

Please refer to the Zoning Ordinance for specific details.

3. Are There Any Prohibited Uses?

Any use not specifically mentioned or listed as a permitted use in the Shoreland Overlay District section of the Zoning Ordinance is a prohibited use, unless the wetland has been re-zoned by amendment.

4. Are There Restrictions For Cutting Vegetation?

Within 35 feet of the normal high water mark, no more than 30 feet in any 100 feet can be clear cut. In the remaining 70 feet, selective cutting of vegetation may be allowed that would not result in shoreland erosion and leave sufficient cover to prevent sedimentation and preserve natural appearance.

5. What Are The Minimum Lot Dimensions?

The minimum area and width are the same as the underlying district provided that:

- a. Lots served by public sewer have a minimum width of at least 65 feet and a minimum area of 10,000 square feet;
- b. Lots not served by public sewer have a minimum width of at least 100 feet and a minimum area of 20,000 square feet.

6. What Are The Setbacks For Structures In The Shoreland Overlay District?

Structures will be set back 75 feet from the ordinary high water mark except as specifically noted in the section, such as piers and docks. Structures such as removable piers and docks, open stairways, boat tracks, boat shelters, bridges and walkways are exempt from setback requirements.

The lot requirements of yard, height, and density of the underlying zoning district are still required as well.

7. What Are The Restrictions To Amending The Shoreland Overlay District?

The shoreland district cannot be re-zoned if such a re-zoning results in a significant adverse impact upon any of the following:

- a. Storm and floodwater storage capacity;
- b. Maintenance of dry-season stream flow, the discharge of groundwater to wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
- c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- d. Shoreline protection against soil erosion;
- e. Spawning, breeding, nursery or feeding grounds for aquatic life;
- f. Wildlife habitat;
- g. Areas of special recreational, scenic, or scientific interest, including scarce wetland types.

APPENDIX P

**GUIDELINES FOR THE
FLOODPLAIN OVERLAY DISTRICT**

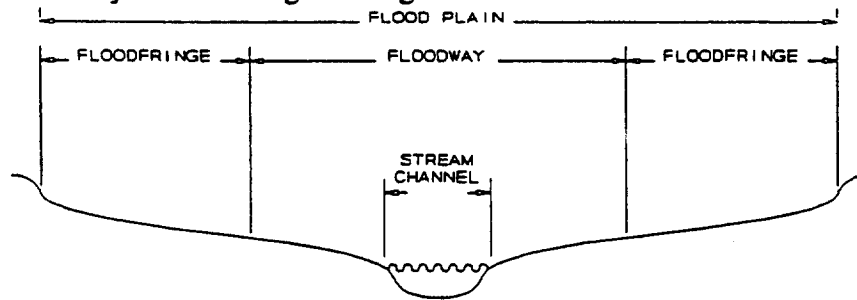
GUIDELINES FOR THE FLOODPLAIN OVERLAY DISTRICT

1. What Are The Differences Between The General Floodplain, Floodfringe, And Floodway Districts?

The General Floodplain District is the overall, comprehensive area for the A-Zones on the Flood Hazard Boundary Maps or any other map approved by the Tribal Legislature delineating flood area.

The Floodfringe District is the portion of the General Floodplain District that is covered by floodwaters during the regional flood, but is usually associated with standing water rather than rapidly flowing water.

The Floodway District is also a part of the General Floodplain District which includes the water body, required to carry and discharge the regional flood.



FLOODPLAIN DISTRICTS

2. How Can The General Floodplain District Divided?

The General Floodplain District can be divided into the Floodfringe or Floodway Districts in one of two ways. The first is to establish and compile scientific data for the district and make the determination for the entire General Floodplain District. When a development is proposed within the General Floodplain District, a determination can be made to establish the boundaries of the whether floodway or floodfringe uses apply to that specific development is the second method.

3. What Are The Special Provisions For All The Floodplain Districts?

No development will be allowed in the floodplain areas which will cause an obstruction to flow, or cause and increase in regional flow height due to floodplain storage area lost, which is equal to or exceeding 0.01 feet.

Within the floodplain districts, all uses not listed as permitted or conditional uses will be prohibited.

Utility facilities such as dams, storm sewers and related structures, flowage areas, transmission lines, pipelines and water monitoring devices are conditional uses which are subject to Tribal and federal regulations.

4. What Are The Permitted Uses In The Floodfringe District?

Any structures, land uses, or developments may be permitted within the Floodfringe District to the extent that they are not prohibited by the zoning ordinance, any other Tribal ordinance, or federal regulations, and provided that a land use permit has been issued by the Community Development Department.

5. What Are The Development Standards For The Floodfringe District?

In addition to the special provisions applicable to all floodplain districts, the Floodfringe District has further provisions that must be met. For residential, commercial, and institutional structures the lowest floor excluding the basement or crawlway should be placed on fill at or above the flood protection elevation, which is 2 feet above the regional flood elevation. Complete land access needs to be provided for the structure to land which is outside of the floodplain. Industrial structures and utilities must follow the ordinance's floodproofing provisions.

6. Are There Any Prohibited Uses In The Floodfringe District?

Yes, all solid waste disposal and transfer sites, whether public or private, are prohibited in floodfringe areas.

7. What Are The Permitted Uses In The Floodway District?

Open space uses such as agriculture, parking, parks, golf courses, and roads.

8. What Are The Development Standards For The Floodway District?

In addition to the special provisions applicable to all floodplain districts, the Floodway District has further provisions that must be met. Any structure constructed must be firmly anchored, have any roads or utilities above flood protection levels, and not be for human habitation.

9. Are There Any Prohibited Uses In The Floodway District?

Yes, the storage of any materials that are buoyant, flammable, explosive, or injurious to human, animal, plant, fish or other aquatic life such as propane tanks. All public or private wells which are used to obtain water and all wastewater treatment ponds and facilities are prohibited as well.

10. What Are The Floodproofing Provisions For The General Floodplain District?

When floodproofing measures are required, they will be designed to:

- a. Withstand the flood pressures, depths, velocities, uplift and impact forces, and other factors associated with the regional flood;
- b. Assure protection to the flood protected elevation;
- c. Provide anchorage of structures to foundations to resist flotation and lateral movement;
- d. Insure that the structural walls and floors are watertight and completely dry without human intervention during flooding, to the flood protection elevation;

Other required floodproofing measures can include:

- a. Installation of watertight doors, bulkheads and shutters;
- b. Reinforcement of walls and floors to resist pressures;
- c. Use of paints, membranes or mortars to reduce seepage of water through walls;
- d. Additional mass or weight to structures to prevent flotation;
- e. Placement of essential utilities above the flood protection elevation;
- f. Pumping facilities and/or subsurface drainage systems for buildings to relieve external foundation wall and basement floor pressures and to lower water levels in structures;
- g. Construction to resist rupture or collapse caused by water pressure or floating debris;
- h. Cutoff valves on sewer lines, or the elimination of gravity-flow basement drains.

No permit or variance will be issued until the applicant submits a plan or document certified by a registered professional engineer or architect that floodproofing measures are adequately designed to protect the structure or development to the flood protection elevation for the particular area.

APPENDIX Q
QUICK REFERENCE CHART
PERMITTED LAND USES

- = PERMITTED
- = ACCESSORY
- = CONDITIONAL
- = PROHIBITED

SINGLE FAMILY RESIDENTIAL MOBILE HOME RESIDENTIAL LOW DENSITY RESIDENTIAL HIGH DENSITY RESIDENTIAL RURAL RESIDENTIAL TRIBAL INSTITUTIONAL NEIGHBORHOOD BUSINESS GENERAL BUSINESS UTILITY-INDUSTRIAL EXCLUSIVE INDUSTRIAL EXCLUSIVE FORESTRY EXCLUSIVE AGRICULTURE PLANNED UNIT DEVELOPMENT CONSERVANCY

USES and STRUCTURES	R-1	R-2	R-3	R-4	R-R	TI-1	C-1	C-2	UID-1	I-2	F-1	A-1	PUD	CV-1
Abattoir (slaughter house)										C				
Acoustical material-storage & mfg									C	P				
Adult bookstore ¹														
Adult entertainment facility ¹														
Agricultural implements - display, distribution, sales, and repair								C				P		
Airport, public & private including seaplane base														
Alcoholic & fermented beverage sales, distribution & mfg ²									P	P			C	
Amusement park & carnival (temporary)						C						C		
Animal boarding facility (commercial kennel) ³	A				A			C				C		
Archery Range	C	C	C	C	C							C		
Armory						P							C	
Arms & Ammunition wholesale & storage								C						
Asphalt products & storage									C	P				
Associations, clubs, and fraternal organizations				C		C	C	C						
Asylum, public & private						P							C	
Athletic club, health club - commercial								C						
Athletic club, health club - public						P							C	
Athletic field	P	P	P	P	P	P						C	C	
Auditorium, arena						P							C	
Automobile & truck sales, repair, parts supplies & storage ³	A				A		C	P				A		
Automobile & truck salvage, scrap & junk yards										C				
Bait sales, live & artificial							P	P				C	C	
Baked foods, mfg & sales							P	P					C	

USES and STRUCTURES	R-1	R-2	R-3	R-4	R-R	TI-1	C-1	C-2	UID-1	I-2	F-1	A-1	PUD	CV-1
Bank & other financial institutions							P	P					C	
Bar, cocktail lounge, tavern ²					A		P	P					C	
Barber & beauty shops ³	A	A	A				P	P				A	C	
Basketball court (full) ⁴				A		A						A		
Bed & breakfast establishment ⁵	C				C							C		
Beverages (non-alcoholic) wholesale & storage								C						
Bicycle, motorcycle, snowmobile sales & repair ³	A	A			A		P	P				A	C	
Billiard parlor, arcade							P	P					C	
Boarding house ⁵	C				C							C		
Boathouse														
Boat sales, repair & service								C						
Bottled gas, storage & distribution							C	P						
Bottling plant										C				
Bowling alley, commercial							P	P					C	
Brewery, winery ²									C	P				
Broadcasting studio (radio & TV)							P	P					C	
Butcher, fresh meat retail							P	P				C	C	
Building contractor, equipment & material storage									C	P				
Bus line depot, garage & repair								C		P				
Business park development								C						
Campground, private (commercial)												C		
Campground, public														
Camper sales & service (travel trailers, etc.)								C						
Carpentry, cabinet making, woodworking, etc.									C	P				
Cement & concrete products mfg, sales & service									C	P				
Cemetery						P							C	
Ceremonial building	C	C	C		C	P						C	C	
Child care center, nursery school ⁶	C	C	C	F	C	P							C	
Church, synagogue, shrine, etc.	C	C	C		C	P						C	C	
Clinic						P							C	

USES and STRUCTURES	R-1	R-2	R-3	R-4	R-R	TI-1	C-1	C-2	UID-1	I-2	F-1	A-1	PUD	CV-1
Clothing store							P	P					C	
thing mfg.										C				
College						P							C	
Community Center	C	C	C		C	P	C	C				C	C	
Community living arrangement ⁷	P	P	P	F	P	P							C	
Convent, retreat house	C	C	C		C	P						C	C	
Country club, banquet facilities								C				C		
Curio & souvenir shop							P	P					C	
Dairy products mfg. & sales								C		P		C		
Disposal plant (sewage)									P	P			C	
Disposal plant (incinerator)														
Dog pound						P							C	
Drag Strip - auto & motorcycle														
Drug store, pharmaceuticals							P	P					C	
np, solid waste, landfill														
Dwelling unit (high density multiple family, apartments)				P		C							C	
Dwelling unit (low density multiple family, duplex, quad-plex)	C	C	P	C	C	C							C	
Dwelling unit (seasonal)											C	C		
Dwelling unit (single family) [excluding mobile homes]	P	P	P	C	P	C						P	C	
Eggs, poultry processing										C		C		
Electric light & power company yards									C	P				
Electric light & power company substations									P	P			C	
Elevators, grain storage, etc.													C	
Explosives (industrial) mfg, storage & distribution														
Express mail & packages, warehouse & garage									C	P				
Fairgrounds						P							C	C
Farm related, single family dwelling unit												P		

USES and STRUCTURES	R-1	R-2	R-3	R-4	R-R	T1-1	C-1	C-2	UID-1	I-2	F-1	A-1	PUD	CV-1
Feed, wholesale, sales, storage, & fertilizer								C				A		
Leisure shooting range														
Fireworks, retail sales ^B														
Fire tower									P	P	P		C	
Fish or meat wholesale, storage & curing								C		P		C		
Fish hatchery, public & private												C		
Florist sales							P	P					C	
Forestry activities, silviculture									P	P	P		C	
Freight depot										P				
Frozen food, cold storage locker										P				
Funeral home, mortuary						P	P	P					C	
Fur farm preparation & storage												C		
Gaming establishment							P	P					C	
Gasoline service station							P	P					C	
Gasoline, fuel oil, bulk storage tanks & related facilities									C	P				
Garages, public							P	P					C	
Garages, private	A	A	A	A	A	A	P	P	A	A		A	C	
Go-cart, trampoline, water slide, bungee & related large equipment recreational												C		
Golf, driving range												C		
Golf, miniature								C				C		
Golf course	C	C	C	C	C							C		
Governmental offices (see public & municipal bldgs)	C	C	C		C	P		P				C	C	
Gravel pit, crushing, screening & washing plant														
Greenhouses	A		A		A		P	P				P	C	
Grocery stores							P	P					C	
Hardware, sporting goods retail							P	P					C	
Hobby farm, farm animals												P		
Hospital			C			P							C	

USES and STRUCTURES	R-1	R-2	R-3	R-4	R-R	TI-1	C-1	C-2	UID-1	I-2	F-1	A-1	PUD	CV-1
Hotel, motel							P	P					C	
Household occupation ²	A	A	A	A	A							A		
Ice mfg, sales & storage									C	P				
Industrial, heavy										C				
Industrial, light									C	P				
Irrigation facilities, canals, dams, reservoirs, etc.												C		
Laundry, dry cleaning							P	P					C	
Library	C	C	C		C	P						C	C	
Liquor retail ²							P	P					C	
Livestock												P		
Machine shop, welding, metal fabrication, processing, & welding shop										C				
Massage parlor														
Mining, quarry, equipment, storage, rock crushing														
Mobile homes, singular		P			C							P	C	
Mobile home park														
Mobile home sales & services														
Movie theater, building								P						
Movie theater, drive-in								C				C		
Museum, art, culture, historical						P							C	
Paper & wood product mfg & storage										C				
Park & playground	P	P	P	P	P	P						A	C	
Paving-batch plant for cement, asphalt & related materials										C				
Performing arts facility						P							C	
Pipe, culvert sales & storage														
Pipeline - gas, oil, etc. ²									P	P	C		C	C
Planned unit development	C	C	C	C	C	C	C	C					P	
Printing, lithograph, photo engraving, etc.							C	P						

USES and STRUCTURES	R-1	R-2	R-3	R-4	R-R	TI-1	C-1	C-2	UID-1	I-2	F-1	A-1	PUD	CV-1
Professional office - engineer, doctor, attorney, dentist, etc. ³	A	A	A		A		P	P				A	C	
Public & municipal building (see government offices)	C	C	C		C	P		P				C	C	
Public service, utility facilities & plants ⁹									P	P	C		C	C
Racetrack - automobile, horse, greyhound, snowmobile, motorcycle, bicycle, etc.												C		
Radio, TV transmitting station & tower - dispatch & commercial						P			C	P				
Rafting, canoeing, & kayaking (commercial)								C						
Recreational activities, outdoor (hunting, fishing, etc.)											P			P
Recycling drop-off facility ¹⁰							C	C	P	P			C	
Resort (rental cabins, lodging, food, & related facilities)														
Restaurant, cafe, supper club, fast food establishment, etc.							P	P					C	
Restaurant, drive-in							C	P						
Resource recovery facility ¹⁰									C	P				
Resource recovery processing ¹⁰ facility									C	P				
Retail (general)							P	P					C	
Riding stable, boarding stable												P		
Roadside park, wayside rest											C	C		C
Roadside produce stand (permanent structure)												P		
Rollerskating rink								P						
Sauna, steambath (commercial)								P						
Sawmill & lumber yard									C	P	C	C		
Septic tank, sales, service, mfg									C	P				
School (elementary & secondary)	C				C	P							C	
School (commercial, beauty, trade, etc.)						P							C	
Senior citizen care facilities			C			P							C	
Shopping center							P	P					C	

USES and STRUCTURES	R-1	R-2	R-3	R-4	R-R	Tl-1	C-1	C-2	UID-1	I-2	F-1	A-1	PUD	CV-1
Sign, attached ¹¹	P	P	P	P	P	P	P	P				P	C	
Sign, freestanding ¹¹	P	P	P	P	P	P	P	P	P	P		P	C	
Sign, off-premise ¹¹									P	P			C	
Small engine (lawnmower, snowblower, etc.) sales, repair ³	A	A			A		P	P				A	C	
Storage, campers, boats, etc.										P				
Storage warehouse (commercial, industrial)										P				
Store, general retail goods							P	P					C	
Swimming pool, private ⁴	A			A	A	A						A		
Swimming pool, public						P							C	
Taxidermist ²	A	A			A		P	P				A	C	
Tennis courts ⁴	A			A	A	A						A		
Tire recapping, equipment & supplies including sales							C	C						
Transfer station (solid waste) ¹⁰									C	P				
Travel bureau							P	P					C	
Veterinarian, no outside runs							P	P				C	C	
Veterinarian, full facilities							C	P				C		
Water reservoir systems & regulating facilities (potable) ⁹									P	P	C		C	C
Wholesale (general sales)								C						
Wild crop harvesting											A	A		P
Wild game farm												C		
Wild life preserve									P	P	P	C	C	P
Windmill, electrical generating									P	P		A	C	

1. Subject to regulation under section 3.080 B. (Excluded Uses; Adult Book Stores and Adult Entertainment Facilities).
2. Subject to regulation under section 3.080 A. (Excluded Uses; Alcoholic or Fermented Beverages)
3. Subject to regulation under Section 19 (Home Occupations).
4. Subject to regulation under section 23.060 (Private Recreational Facilities).
5. Subject to regulation under section 32.120 (Bed and Breakfast Establishments and Boarding Houses).
6. Subject to regulation under section 23.110 (Family Day Care Homes).
7. Subject to regulation under section 23.100 (Community Living Arrangements).
8. Subject to regulation under Tribal Ordinance 83-3 "Fireworks."
9. Subject to regulation under section 23.050 (Essential Services).
10. Subject to regulation under section 23.150 (Solid Waste and Recycling Facilities).
11. Subject to regulation under Section 22 (Sign Regulation).

Part Six

Tribal Building Codes

Introduction

The goal of building codes generally is to protect the health and safety of persons using a structure. Building codes may cover every aspect of the design, construction and renovation of these structures from specifying aesthetically appropriate architecture to regulating private sewage disposal. Many jurisdictions are looking to update codes in order to be current with new materials and technology, to lessen susceptibility to natural disasters, and to make ecologically sound use of resources. Tribes face additional obligations such as protecting the health, safety and welfare of the community as a whole, covering the costs of administering and enforcing rules with limited financial resources, and respecting unique historic housing and building practices of the communities.

Considerations In Developing Tribal Building Codes

Getting Started

The starting points for developing a tribal building code are identifying local needs and gathering resources:

1. Gather all the tribal enactment's currently in place that are likely to be affected by a building code such as those related to housing, zoning, planning, business or economic development;
2. Determine specific, building-related, community needs that call for immediate attention and those that also call for longer-term solutions. Some examples of the first might be inadequate drainage, lack of proper heating, deteriorating mobile homes, and severe overcrowding. Some examples of the second might be encouraging traditional building designs, promoting use of locally available materials, and advancing environmentally sound use of resources; and
3. Find examples of codes addressing the needs. Building Officials & Code Administrators International, Inc. (BOCA, <http://www.bocai.org>, 312-947-2580) publishes a series of national and international comprehensive model codes that form the basis for nearly all building related codes adopted by governments located in the United States. The International Conference of Building Officials also publishes some building standards on-line at <http://www.codes.org>.

The governing body for the tribe will set the overall policies guiding development of the code. Ideally, the policies will become part of its legislative purpose. This may include a broad statement that establishment and enforcement of the code are essential to the public health, safety, and general welfare of persons in the community. The purpose section may also include more specific language expressing the need to protect the health and safety of the community as a whole by promoting ecologically sound use of local resources; to seek cost effective approaches

to building by encouraging the use and development of innovative building materials and techniques, and to respect community identity by incorporating community norms and historic practices or traditions in design, building, and renovation.

Some Specific Considerations

Monitoring & enforcing compliance; code administration

Will the tribal official (called inspector here) responsible for enforcing the code be governed by a separate board/the tribal council/housing director?

What can the inspector do to enforce the code? Assist the homebuilder or resident with compliance by finding financial or other assistance to encourage compliance but assess fines, seize equipment and materials, enter into homes and businesses with or without notice, and write "tickets" into tribal court when compliance is still not there?

How will the tribe's costs for personnel, equipment, and supplies be covered? Licenses and permit fees that are waivable under specified circumstances or for good cause? Some costs are reimbursable with federal dollars, such as environmental review costs. Some costs may be absorbed within the current tribal structure, for example, appeals of permit denials or of the imposition of fines may be handled at less cost within the current tribal court rather than by creation of a separate administrative review board.

How can an understanding of the need for the code and of its enforcement be promoted in the community? What kind of publicity is effective in the community? The inspector can speak to school and community groups, place articles in a tribal or local newspaper. Prior to drafting and enacting building codes, community input can be requested through public meetings or by one on one contact with members likely to have special concerns and with experienced builders in the area.

Meeting federal requirements and following federal guidelines

The federal rules governing implementation of the Native American Housing Assistance and Self-Determination Act of 1996 contain requirements that may be addressed in a tribal building code. The official rules were published in the Federal Register, Vol. 63, No.48/Thursday, March 12, 1998, pages 12334-12374 and as corrected in Vol. 63, No. 51/Tuesday, March 17, 1998 and are found in sections of 24 CFR Parts 950, 953, 955, 1000, 1003, and 1005.

- Tribes must follow 24 CFR Part 58 in complying with environmental review requirements. (§1000.20)
- Tribes must comply with flood insurance requirements under the Flood Disaster Protection Act of 1973 (42 USC 40001-4128) and cannot acquire, construct or rehab in a flood hazard area unless the community is part of the National Flood Insurance Program or it has been less than a year since FEMA notification. (§1000.38)
- Tribes must comply with the lead-based paint poison prevention requirements. (§1000.40)
- HUD's review for compliance with performance measures may include on-site evaluation of the quality of work performed. (§1000.526)

The tribe's building code may need to address having builders, owners, or inspectors gathering this information and maintaining it to document compliance with HUD requirements.

Some federal guidelines may affect a tribe's approach to building codes, as well. For example, the Fair Housing Accessibility Guidelines, published in the Federal Register, Vol. 56, No. 44/March 6, 1991, pages 9472-9515, as corrected on June 24, 1991, guide builders and developers in building spaces that can be negotiated by a person in a wheelchair and that is safe and useable by persons with differing abilities. These guidelines follow '504 of the Rehabilitation Act of 1973 (29 USC 794, 24 CFR Part 8)) and the Architectural Barriers Act of 1968 (42 USC 4151-4157, 24 CFR Part 40). The tribe may choose to incorporate such guidelines into tribal law.

Enacting uniform standards

How can a uniform code meet specific community needs? One way is to enact a specific version of a uniform code, for example, the 1998 International Plumbing Code, to apply except under specifically listed circumstances or except when good cause can be shown. The code may also approach using a uniform code by stating it applies except where tribal law imposes stricter requirements

If uniform codes are used, copies should always be easily available through the library, the inspector, and at least one other tribal office. The code itself should also state where the uniform code can be found and reviewed.

One advantage of using uniform standards is that the requirements are familiar to builders and suppliers. The uniform codes do not necessarily assist a tribe interested in promoting the use of locally available resources, respecting historic building practices within the community, or advancing environmentally sound building methods. Separate provisions that specifically state they apply instead of, or in addition to, may be necessary.

Affecting other tribal enactment's

Tribal enactment's on jurisdiction may be affected by the building code. For example, builders on the reservation may include special provisions in their contracts with suppliers to meet code requirements and the tribe's jurisdictional enactment's should be designed to allow disputes about the contracts to be resolved within the tribe's system.

The imposition of fines and forfeitures by the inspector may need to be coordinated with general provisions on the enforcement of civil laws. If appeals of fines, forfeitures, and denials of permits and licenses may be made to a tribal court, the court's rules and procedures may need modification.

Keeping up to date with technology and innovations in materials and techniques and protecting historic practices

The code's purposes section may state an intention to encourage both using innovative materials and techniques and relying on historic or indigenous designs and methods. The tribe may include keeping informed on developments as part of the job description for the inspector and ask for periodic recommendations to the tribe's governing body from the inspector on updating the code to allow for using new technology and innovations that fit the community's needs. A tribe may

also support and help maintain traditional methods by exempting structures being built using historic designs and methods from some or all code requirements.

Typical code contents for a basic housing-property maintenance code

General Provisions

- I. Title, purpose, matters covered
- II. What the code applies to, conflicts with other ordinances
- III. Who has the duty to enforce, liability for enforcement, right to enter for inspections
- IV. Condemnation, defining dangerous structures, notice to vacate requirements such as service and posting
- V. Procedure for prosecuting violations of the code, penalties
- VI. Appeal rights

Definitions

- I. Environmental Requirements
- II. General application
- III. External property areas, sanitation, drainage, weeds, insect and rodent controls, unregistered motor vehicles
- IV. External structure, foundations, walls, roofs, stairs, handrail, windows, doors exits, screening
- V. Interior structure, dampness, supports, interior stairs, repairs, interior walls ceilings, and floors
- VI. Space and occupancy requirements, sanitary facilities, sinks, bathtubs, water closets, heating, rubbish storage and disposal
- VII. Installation and maintenance, standards, plumbing, electrical
- VIII. Occupancy requirements, ceiling heights, space, access, use of basements
- IX. Light and ventilation, overcrowding, eating areas, habitable rooms, workspaces, storage of flammable liquids, cooking and heating equipment

Responsibilities of Persons

- I. Maintenance, cleanliness, disposal of garbage and rubbish

Conclusion

Tribes can modernize the regulation of building activities to promote the health and safety of individuals without sacrificing community needs or historic housing and building practices. An assertion of jurisdiction over building activities can be within a tribe's financial ability and offers a means of encouraging environmentally sound use of local resources under local control.

Postscript on Use of Resources

Buildings account for one-fourth of the world's wood harvest, two-fifths of material and energy usage, and one-sixth of fresh water use; building use accounts for one-fourth of the rise in carbon dioxide levels in the past century; and two billion of the six billion people on this planet live and work in resource intensive buildings. (Taken from "Sustainability and the Building Code," a paper for the BETEC Symposium on Emerging Technologies, Washington DC, November 19, 1997 by David Eisenberg, Director of the Development Center for Appropriate Technology).

Building Code Development Resources

Building Officials & Code Administrators International, Inc.
1313 East 60th St
Chicago Ill 60637
(312) 947-2580
<http://www.bocai.org>
(Publishes national & international building & related codes)

American Indian Council of Architects and Engineers
11675 SW 66th Ave
Portland OR 97223
(503) 639-4914; (503) 639-2743 fax
(Publishes booklet of design principles for Indian Housing)

International Conference of Building Officials
<http://www.codes.org>
(Sample building standards on-line, products, links)

Civil Engineering Research Foundation
1015 15th St NW Suite 600
Washington DC 20005
(202) 842-0555; (202) 842-2943 fax

National Association of Home Builders
<http://www.nahbrc.org>
(Technical assistance to building industry, benchmarks for quality business practices, information on products and systems)

Development Center for Appropriate Technology
PO Box 41144
Tucson, AZ 85714
(520) 624-6628

Partnership for Advancing Technology in Housing (PATH)
<http://www.pathnet.org>
E-mail: pathnet@pathnet.org
(Good links to resources on-line)

International Association Managers, Inc.
1224 N Nokomis NE
Alexandria MN 56308
(320) 763-5190; (320) 763-9290 fax
<http://www.iami.org>
(Links to inspections resources)

National Association of Housing & Redevelopment Officials
630 Eye St NW
Washington DC 20001
(202) 289-3500; (202) 289-8181 fax
<http://www.nahro.org>

Resources for Accessible Housing and Barrier-Free Design

American Association of Retired Persons
Publication: The DoAble Renewable Home, A Perfect Fit
1-800-424-3410
<http://www.aarp.org>

Center for Accessible Housing School of Design
North Carolina State University
Box 8613
Raleigh NC 27695-8613
(800) 647-6777
<http://www.design.ncsu.edu/cud>

The Center for Inclusive Design & Environmental Access
School of Architecture & Planning-University at Buffalo
Buffalo NY 14214-3087
(716) 829-3485 ext329; (716) 829-3861 fax
<http://www.arch.buffalo.edu>; idea@ap.buffalo.edu

American National Standards Institute
1430 Broadway
New York NY 10018
(Publishes standards referenced in Fair Housing Act Accessibility Guidelines)

Architectural and Transportation Barriers Compliance Board
1111 18th St NW Suite 501
Washington DC 20036-3894
1-800-USA-ABLE

Paralyzed Veterans of America
801 18th ST NW
Washington DC 20006
202-416-7710

Best Practices

Building Codes

Colorado River Indian Tribes Building Code

Basic Structure

The code is identified as a Health and Safety Code and by ordinance number and contains eight chapters. The first chapter covers general provisions while the remaining chapters adopt specific editions of commonly available uniform codes with special clauses relating to local needs such as using specialized building materials (adobe).

Overall Comments

1. When adopting a uniform code, each section plainly specifies which edition is being used, allows for automatic updates as new editions are released, and notifies code users that copies of the uniform code being adopted are filed with the office of the Chairman. If a tribe will be making use of the uniform codes, these sections represent good practice on how to notify experienced builders and suppliers as well as persons unfamiliar with building requirements where to find information. The adoption of automatic updates increases the Tribe's ability to be current on using new technologies and materials.
2. Overall, the language of the code, even where giving technical descriptions of materials, is easy to read and understand.
3. The code offers a good example of considering some tribal specific needs such as using adobe and respecting traditional builders by exemptions from uniform code requirements.

Analysis of Specific Sections

Chapter 1

1. The general provisions allow the Tribal Council to appoint a Building Inspector from time to time, by resolution, to issue permits and enforce compliance. For tribes with limited resources, this approach can help control costs by allowing the tribe to contract for inspection and enforcement services as needed, such as when a multi-unit housing project is underway. The language also allows this to happen without amendments to the code.
2. An additional provision further controls the costs of issuing permits and enforcing compliance in a unique way. The inspector gives a written estimate of inspections needed to monitor compliance for each permit issued and the permittee pays extra fees if they are responsible

for a greater number of inspections being needed. This system also allows the Tribe to monitor the likely costs of upcoming inspections and not have liability for unanticipated inspection expenses.

3. The general provisions also waive check, permit and supplemental inspection fees for construction actually performed by members. This is a useful way to promote more affordable housing for members and member operated construction firms.

Chapter 2

1. This chapter adopts a uniform building code using the language described above. It contains extensive amendments to the uniform code covering unburned clay masonry specifications and is supplemented with diagrams.
2. The chapter also amends the uniform code by exempting certain types of structures from the permit process. Some of the exemptions are part of the uniform code, but at least one is clearly based local needs in that traditional dwelling constructed either by or for members do not require permits. This offers a direct, practical example of how to use model codes but limit their interference with traditional housing practices.
3. The practice of re-stating the language from the uniform code subsection with the amended language incorporated into the tribal code was also used here. This allows the user to understand the particular subsection without requiring the full uniform code for reference.

Chapters 3-7

These chapters adopt the uniform housing, abatement of dangerous buildings, plumbing, electrical, and mechanical codes using identical language. No exemptions are specified.

Chapter 8

Originally, the Uniform Fire Code had been adopted. This section was crossed out by hand with a cross-reference to the cite of a Fire Prevention and Safety Code. This demonstrates an easy, straightforward way of tracking code updates if the jurisdiction does not regularly publish cumulative codes that contain all recent changes enacted by the tribal governing body. Including the date of the change may also be useful.

(51)
**Best Practices
Building Codes
Code #1: Colorado River Indian Tribes Building Code**

Be it enacted by the Tribal Council of the Colorado River Indian Tribes, that there is hereby established a Health and Safety Code of the Colorado River Indian Tribes, as follows:

ARTICLE 1.

BUILDING AND CONSTRUCTION

CHAPTER 1. GENERAL PROVISIONS

Section 1-101. Building Inspector.

The Tribal Council may, by appropriate resolution, from time-to-time commission a Building Inspector, who shall have the authority to issue permits pursuant to the provisions of this Article and enforce compliance with this Article and any permit issued under its terms.

Section 1-102. Supplemental Inspection Fee.

At the time that any permit is issued pursuant to the provisions of this Article, the Building Inspector shall provide a written estimate of the number of inspections required to be performed to certify compliance with each permit. If through the fault of permittee, his agents, employees or contractors, a greater number of inspections needs to be performed, permittee shall pay a supplemental inspection fee for each such inspection in the following amounts: \$50.00 per inspection; where the work to be inspected is located outside of a 15-mile radius of Parker, \$75.00 per inspection.

Section 1-103. Waiver of Fees.

Plan check fees, permit fees and supplemental inspection fees are hereby waived for any plan checks, permits issued and inspections performed respecting any construction actually performed by any member of the Colorado River Indian Tribes.

CHAPTER 2. UNIFORM BUILDING CODE

Section 1-201. Uniform Building Code.

That certain code entitled "Uniform Building Code," 1982 Edition, including all revisions thereto, copyrighted by the International Conference of Building Officials, is hereby referred to, adopted and made a part of this Section the same as though said code was specifically set forth in full herein. Each succeeding edition of said code, including all revisions thereto, shall automatically supersede all previous editions thereof and revisions thereto. A copy of said code shall be filed in the office of the Chairman of the Tribes.

Section 1-202. Unburned Clay Masonry.

Section 2405 of the Uniform Building Code, Section 1-201 of this Article is amended to read as follows:

Sec. 2405. (a) General. Masonry of unburned clay units shall not be used in any building more than two (2) stories in height. The height of every laterally unsupported wall of unburned clay units shall be no more than ten (10) times the thickness of such walls. Exterior walls, which are laterally supported with those supports located no more than twenty-four (24) feet apart, are allowed a minimum thickness of twelve (12) inches for a single story and a minimum thickness of sixteen (16) inches for the bottom story of a two (2) story with the upper story of a two (2) story allowed a minimum thickness of twelve (12) inches. Interior bearing walls are allowed a minimum thickness of eight (8) inches.

(b) Compressive Strength. The units shall have an average compressive strength of three hundred (300) pounds per square inch when tested in accordance with A.S.T.M. C67. One sample out of five may have a compressive strength of not less than two hundred and fifty (250) pounds per square inch.

(c) Module of Rupture. The unit shall average fifty (50) pounds per square inch in modulus of rupture.

(d) Soil. The soil used shall contain not less than twenty-five percent (25%) and not more than forty-five percent (45%) of material passing a No. 200 mesh sieve. The soil shall contain sufficient clay to bind the particles together and shall not contain more than two percent (2%) of water-soluble salts.

Most clayey loams, except those with a high clay content, are suitable, but it is not practicable to make a selection on the basis of soil analysis only. Soils having a high clay content shrink or crack badly when drying, and sandy soils do not have sufficient bonding material to prevent crumbling.

Neither of these soils should be used alone for brick but a very good building material can be obtained by mixing the two soils together in proportions that will overcome the undesirable qualities of each. The best way to determine the fitness of a soil is to make a sample brick and allow it to cure in the open, protected from moisture. It should dry without serious warping or cracking.

(e) Classes of Adobe. 1. Treated Adobe. The term "treated" is defined to mean adobes or soil to which certain admixtures are added in the manufacturing process in order to limit the adobe's water absorption in order for it to comply with paragraph (h) below. Exterior walls constructed of treated adobe require no additional protection. Stucco is not required. In order for the wall to so comply, the mortar must be of adobe soil treated with an additive to make the mortar comply with the same water absorption requirement in paragraph (h) below.

2. Untreated Adobe. Untreated adobes are adobes which do not meet the water absorption specifications of paragraph (h) below. This shall hold even if some water absorption protective agent has been added. The determination as to whether an adobe is treated or untreated is to test for compliance with paragraph (h) below. Exterior walls of untreated adobe are allowed but must comply with paragraph (o) requiring Portland Cement plaster applied to the outside.

Use of untreated adobe is prohibited within eight (8) inches above the finished floor grade. Treated adobes may be used for the first eight (8) inches above finished floor grade. Mortar must be adobe soil (either treated or untreated).

(f) Sampling. Each of the tests prescribed in this Section shall be applied to five sample units selected at random from each five thousand (5,000) bricks to be used.

(g) Moisture Content. The moisture content of the unit shall be not more than four percent (4%) by weight.

(h) Absorption. A dried four-inch (4") cube cut from a sample unit shall absorb not more than two and one-half percent (2½%) moisture by weight.

(i) Shrinking Cracks. No units shall contain more than three (3) shrinkage cracks, and no shrinkage crack shall exceed three (3) inches in length or one-eighth (1/8) inch in width.

(j) Use. No adobe shall be laid in the wall for at least three (3) weeks after making, dependent on weather conditions.

(k) Foundations. Adobes shall not be used for foundations or basement walls. All adobe walls, except as noted under Group M Buildings, shall have a continuous concrete footing at least eight (8) inches thick and not less than two (2) inches wider on each side than the foundation walls above. All foundation walls which support adobe units shall extend to an elevation not less than six (6) inches above the finish grade. The foundation trench shall be excavated to a depth of at least eighteen (18) inches below natural grade.

Foundation walls shall be at least as thick as the exterior wall as specified in Section 2405 (1): Where stem wall insulation is used, a variance is allowed for the stem wall width to be two (2) inches smaller than the width of the adobe wall it supports.

Either the footing or the foundation (stem) wall must be reinforced with a minimum of two (2) No. 4 reinforcing rods.

(l) Exterior Walls. All walls of adobe (treated or untreated) shall not have thicknesses less than that allowed in paragraph (a) above. Mortar shall be in accordance with paragraph (e) 1 and (e) 2 above, depending on the class of adobe being used. All adobe brick shall be laid up with full slush (bed) joints and shall be bonded (overlapped) no less than four (4) inches. Walls of treated adobe which do not require a protective outer coating must also be laid up with full head (end) joints. All exterior adobe walls shall be topped with a continuous belt course or tie beam (except patio walls less than six (6) feet high above the stem). At the time of laying, all units shall be clean and damp at the surface. Parapet walls bearing on wooden tie beams shall be nonstructural and shall not exceed thirty-six (36) inches in height.

No adobe bricks shall be used for isolated piers, porch columns, or wall section of less than twenty-eight (28) inches by twelve (12) inches. A minimum twelve (12) inch wall section will be permitted between openings provided a continuous lintel of concrete or timber be installed spanning both openings and wall section.

(m) Concrete Tie Beam. Shall be minimum size six (6) inch by width of wall up to a ten (10) inch width. For wall thicker than ten (10) inches, a ten (10) inch tie beam will suffice. All concrete tie beams shall be reinforced with a minimum of two (2) No. 4 reinforcing rods each floor and ceiling plate line.

(n) Wood lintels or Tie Beams. Shall be a minimum size six (6) inches by wall width up to a ten (10) inch width. For walls thicker than ten (10) inches, a tie beam of ten (10) inch thickness shall suffice. The wooden tie beams shall be overlapped, or spliced, at least six (6) inches at all joints. All joints shall have a wall bearing of at least twelve (12) inches. Wood tie beams may be solid in the six (6) inch dimension or may be built up by applying layers of lumber. No layer shall be less than one (1) inch. Wood joists, vigas, or beams shall be substantially fastened to the wood tie beam with large nails or large screws. All lintels, wood or concrete, in excess of nine (9) feet shall have specific approval of the Building Official.

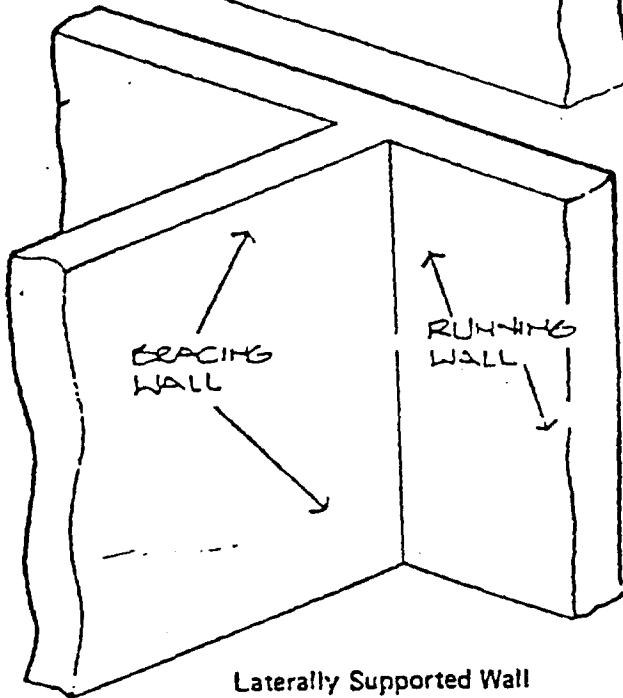
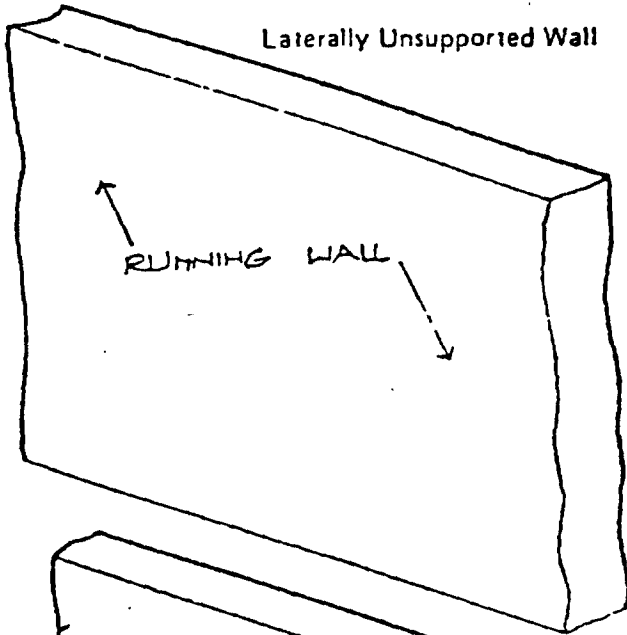
All wooden structural members embedded in adobe walls shall be separated therefrom by a waterproof membrane equal to Type 15 felt (15 pound felt).

(o) Plastering. All untreated adobe shall have all exterior walls plastered on the outside with Portland Cement plaster, minimum thickness three-quarter (3/4) inch in accordance with Chapter 47. Protective coatings other than plaster are allowed, providing such coating is equivalent to Portland Cement plaster in protecting the untreated adobes against deterioration and/or loss of strength due to water. Metal wire mesh minimum twenty (20) guage by one (1) inch opening shall be securely attached to the exterior adobe wall surface by nails or staples with minimum penetration of one and one-half (1½) inches. Such mesh fasteners shall have a maximum spacing of sixteen (16) inches apart. All exposed wood surfaces in adobe walls shall be treated with an approved wood preservative before the application of wire mesh. (Exception: Exterior patio, yard walls, etc., need not have Portland Cement coating).

(p) Floors and Roofs. May be constructed of wood, the sizes and spans to be in accordance with Chapter 25.

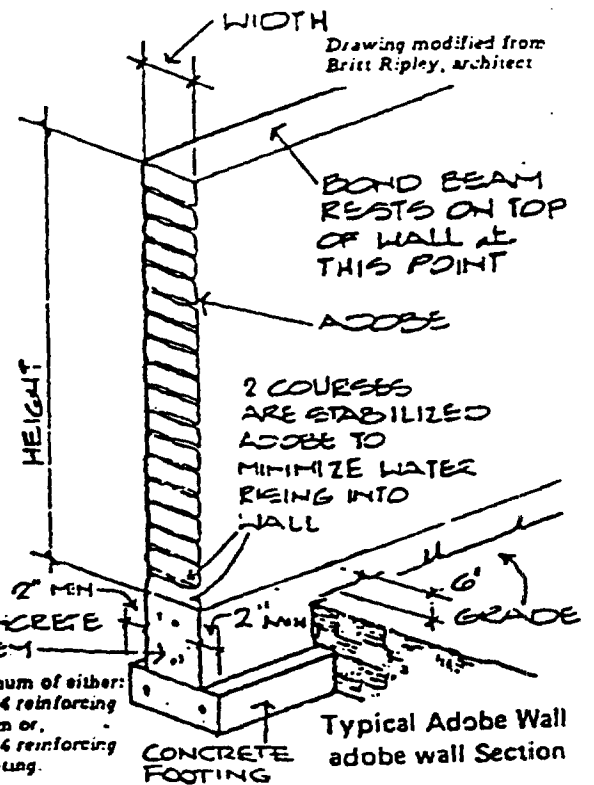
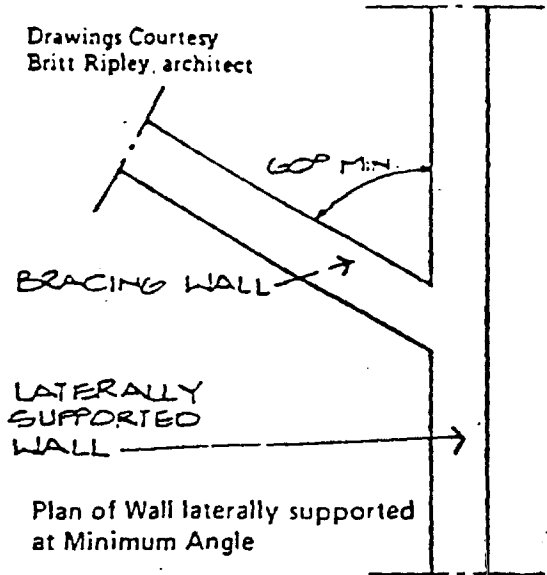
(q) Partitions of Wood. Shall be constructed as specified in Chapter 25. Wood partitions shall be nailed to nailing blocks laid up in the adobe wall or bolted through the adobe wall the height of the partition, with one-half (½) inch Ø bolts at twenty-four (24) inches on center, with large washer or plates.

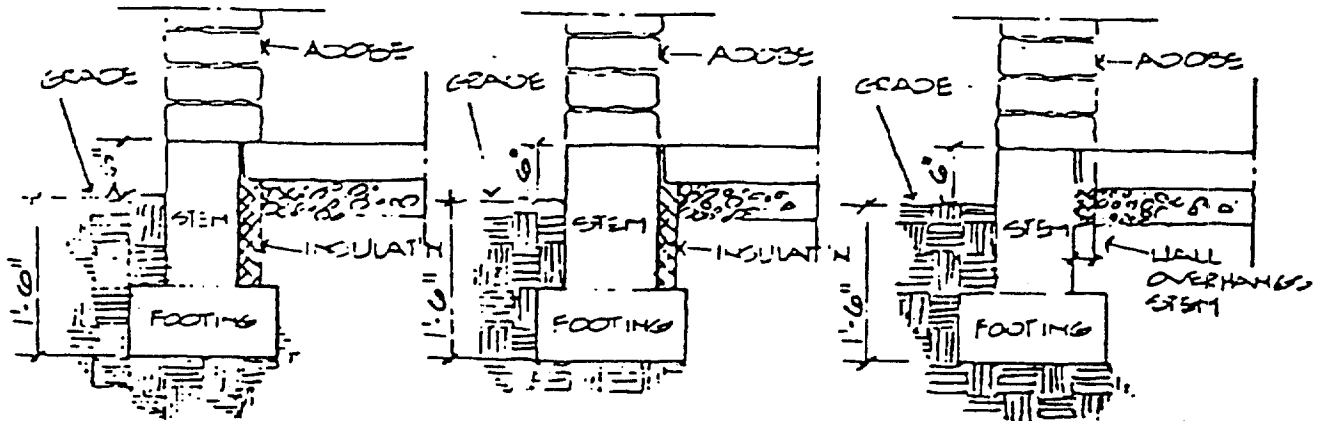
Laterally Unsupported Wall



Laterally Supported Wall

Drawings Courtesy
Britt Ripley, architect





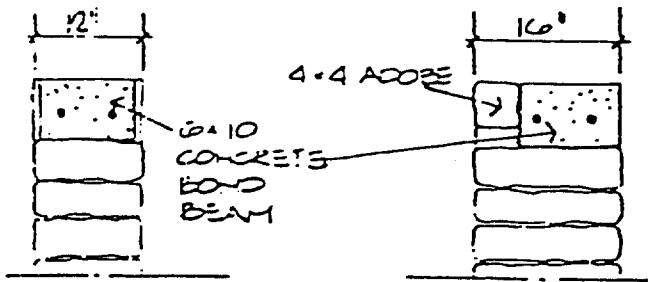
YES - INSULATION ALIGNS WITH ADOBE OVERHANGS

YES - NO OVERHANGS

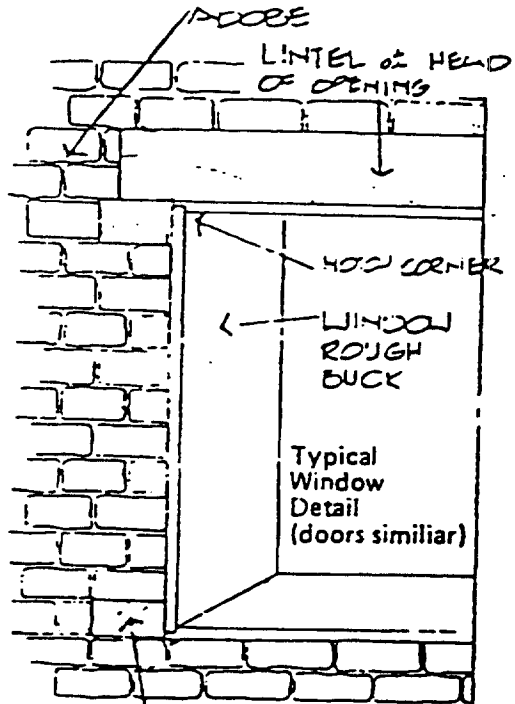
NO - ADOBE WALL OVERHANGS STEM AND HAS NO INSULATION TO COMPENSATE

Drawings by Britt Ripley architect

Insulation Applications

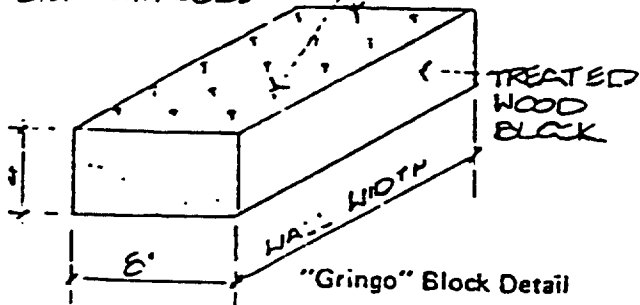


Bond-Beam Applications

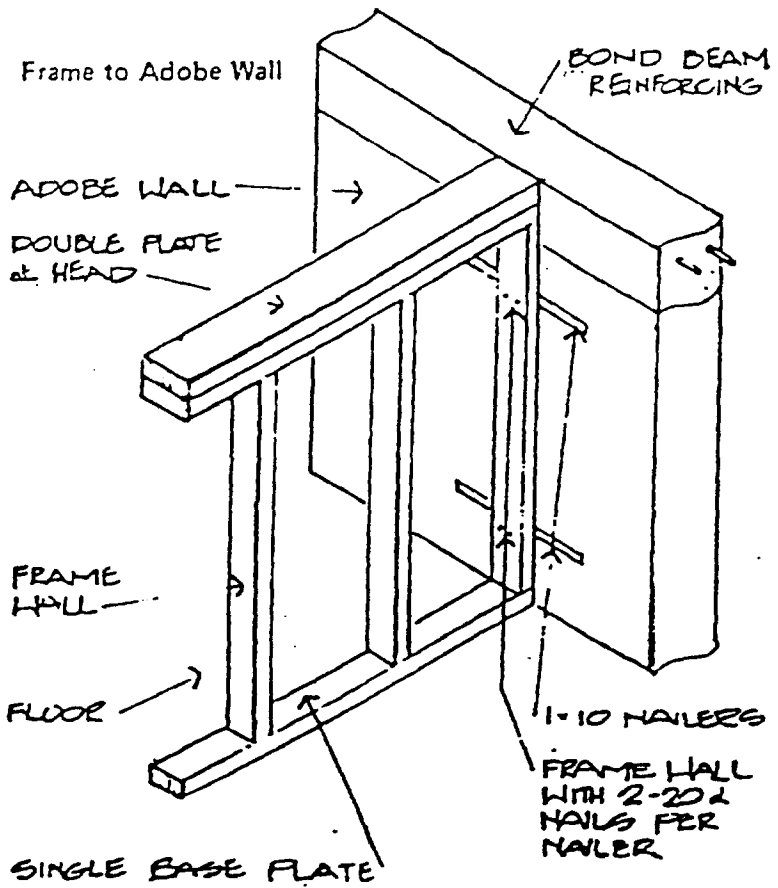
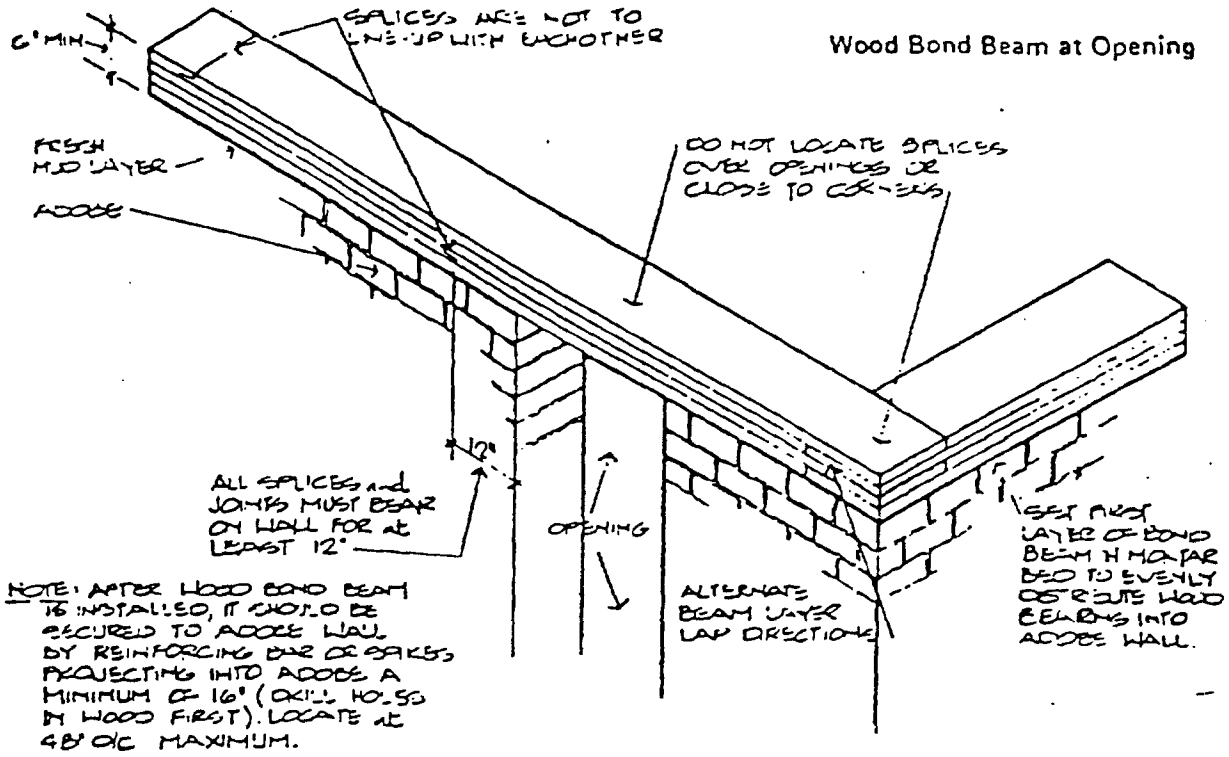


4x8 1/2x60' BLOCK - END GRAY FACES OUT FROM WALL

NAILS WITH HEADS EXTENDING 1/2" - 1/2" ABOVE FACE OF BLOCK TO INCREASE GRIP WITH ADOBE.



"Gringo" Block Detail



Section 1-203. Permits.

Subsection (b) of Section 301 of the Uniform Building Code, Section 1-201 of this Article, is amended to read as follows:

(b) Exempted Work. A building permit shall not be required for the following:

1. One-story detached accessory buildings used as tool and storage sheds, playhouses and similar uses, provided the projected roof area does not exceed 225 square feet.
2. Fences not over 6 feet high.
3. Oil derricks.
4. Movable cases, counters and partitions not over 5 feet high.
5. Retaining walls which are not over 4 feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding flammable liquids.
6. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed two to one.
7. Platforms, walks and driveways not more than 30 inches above grade and not over any basement or story below.
8. Painting, papering and similar finish work.
9. Temporary motion picture, television and theater stage sets and scenery.
10. Window awnings supported by an exterior wall of Group R, Division 3, and Group M Occupancies when projecting not more than 54 inches.
11. Prefabricated swimming pools accessory to a Group R, Division 3 Occupancy in which the pool walls are entirely above the adjacent grade and if the capacity does not exceed 5,000 gallons.
12. Traditional dwellings constructed by or on behalf of members of the Colorado River Indian Tribes.

Unless otherwise exempted, separate plumbing, electrical and mechanical permits will be required for the above exempted items.

Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

CHAPTER 3. UNIFORM HOUSING CODE

Section 1-301. Uniform Housing Code.

That certain code entitled "Uniform Housing Code," 1982 Edition, including all revisions thereto, copyrighted by the International Conference of Building Officials, is hereby referred to, adopted and made a part of this Section the same as though said code was specifically set forth in full herein. Each succeeding edition of said code, including all revisions thereto, shall automatically supersede all previous editions thereof and revisions thereto. A copy of said code shall be filed in the office of the Chairman of the Tribes.

CHAPTER 4. UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS

Section 1-401. Uniform Code for the Abatement of Dangerous Buildings.

That certain code entitled "Uniform Code for the Abatement of Dangerous Buildings," 1982 Edition, including all revisions thereto, copyrighted by the International Conference of Building Officials, is hereby referred to, adopted and made a part of this Section the same as though said code was specifically set forth in full herein. Each succeeding edition of said code, including all revisions thereto, shall automatically supersede all previous editions thereof and revisions thereto. A copy of said code shall be filed in the office of the Chairman of the Tribes.

CHAPTER 5. UNIFORM PLUMBING CODE

Section 1-501. Uniform Plumbing Code.

That certain code entitled "Uniform Plumbing Code," 1982 Edition, including all revisions thereto, copyrighted by the Western Plumbing Officials Association, is hereby referred to, adopted and made a part of this Section the same as though said code was specifically set forth in full herein. Each succeeding edition of said code, including all revisions thereto, shall automatically supersede all previous editions thereof and revisions thereto. A copy of said code shall be filed in the office of the Chairman of the Tribes.

CHAPTER 6. NATIONAL ELECTRICAL CODE

Section 1-601. National Electrical Code.

That certain code entitled "National Electrical Code of 1982," including all revisions thereto, copyrighted by the National Fire Protection Association, is hereby referred to, adopted and made a part of this Section the same as though said code was specifically set forth in full herein. Each succeeding edition of said code, including all revisions thereto, shall automatically supersede all previous editions thereof and revisions thereto. A copy of said code shall be filed in the office of the Chairman of the Tribes.

CHAPTER 7. UNIFORM MECHANICAL CODE

Section 1-701. Uniform Mechanical Code.

That certain code entitled "Uniform Mechanical Code for 1982," including all revisions thereto, copyrighted by the International Association of Plumbing

ARTICLE 6
Fire Protection & Safety

and Mechanical Officials, is hereby referred to, adopted and made a part of this Section the same as though the said code was specifically set forth in full herein. Each succeeding edition of said code, including all revisions thereto, shall automatically supersede all previous editions thereof and revisions thereto. A copy of said code shall be filed in the office of the Chairman of the Tribes.

~~CHAPTER 8. UNIFORM FIRE CODE~~

~~Section 1-801. Uniform Fire Code.~~

~~That certain code entitled "Uniform Fire Code," 1982 Edition, including all revisions thereto, copyrighted by the Western Fire Chiefs Association, is hereby referred to, adopted and made a part of this Section the same as though said code was specifically set forth in full herein. Each succeeding edition of said code, including all revisions thereto, shall automatically supersede all previous editions thereof and revisions thereto. A copy of said code shall be filed in the office of the Chairman of the Tribes.~~

Section 2. Ordinance 35 of the Colorado River Indian Tribes, enacted by the Tribal Council on May 8, 1982, is hereby repealed.

The foregoing ordinance was on November 23, 1982, duly approved by a vote of 6 for and 0 against, by the Tribal Council of the Colorado River Indian Tribes, pursuant to authority vested in it by Article VI of the Constitution of the Tribes, ratified by the Tribes on March 1, 1975, and approved by the Secretary of the Interior on May 29, 1975, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984). This Ordinance is effective as of the date of its adoption.

COLORADO RIVER INDIAN TRIBES

COLORADO RIVER INDIAN TRIBAL COUNCIL

Anthony Drennan Sr.
Anthony Drennan, Sr., Chairman

Elliott L. Booth
Elliott L. Booth, Secretary

Best Practices

Building Codes

Standing Rock Sioux Building Code

Basic Structure

This is a comprehensive code of ten chapters covering minimum housing standards, mapping of communities, structural requirements for new homes and major improvements, design standards for new homes and major improvements, plumbing, electrical installation, yard maintenance, fire prevention, and code administration and enforcement.

Overall Comments

1. The first applicable chapter on minimum housing standards is the most extensive and covers the following topics;
 - general provisions, enforcement, creation and authority of a board of appeals,
 - definition of unfit dwelling,
 - sanitary facilities, plumbing, and drainage,
 - heating and refrigeration,
 - lighting and ventilation,
 - electrical,
 - space and crowding, use, and access,
 - safe and sanitary maintenance,
 - responsibilities of owners, operators and occupants, and
 - standard provisions like conflict of ordinances, severability, and effective date.
2. This code offers a good example of using uniform code language modified to address specific community needs.
 - The enforcement of housing standards process is described in chapter 2 offers several unique solutions to common concerns. The appeals process is designed to value cultural and historic buildings and the tribal official is required to assist with compliance, not merely enforce it.

Analysis of Specific Sections

(Chapter 1 is not part of the building code so is omitted from this analysis)

Chapter 2 Minimum Housing Standards

1. The general provisions include the title, statements on policy and purpose, and applicability of the code to human occupied dwellings. The policy and purpose statements reflect that the code is designed to address specific problems with existing, significantly substandard housing and that the code is intended to be commensurate with existing economic conditions. The language affirms the Tribe's authority, or jurisdiction, over activities related to housing standards and rehabilitation of housing within its geographic boundaries. This is a useful example of a comprehensive statement of policy and purpose that incorporates local needs.
2. The subsection on applicability carefully describes that the code applies to occupancy of buildings for human use. It includes a useful reference that the chapter does not replace or modify other, related standards on construction, and other listed topics. This clearly informs the user when the code applies.
3. The enforcement provisions establish the responsible tribal agency, set out appointment procedures and a comprehensive list of responsibilities, authorize access to dwellings, authorize notices and hearings on violations, permit demolition as compliance, and create an appeal and review procedure.

The subsection describing the appointment and duties of the public officer implementing the code gives a complete, specific list of priorities. This is worthwhile guidance to the person in the job and may aid in avoiding conflicts about responsibilities at a later date.

The subsection on access authorizes entry but demonstrates respect for those occupying the dwelling by requiring reasonable notice and stating entries shall be done in a manner which causes the least inconvenience to the occupants. The language is much less harsh than most model codes.

The provision on notice of violations require informing all interested parties and also requires a hearing with the public officer within 30 days. The public officer is then required to give an order on what specific alterations are needed and to assist the owner in estimating costs, securing financial assistance, and finding skilled labor to do the work. These sections respond to the reality faced in poorer, remote communities and offer a good example of a code that balances community needs and costs along with individual health and safety needs.

The code authorizes demolition as a way to comply with a notice of violation and again requires the public officer to help find financial assistance for the demolition.

The remaining subsections on enforcement cover appeals from the public officer's order about compliance. First, they create a Housing Board of Appeals through Tribal Council designation of either a tribal committee or organization. The language is drafted to allow flexibility for the Council and offers a way to deal with conflicts of interest that might arise in a small community. The procedures for appeal are short and straightforward, allowing 20 days to petition and requiring a hearing within 60 days. Last, the review process is described permitting an affirmation, modification or vacation of the officer's order. The Board is required to consider not only compliance with the code, but cultural considerations and possible historic preservation in its decision. This appeals process is a powerful way for a tribal governing body to protect the cultural and historic practices in a community. It allows for a face to face discussion with the officer whose purpose is to aid compliance. When there is disagreement, a group of members will consider cultural and historic needs in making a decision.

1. The next subsection describes what dwellings will be treated as unfit. It includes a list of conditions and cross-references to other sections of the chapter. The list is complete, easy to understand, and offers another place to customize the code to particular local needs.
2. The following subsections all draw language from early editions of uniform codes;
 - sanitary facilities,
 - plumbing and drainage,
 - heating and refrigeration,
 - lighting and ventilation,
 - electrical,
 - space and crowding,
 - use, and access,
 - safe and sanitary maintenance, and
 - responsibilities of owners, operators and occupants.

There is no reference to uniform codes, but the language will be familiar to builders and suppliers. This is an alternative way to incorporate model or uniform codes into a tribal code instead of incorporation by reference.

3. Remaining parts of the minimum housing standards address conflict, severability and effective date. The conflict section explains that whenever the chapter conflicts with another tribal enactment, the one that establishes the higher standard applies. The effective date allows the Tribal Council to designate areas coming under the code gradually with the full reservation in compliance within six years. This allows the work to build gradually for the public officer responsible for compliance and limits potential claims that enforcement for a particular dwelling is politically motivated.
4. The final part of the chapter is an extended list of definitions of terms used earlier in the chapter. It includes both uniform code words and words specific to this enactment.

Chapter 3

(This chapter covers zoning and is outside the scope of the analysis of building codes)

Chapter 4 General Structural Requirements for New Homes and Major Improvement: Alterations and Additions

1. This chapter states an objective, “to obtain a well built and durable dwelling which provides weather resistant shelter” and then sets out structural requirements that follow selected uniform code requirements. As with the earlier use of uniform code language, this provides familiar requirements to builders and suppliers and avoids incorporating parts of documents that might be unavailable to the user.

Chapters 5, 6, & 7 Building Design Standards, Plumbing, & Electrical Installation

1. Each of these chapters uses language selected from uniform codes.

2. Selected provisions are modified to fit tribal needs. For example, Public Health Service approval of water and sewage systems is incorporated into the appropriate subsections.

Chapter 8 Rural Area Sanitary Facilities

1. The sections on outside toilets, garbage pits and incinerators also refer to Public Health sanitary standards. These standards are likely to be accessible to code users in the community, but a statement about how to find the standards or who to contact could also be included.
2. Community wishes are considered in this subsection by a requirement that outdoor toilets be painted as well as other buildings to present a neat looking appearance.

Chapter 9 Yard Maintenance

1. The two brief requirements are primarily aesthetic, requiring lots to be maintained in a neat and tidy condition without an accumulation of debris, garbage, or inoperative automobiles, and encouraging the growth of grass, trees, flowers and shrubs.

Chapter 10 Fire Prevention

1. The section starts by describing its application to new and existing conditions. It contains a list of examples of dangerous or hazardous conditions and authorizes the Code Supervisor to order their removal or remedy.
2. The methods of serving the order are described and distinguish the responsibilities of an owner and an occupant.
3. Enforcement and sanctions are available through the Tribal Court and are criminal in nature allowing fines and imprisonment as well as removal of the prohibited condition. Some tribes may consider using only civil sanctions to avoid conflicts about the extent of authority to impose sanctions over absent, non-Indian owners.
4. The fire regulations for buildings in this chapter follow those found in versions of uniform codes.

Chapter 11 Administration and Enforcement of Chapters 3-10

1. The final chapter in this code begins with an overall statement of purpose and policy on enforcing the earlier requirements. It requires that efforts be made to have people understand that fair code enforcement benefits themselves and the community and penalties are used only when efforts at persuasion fail. The language demonstrates the cooperative intent of the code.

This chapter also establishes a position of Code Supervisor to enforce selected chapters. The position is created using a procedure referenced in another part of tribal law, the qualifications are listed as well as responsibilities. The chapter also authorizes assistants as the Tribal Council

determines. The responsibilities are clearly separate from the enforcement of the minimum housing standards in chapter 2.

**Best Practices
Building Codes
Code #2: Standing Rock Sioux Building Code**

contract between the Authority and the Department of Housing and Urban Development for loans or annual contributions, or both, in connection with such project, remains in force and effect, or (c) any obligations issued in connection with such project or any monies due to the Department of Housing and Urban Development in connection with such project remain unpaid, whichever period ends the latest. If at any time title to, or possession of, any project is held by public body or governmental agency authorized by law to engage in the development or operation of low income housing, including, the Federal government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

17-110. Approval by Secretary of the Interior.

With respect to any financial assistance contract between the Authority and the Federal government, the Authority shall obtain the approval of the Secretary of the Interior or his designee.

Chapter 2. Minimum Housing Standards

17-201. Title

- (a) Title. This Chapter shall be known as the Standing Rock Sioux Tribe Minimum Standards Housing Code.
- (b) Statement of policy. It is hereby declared that there exists on the Standing Rock Sioux Reservation numerous dwellings which are significantly substandard due to dilapidation, lack of sanitary facilities and maintenance;

and that these conditions together with the inadequate provision for light and air, insufficient protection against fire, unsanitary conditions, structural defects, uncleanliness, inadequate ingress and egress, inadequate drainage, lack of proper heating, overcrowding of dwellings and dwelling premises, and occupancy of unfit dwellings, render such dwellings unsafe, or unsanitary and dangerous, or detrimental to health and safety, or otherwise inimical to the residents of the Standing Rock Sioux Reservation. It is further declared that the establishment and enforcement of minimum housing standards and the rehabilitation of housing are essential to the public health, safety, and general welfare.

- (c) Purpose of Chapter. Commensurate with the economic conditions of the people and the lack of adequate and satisfactory housing, the purpose of this Chapter shall be to protect the public health, safety, and welfare by establishing minimum standards for the use and occupancy of dwellings throughout the Reservation, governing the condition and maintenance of all dwellings and dwelling premises; establishing minimum standards governing utilities and facilities and other physical things and conditions essential to make dwellings safe, sanitary, and fit for human habitation; fixing certain responsibilities and duties of owners, of operators, and of occupants of dwellings and dwelling premises; and fixing the conditions whereby certain dwellings may be declared unfit for occupancy.

- (d) Applicability to all dwellings. Every portion of a building or structure, or part thereof, used and occupied for human habitation or intended to be so used, including any appurtenances belonging thereto or usually enjoyed therewith, shall comply with the provisions of this Chapter and with the rules and regulations adopted pursuant thereto. This Chapter establishes minimum standards for the initial and continued occupancy of all dwellings and does not replace or modify standards otherwise established for the construction, repair, or use of buildings or the installation of building equipment.

17-202. Enforcement.

- (a) Establishment of Tribal Neighborhood Development Agency. There is hereby created a Tribal Neighborhood Development Agency for the purpose of enforcing the provisions of this Chapter and such other matters as may be appropriately assigned to it.
- (b) Appointment of a Neighborhood Development Director. Pursuant to the effective date of this Chapter, the Standing Rock Sioux Tribal Council shall appoint a public officer known as the Neighborhood Development Director who shall be the immediate director of the Tribal Neighborhood Development Agency, and whose responsibilities shall be as follows: First, to implement the statement of policy set forth in Section 17-201(b) of this Chapter; second, to provide for the enforcement of this Chapter as an effective part of

of the tribal housing rehabilitation program; third, to support the enforcement of this Chapter through the development of a workable program to deal with the problem of substandard housing on the Reservation; fourth, to coordinate the program with local district planning commissions and other tribal and Federal departments, commissions, and agencies dealing with housing development and rehabilitation and other related programs; and fifth, to utilize Federal housing aids and financial assistance for housing improvement and neighborhood development. The Neighborhood Development Director or authorized inspector is authorized to investigate the dwelling conditions on the Reservation in order to determine which dwellings do not meet the provisions of this Chapter.

- (c) Access to dwellings. The Neighborhood Development Director, or authorized inspector, is hereby authorized to enter upon premises, after reasonable notice, for the purpose of making code inspections, provided that such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession.
- (d) Notice of violation. Whenever it appears to the Neighborhood Development Director after inspection that a dwelling does not meet the provisions of this Chapter and is, therefore, substandard, he shall issue to the owner, occupant, and all parties in interest a notice of violation indicating those sections of this Chapter which are in violation.

Such notice shall state that a hearing will be held before the Director or his designated agent within thirty (30) days after the serving of said notice.

If, after such notice and hearing, the Director determines that the dwelling under consideration is substandard, he shall issue an order indicating specific improvements or alterations necessary to bring said dwelling into compliance with this Chapter.

The Director shall assist the owner of said dwelling in estimating the cost of necessary improvements or alterations, securing any possible financial assistance for effecting said improvements or alterations, and contracting a source of skilled labor to make said improvements or alterations.

If the Director finds that the cost of bringing said dwelling into compliance with this Chapter is prohibitive, he shall assist the owner in making application to other tribal or Federal agencies dealing with home improvement such that certain improvements or alterations may be made to bring said dwelling into compliance with those priority provisions of this Chapter as determined by the Director.

- (e) Demolition as compliance. Any owner of a building or dwelling receiving a notice of violation or a compliance order stating that such dwelling does not comply with the provisions of this Chapter may demolish such building or dwelling, and such action will be deemed compliance, except that any resulting cellar hole shall be filled to grade and

debris cleared. The Neighborhood Development Director shall, upon request of the owner, assist in securing any possible financial assistance for demolition of said structure.

- (f) Creation of a Housing Board of Appeals. Pursuant to the effective date of this Chapter, the Standing Rock Sioux Tribal Council shall designate that tribal committee or organization which shall act as a Housing Board of Appeals.
- (g) Right to petition. Any person affected by an order issued by the Neighborhood Development Director may, within twenty (20) days of the issuance of said order, petition the Housing Board of Appeals, as designated in Section 17-202(f) of this Chapter, for hearing to be held within sixty (60) days of said order. The Board of Appeals shall hear and determine the issues raised and shall enter a final order or decree in the matter.
- (h) Review by the Housing Board of Appeals. The Housing Board of Appeals shall have the power to modify, vacate, and affirm any order issued by the Neighborhood Development Director by majority vote when any person affected by an order issued by the Director petitions the Housing Board of Appeals according to the provisions of Section 17-202(g) of this Chapter. The findings of the Director concerning code compliance of the dwelling, cultural considerations, and possible historic preservation shall be the basis for consideration by the Housing Board of Appeals.

17-203. Designation of unfit dwellings or dwellings units.

- (a) Designation of unfit dwellings or dwelling units. A unit is unfit for human habitation if conditions exist in such dwelling or dwelling unit which are dangerous or injurious to the health or safety of the occupants of such dwelling or dwelling unit, the occupants of neighboring dwellings or dwelling units, or other residents of the Standing Rock Sioux Reservation, or which have a blighting influence on properties in the area. Such conditions may include the following without relationship:
- i. Defects therein, increasing the hazard of fire, accident, or other calamities.
 - ii. Lack of adequate ventilation, light, or sanitary facilities.
 - iii. Dilapidation.
 - iv. Disrepair.
 - v. Structural defects.
 - vi. Uncleanliness.
 - vii. Overcrowding.
 - viii. Inadequate ingress and egress.
 - ix. Inadequate drainage.
 - x. Any violation of health, fire, building or zoning regulations.
 - xi. Or any violation of any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements.

Sections 17-204, 17-205, 17-206, 17-207, 17-208, 17-209 and 17-210 of this Chapter are to be used as additional guides for determining the fitness of a dwelling for human habitation.

17-204. Sanitary facilities and plumbing and drainage.

No person shall occupy as owner-occupant or permit to be occupied by another any dwelling or dwelling unit which does not comply with the following requirements.

- (a) Kitchen sink. Every dwelling unit shall be provided with a kitchen sink properly connected to an approved water supply and sewage system, all in good working condition.
- (b) Flush toilet and lavatory basin. Every dwelling shall be supplied within such dwelling unit with a room or compartment which affords privacy to a person therein and shall be equipped with an approved flush toilet and lavatory basin properly connected to an approved water and sewage system, all in good working condition.
- (c) Bathtub and shower bath. Every dwelling unit shall have supplied within such dwelling a room or compartment which affords privacy to a person therein and shall be equipped with a bathtub or shower bath properly connected to an approved water and sewage system, all in good working condition.
- (d) Availability of water and sewer. The provisions of Sections 17-204(a)(b) and (c) of this Chapter shall not apply to dwellings which are not served by a water source and septic

sewer system and cannot be readily provided with such service.

- (e) Hot water. Every sink and bathing facility required under the provisions of Sections 17-204(a) and (b) of this Chapter shall be properly connected to a hot as well as cold water supply.
- (f) Impervious flooring. The floor surface of every bathroom and toilet room shall be constructed of material impervious to water; or if not constructed of material impervious to water, it shall be fitted with an approved waterproof floor covering or painted or varnished so as to make the floor impervious to water. All such floors shall be kept in a dry and sanitary condition by the occupant.
- (g) Garbage and rubbish disposal. Every dwelling shall have adequate disposal facilities or containers approved as to type and location.

17-205. Heating and refrigeration equipment.

No person shall occupy as owner-occupant or permit to be occupied by another any dwelling or dwelling unit which does not comply with the following requirements.

- (a) Heating and refrigeration facilities. Every dwelling unit shall be supplied with either adequate heating facilities or with chimneys or flues sufficient to accommodate facilities for the safe and adequate heating of all habitable rooms, bathrooms, and toilet rooms or compartments. Where heating equipment is not supplied by the owner, heating

equipment as herein specified shall be provided by the occupant. Heating equipment shall be capable of maintaining a minimum air temperature of seventy (70) degrees Fahrenheit three feet above floor level in all habitable rooms, bathrooms, and toilet rooms or compartments during the lowest temperature experienced in the area. Doors, windows, and other parts of the dwelling shall be constructed and maintained so as to prevent abnormal heat loss.

- (b) Water heating facilities. Every dwelling shall be supplied with water heating facilities capable of heating water so as to permit water at a temperature of not less than one hundred and twenty (120) degrees Fahrenheit at every sink, bathtub or shower. Such water heating facilities shall be capable of meeting the requirements of this section, whether or not the heating facilities required under Section 17-205(a) of this Chapter are in operation, and shall be of sufficient volume to provide adequate hot water for the occupants residing therein.
- (c) Heating equipment. All heating equipment burning solid fuels shall be rigidly connected to a chimney or flue and all heating equipment burning liquid or gaseous fuels shall be rigidly connected to a chimney or flue and a supply line.
- (d) Refrigerated storage space. In every dwelling unit where perishable foods are kept, refrigerated space for their storage shall be provided by the occupant if not provided by the owner.

- (e) Cooking equipment. Every piece of cooking equipment shall be so constructed and installed so that it will function safely and effectively and shall be maintained by the owner thereof. Cooking equipment burning solid fuel shall be rigidly connected to a chimney or flue and cooking equipment burning liquid fuel or gaseous fuel shall be rigidly connected to a supply line.

17-206. Lighting and ventilation.

No person shall occupy as owner-occupant or permit to be occupied by another any dwelling or dwelling unit which does not comply with the following requirements.

- (a) Window area. Every habitable room shall have at least one window facing directly to the outdoors. The minimum aggregate glass area available for unobstructed light for every habitable room shall be no less than considered adequate and reasonable as compared to the floor space of the room.
- (b) Openable window area. Every habitable room shall have at least one openable window which can easily be opened, or shall have such other device as will adequately ventilate the room.
- (c) Bathroom light and ventilation. Every bathroom and toilet room or compartment shall comply with the light and ventilation requirements for habitable rooms contained in Section 17-206(a) and (b) of this Chapter.

- (d) Screening of vents. All exterior doors used for ingress and egress from a dwelling unit directly to or from outdoor space shall be provided either with a self-closing device or self-closing screen door, and every window of every habitable room, bathroom, and toilet room or compartment and every other window and opening used for ventilation shall be equipped with approved screening which shall be provided by the owner.
- (e) Basement ventilation. Every cellar and basement shall have at least two vents or windows opening directly to the outside air sufficient to prevent mildew or structural deterioration, and properly equipped with approved screening.

17-207. Electrical facilities.

No person shall occupy as owner-occupant or permit to be occupied by another any dwelling or dwelling unit which does not comply with the following requirements.

- (a) Electrical service. Every dwelling unit shall be supplied with electrical service adequate to serve all electrical fixtures and devices which meet the requirements of this Chapter.
- (b) Electrical fixtures. Every habitable room shall be provided with at least two separate electrical convenience outlets in addition to provisions for adequate lighting. Every bathroom, toilet room or compartment, cellar, stairway, and utility room shall be supplied with at least one electrical light fixture with easily accessible switching

means. Every such outlet and fixture shall be properly installed, shall be properly maintained in good and safe working condition and shall be properly connected to the source of electrical power.

- (c) Availability of electrical power. The provisions of Sections 17-207(a) and (b) of this Chapter shall not apply to dwellings which are not served by an adequate source of electrical power and cannot be readily provided with such service.

17-208. Dwelling space, use, and access.

No person shall occupy as owner-occupant or permit to be occupied by another any dwelling or dwelling unit which does not comply with the following requirements.

- (a) Overcrowding. Every dwelling unit shall be of sufficient size as to adequately accommodate its occupants. A one-bedroom dwelling shall not exceed three occupants. A two-bedroom dwelling shall not exceed six occupants. A three-bedroom dwelling shall not exceed nine occupants. Every room occupied for sleeping purposes by one occupant shall contain at least seventy (70) square feet of floor space and every room occupied for sleeping purposes by more than one person shall contain at least thirty (30) square feet floor space for each occupant thereof.
- (b) Ceiling height. At least one-half of the minimum required floor space of every habitable room shall have a ceiling height of at least seven (7) feet.

- (c) Cellar and basement occupancy. No cellar or basement shall be as a habitable room or dwelling unit except as a workshop or recreation room unless it shall comply with the requirements herein, and unless reasonable precaution has been taken to prevent leakage and proper drainage is provided away from the building.
- (d) Means of egress. Every dwelling unit shall be provided with approved, safe, and unobstructed means of egress, and shall comply with the applicable provisions of Chapters 4; 5, 6, 7, 8, 9, and 10 of this Title.

17-209. Safe and sanitary maintenance.

No person shall occupy as owner-occupant or permit to be occupied by another any dwelling or dwelling unit which does not comply with the following requirements.

- (a) Structural elements. Every foundation shall adequately support dwelling structures at all points and shall be free of holes and wide cracks. Every floor, exterior wall and roof shall be free of holes, wide cracks, and loose protruding and rotting boards or any other condition which may admit moisture, or rodents, or which might constitute a hazard to health or safety. All exposed surfaces which have been adversely affected by exposure or other cause shall be repaired and coated, treated and sealed, so as to protect them from serious deterioration. Every interior wall and ceiling shall be free from holes and large cracks, loose plaster, defective materials, or serious damage. Interior

walls and all protective materials thereon shall be properly maintained and easily cleanable.

- (b) Windows and doors. Every window, exterior door, and bulkhead shall be reasonably weather tight, watertight, and rodent proof; and shall be kept in sound working condition and good repair. Every exterior door shall be provided with a safe lock.
- (c) Stairways and porches. Every stairway and porch shall be constructed and maintained in safe condition and in good repair.
- (d) Supplied facilities. Every supplied facility, piece of equipment, or utility, which is required under the provision of this Chapter, shall be so designated, constructed, and installed so that it will function safely and effectively, and shall be maintained in safe and sanitary working condition.
- (e) Plumbing facilities. Every plumbing fixture, and water supply and sewer line shall be properly installed according to the Plumbing Code, Chapter 6 of this Title, and maintained in safe and sanitary working condition, free from defects, leaks and obstructions.
- (f) Infestation. Every dwelling unit shall be free from infestation from rodents.
- (g) Dwelling premises and accessory structures. All dwelling premises and accessory structures shall be maintained in good repair and sanitary condition.

- (h) Yard maintenance. It shall be the responsibility of every dwelling unit occupant to comply with Chapter 9 of this Title.

17-210. Responsibilities of owners, operators and occupants.

The following provisions shall pertain to the responsibilities of owners, operators, and occupants of dwellings and their premises.

- (a) Maintenance of private spaces. Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of a dwelling, dwelling unit, and dwelling premises thereof which he occupies and controls.
- (b) Maintenance of public spaces. Every owner of a multiple dwelling shall be responsible for maintenance in a clean and sanitary condition the common areas of the dwelling and the premises thereof. Occupants of two and three family dwellings shall share the responsibility of maintaining in a clean and sanitary condition the common areas of the dwelling and the dwelling premises thereof.
- (c) Provision of disposal facilities. Every owner of a multiple dwelling shall supply on the premises such rubbish and garbage disposal facilities and storage containers for such dwelling and shall maintain such facilities in good repair and sanitary condition, and shall provide for the proper collection and removal of their contents. Occupants of one, two, and three family dwellings shall provide preparation for such facilities, containers, maintenance, collection and removal for their own dwelling units.

- (d) Use of screens. Every occupant of a dwelling or dwelling unit shall be responsible for the use of all screens whenever the same are required under the provisions of Section 17-206(d) of this Chapter. If occupant does not comply, the responsibility devolves upon the owner.
- (e) Extermination. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any rodents, vermin, or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested; except that whenever such infestation is caused by the failure of the owner to carry out the provisions of this Chapter, extermination shall be the responsibility of the owner.
- (f) Maintenance of plumbing and equipment. Every occupant of a dwelling unit shall be responsible for the exercise of proper care and cleanliness in the use and operation of all plumbing fixtures, sanitary facilities, appliances, and equipment therein.
- (g) Discontinuance of utilities. No owner, operator, or occupant shall cause any service, facility, equipment, or utility, which is required to be supplied by the provisions of this Chapter, to be removed from or shut off from or discontinued for any occupied dwelling, or dwelling unit, except for such temporary interruptions as may be necessary when actual repair or alterations are being expeditiously made, or during other temporary emergencies.

- (h) Occupancy of vacant units. No person shall occupy as owner-occupant or permit to be occupied by another, any vacant dwelling or dwelling unit unless or until it is in full compliance with all provisions of this Chapter and the rules and regulations adopted pursuant thereto.
- (i) Supplied heat. Every owner or operator of a dwelling who permits to be occupied any dwelling unit therein under an agreement, express or implied, to supply or furnish heat to the occupant thereof, shall maintain therein a minimum air temperature level of not less than seventy (70) degrees Fahrenheit at an outside temperature of ten (10) degrees above the lowest recorded temperature during the previous ten-year period. Whenever a dwelling is heated by means of a central heating facility or other heating apparatus under the control of the owner or operator of the dwelling, such owner or operator in the absence of a written contract or agreement to the contrary, shall be deemed to have contracted, undertaken or bound himself to furnish heat in accordance with the provisions of this section. The provisions of this section shall not apply where the failure to maintain such an air temperature level is due to a general shortage of fuel, or any negligent or malicious act of the occupant, or while repairs are being expeditiously made to the heating equipment, or any cause beyond the control of the owner or operator.

17-211. Conflict: severability: effective date.

- (a) Applicability of Standing Rock Code. Whenever the provisions of this Chapter require the construction, installation, alteration, or repair of a dwelling or of its facilities, utilities, or equipment, the required work shall be done in full compliance with the applicable provisions of Chapters 3, 4, 5, 6, 7, 8, 9, and 10 of this Title, except as provided in subsection (b) below.
- (b) Conflict of ordinances. In any cases where a provision of this Chapter or of any regulation adopted pursuant thereto is found to be in conflict with a provision of any zoning, building, fire safety, or health provisions of this Title, or any regulation adopted pursuant thereto, or any other ordinance, or code, or regulation of the Standing Rock Sioux Tribe, the provision which established the higher standard for the promotion of health and safety of the people shall prevail.
- (c) Shift of responsibilities between owner, operator, and occupant. Nothing in this Chapter shall prevent an owner, operator, or occupant from shifting the responsibility of the one to the other, provided that the primary and final responsibility in every case shall remain upon the person therein designated.
- (d) Severability. If any section, article, paragraph, or provisions of this Chapter should be held invalid for any reason whatsoever, such invalidity shall not affect the remaining portions of this Chapter, which shall remain in full force and effect, and to this end, the provisions of this Chapter are declared to be severable.

- (e) Effective date. The provisions of this Chapter shall be in effect in an area of the Standing Rock Reservation so designated by the Standing Rock Sioux Tribal Council within eighteen (18) months following the effective date of this Chapter, and shall be enforced in this area and in subsequent designated areas such that the entire Standing Rock Reservation shall be brought into compliance with this Chapter within six (6) years following the effective date of this Chapter.

17-212. Definitions.

- (a) Purpose. Definitions in this section are included to provide a basis of understanding of these terms, phrases, and their derivatives wherever used in this Chapter.
- (b) Definitions.
- i. Approved shall mean as defined and specified by the Director in regulations adopted pursuant to the provisions of this Chapter.
 - ii. Basement shall mean that story of a building or dwelling located substantially below the existing grade but having more than half its clear floor-to-ceiling height below the average grade of the adjoining ground, as measured from finished floor to finished ceiling.
 - iii. Director shall mean the Neighborhood Development Director.
 - iv. Dwelling shall mean any building, or structure, or part thereof used and occupied for human

habitation or intended to be so used and includes any appurtenances belonging thereto or usually enjoyed therewith.

- v. Dwelling premises shall mean the land and auxiliary buildings thereon used or intended to be used in connection with the dwelling.
- vi. Dwelling unit shall mean any room or group of rooms within a dwelling and forming a single and separate habitable unit with facilities which are used or intended to be used for living, sleeping, regular cooking, and eating.
- vii. Floor space shall mean the horizontally projected floor area inside of and between exterior walls or partitions or any combination thereof, as measured within a habitable room exclusive of that portion of the habitable room which does not have a ceiling height at least four feet.
- viii. Foundation shall mean construction, below or partly below grade, which provides support for exterior walls or other structural parts of the building.
- ix. Garbage shall mean all combustible refuse.
- x. Habitable room shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes, and excluding bathrooms, toilets, or compartments,

- laundries, pantries, foyers, or communicating corridors, closets, and storage spaces.
- xi. Infestation shall mean the presence, within or around a dwelling, or dwelling premises, of rodents, vermin or other pests.
- xii. Occupant shall mean any person over one (1) year of age, living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.
- xiii. Operator shall mean any person who has charge, care or control of a multiple dwelling or rooming house, in which dwelling units or rooming units are let or offered for occupancy.
- xiv. Owner shall mean any person who, alone, jointly, severally or jointly and severally with others:
- (a) shall have legal or record title to any dwelling or dwelling premises, or
 - (b) shall have charge, care or control of any dwelling or dwelling premises as agent of the owner, executor, administrator, trustee or guardian of the estate of the owner.
- xv. Person shall mean an individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

- xvi. Plumbing shall mean and include all of the following supplied facilities, equipment, and devices: gas pipes, water pipes, toilets, lavatories, sinks, laundry tubs, installed dishwashers, garbage disposal units, installed clothes-washing machines, catch basins, wash basins, bathtubs, showerbaths, waste and sewer pipes, cess pools, septic tanks, drains, vents, traps and any other gas burning or water using fixtures and appliances together with all connections to water, waste and sewer, or gas pipes.
- xvii. Priority shall mean that having clearly higher importance.
- xviii. Property shall mean as defined or specified herein or in rules and regulations adopted thereto; or when not so defined or specified, in accordance with the applicable ordinances of the Standing Rock Sioux Tribe.
- xvii. Rehabilitation. The restoration of a reuseable single or group of structures which overcomes deterioration and provides a satisfactorily improved physical condition for residential purposes.
- xx. Rubbish shall mean any non-combustible refuse.
- xxi. Shall indicates a requirement.
- xxii. Should indicates minimum good practice but is not mandatory.

- xxiii. Substandard shall mean a condition which does not meet the provisions of this Chapter.
- xxiv. Supply shall mean paid for, furnished by, or provided by the owner or operator.
- xxv. Ventilation.
- (a) Mechanical - supply and removal of air by power-driven devices.
- (b) Natural - ventilation by openings to outside air through windows, doors, or other openings.

Chapter 3. Zoning

17-301. Mapping.

The communities shall be mapped to indicate the zones for residential, industrial, commercial, recreational and disposal areas.

17-302. Residential.

- (a) The only types of buildings that can be constructed in the residential area is for human occupancy, community or recreation center, and churches.

- (1) Separate areas within the residential district shall be designated as mobile home sites.
- (2) No home in the residential area shall be built on a lot of less than 5,000 square feet, and no closer than 20 feet from the front of the lot.

17-303. Commercial.

No building or structure shall be erected in the commercial area except structures used in connection with any profession or retail trade.

17-304. Industrial.

No building or structure shall be erected in the industrial area except for factories, storage warehouses, slaughter houses, lumber yards and similar businesses.

17-305. Recreational.

Land in recreational area shall be reserved exclusively for recreational uses including parks, playgrounds, recreational buildings and campsites, and outdoor dance and fair grounds.

17-306. Disposal area.

No buildings or structures may be constructed on a disposal area except as required for the sanitary disposal of garbage, trash, junk and other waste products.

Chapter 4. General Structural Requirements for New Homes
and Major Improvement Alterations and Additions

17-401. Applicability.

Any dwelling which is hereafter constructed or subject to a major improvement alteration or addition shall meet the general structural requirements.

17-402. Objective.

The objective of structural requirements is to obtain a well built and durable dwelling which provides weather resistant shelter.

17-403. Moisture and weather.

All portions of the structure subjected to exterior exposure shall be of such materials and be so constructed as to prevent the entrance or penetration of moisture and weather.

17-404. Footings.

- (a) Footing shall be designed for proper distribution of superimposed loads.
- (b) The material used for footings shall be poured concrete, with necessary horizontal and vertical reinforcement steel bare installed.
- (c) Thickness of footings shall be determined in accordance with sound engineering practices, and in all cases not less than six inches thick.
- (d) Footing projection on each side of foundation wall or chimney shall be determined in accordance with sound engineering practice and in no case shall the projection be less than one half of the wall thickness.

17-405. Foundation walls.

- (a) Walls supporting frame construction shall extend not less than 8 inches above outside adjoining finish grade and be exposed not less than 6 inches.
- (b) The material used for foundation walls shall be poured concrete or masonry block properly reinforced with steel.
- (c) Poured concrete walls shall be of a minimum thickness of 6 inches without basement and 8 inches with basement. This is for one story frame buildings.

17-406. Wood construction - sills.

- (a) Sills shall be anchored to foundation as follows:
 - (1) Masonry - $\frac{1}{2}$ inch by 12 inch bolts;
 - (2) Poured concrete - $\frac{1}{2}$ inch by 6 inch bolts;

- (3) Spacing of anchor bolts shall not exceed 8 feet, and at least two bolts on each sill piece.
- (4) One standard nut and washer shall be installed on each bolt.

17-407. Floor joists.

- (a) The minimum size of floor joists for a dwelling 16 feet or less in width, without a basement, shall be 2"x6" with a center support of masonry or poured concrete. Maximum spacing, center to center shall be 24 inches.
- (b) The minimum size of floor joists for a dwelling 16 feet or less with a basement shall be 2"x8".
- (c) The minimum size of floor joists for dwellings more than 16 feet in width, without basement, shall be 2"x8" with a center support of masonry or poured concrete.
- (d) Dwellings with a basement which exceed 16 feet in width shall be provided with a girder to support the floor joists.
- (e) In all cases, spans shall not exceed recommended widths for type of material used.
- (f) Cross bridging of either solid or 1"x3" shall be installed at the center of the span on joists exceeding 8 feet of unsupported length.

17-408. Sub-floor.

- (a) Each board of sub-floor shall have bearing on at least two joists. Minimum thickness of sub-floor boards shall be 25/32 inch and maximum width 8 inches. Sub-flooring to be

placed across or diagonally to the direction of the finished flooring.

- (b) Plywood used for sub-flooring shall have a minimum thickness of $\frac{1}{2}$ inch. Plywood used for leveling purpose over other sub-floor shall have a minimum thickness of $\frac{1}{4}$ inch.

17-409. Studs - braces.

- (a) Minimum size shall be 2"x4".
- (b) Maximum spacing shall be 24 inches from center to center.
- (c) Fire stops shall be installed when needed.
- (d) Studs shall be continuous lengths without splicing.
- (e) Corner posts shall not be less than three 2"x4"s set to receive interior finish. Braces shall be installed at all external corners except as follows:
 - (1) If wood sheathing boards are applied diagonally, or
 - (2) If plywood sheathing (4'x 8' sheets) is nailed with 6d nails, 6 inches on center on all edges and one foot on center at intermediate bearings.
- (f) Corner braces shall be installed as follows: Use 1x4's set into outside face of studs, corner posts, sill and plate, set 45° extending from bottom of sill to top of plate.

17-410. Window and door openings.

Inner studs on jambs shall extend in one piece from header to bearing and shall be nailed to outer stud.

17-411. Plates.

- (a) Top plates shall be of 2"x4" material doubled. Plate members shall be lapped at corners and intersecting partitions; when plates are cut for piping or duct work, steel angle ties for plate and bearing for ceiling joists shall be installed.
- (b) Sole plate shall be 2 inches minimum thickness and studs shall bear on sole plate on top of sub-floor.

17-412. Partition framing.

- (a) Studs shall be continuous in length without splicing.
- (b) Corner studs shall be framed to receive interior finish.
- (c) Top plates shall be 4 inches minimum thickness, sole plates 2 inches minimum.
- (d) Top plate shall be attached to outside walls and on bearing partitions.

17-413. Outside wall sheathing.

- (a) Minimum thickness of wall sheathing shall be 25/32 inch.
- (b) Joints shall be over center of studs and each board shall bear on at least two studs.
- (c) When plywood is used for sheathing, the minimum thickness shall be 3/8 inch interior plywood.

17-414. Roof sheathing.

- (a) Minimum thickness of roof sheathing shall be 25/32 inch, maximum width of boards shall be 8 inches.

- (b) When plywood sheathing is used the minimum thickness shall be 5/8 inch.

17-415. Wood siding.

Acceptable siding grades shall be commensurate with quality and class of dwelling.

17-416. Stucco.

Acceptable materials for stucco finish are expanded metal lath, woven wire fabric or welded wire fabric. Metal lath, mesh or fabric shall be held at least $\frac{1}{4}$ inch away from sheathing.

17-417. Roof covering.

Roof covering may be asphalt or wood shingles.

- (a) Asphalt shingle shall be applied and nailed in accordance with the recommendations of the manufacturer.
- (b) Wood shingles shall be edge grain, tapered shingles No. 1 grade.

17-418. Chimney.

- (a) Chimneys shall be brick, tile, steel or prefabricated and shall be constructed of sufficient size to meet the needs of the heating plant. Steel or prefabricated chimneys shall bear underwriters' laboratory seal of approval.
- (b) Under no circumstances will homeowners be allowed to use a stove pipe for chimney.

17-419. Preservation.

Adequate precautions shall be taken to properly protect materials and construction from damage by ordinary use, decay and corrosion.

Chapter 5. Building Design Standards for New Homes and
Major Improvement Alterations and Additions

17-501. Light and ventilation.

- (a) The objective of light and ventilation requirements is to insure satisfactory healthful living conditions by providing natural light and ventilation in sufficient volume, proportioned to the size and intended use of rooms.

Minimum requirements for habital rooms shall be:

- (1) Total glass area: 10% of total floor area of room.
- (2) Ventilating area:
 - (a) Four percent of floor area of room with no exterior door.
 - (b) Two percent of floor area of room with an exterior door.

17-502. Space requirement.

- (a) The minimum floor space for a family shall be 150 square feet for the first person and an additional 100 square feet for each additional person, this space is not to include a bathroom.
- (b) Ceiling height should not be less than 7 feet 6 inches.

Chapter 6. Plumbing

17-601. Installation and alteration.

All plumbing installations or major alterations of \$100.00 or more of the existing plumbing installation shall be made only by a duly qualified plumber and executed in a safe, neat and workman-like manner.

17-602. Water supply approval.

Water supply shall be approved by the Public Health Service.

17-603. Design approval.

The sewage disposal system shall be of a design approved by the Public Health Service.

17-604. Materials.

- (a) Materials shall be new and durable.
- (b) Size of the pipe shall be adequate in relation to the fixture served.
- (c) Hot water heaters to be not less than 30 gallon in capacity, and shall be equipped with a safety pressure and temperature valve installed not more than 8 inches above the top of the water heater.

17-605. Installation.

- (a) All piping and drains shall be installed without damage to structural members and in a safe, sanitary and workman-like manner.
- (b) All piping and drains shall be properly sloped and protected against freezing.

- (c) Cross connections between drinking water supply and supplies not intended for drinking shall not be permitted.
- (d) All fixtures shall be vented with not less than 3" pipe for toilets, 2" pipe for sinks, bathtubs or showers, and all vents not less than 5 feet from the fixture to be vested.

17-606. Exterior water lines.

Water service line shall be laid in solid ground, below the frost line. Water service line may be laid in same trench as sewer line, providing water line is not less than one foot higher than the sewer line and laid to one side on a solid ledge of ground.

17-607. Exterior sewage lines.

Sewage disposal pipe shall be laid with barrel on solid ground, with an excavated bell hole for each joint. Joints shall be water tight and where necessary protected against penetration by roots of shrubbery or trees.

17-608. Maintenance.

All water and sewage disposal facilities shall be maintained in a safe and sanitary condition.

17-609. Items not covered.

All items not covered herein shall be governed by the minimum standards established by the current edition of the National Plumbing Code.

Chapter 7. Electrical Installation

17-701. Installation and alterations.

All electrical installations or major alterations of \$100.00 or more of the existing electrical installation shall be made only by

a duly qualified electrician and executed in a safe, neat and workmanlike manner.

17-702. Minimum service standards.

- (a) One circuit for each 200 feet of floor area, minimum of three per dwelling unit, with provision for at least one additional future circuit.
- (b) Ceiling fixtures in kitchen, halls, dining room, bedroom, and as necessary in closets, attic and basements.
- (c) An outside fixture at each entrance and porch.
- (d) Convenience outlets in each room, with the minimum of 3 in the living room, 2 in kitchen and dining room, and 2 in each other habitable room.
- (e) Special outlets, when required, for special equipment such as range, dryer and washer.
- (f) Wall fixture in bathroom.

17-703. Convenience standards.

- (a) Each ceiling fixture shall be controlled by a wall switch.
- (b) Each bathroom fixture shall be controlled by a wall switch, not readily accessible from shower or tub.
- (c) Switches shall not be placed behind doors.
- (d) Exterior fixtures shall be controlled by wall switches inside the entrance doors.

17-704. Utility company regulations apply.

All installations and major alterations shall comply with the regulations of the utility company supplying the service.

17-705. Maintenance of service and fixtures.

All service and fixtures subject to this Chapter shall be maintained at all times in good working order and repair.

Chapter 8. Rural Area Sanitary Facilities

17-801. Outside toilets.

- (a) The construction of outside toilets should be standardized and constructed to meet Public Health Service sanitary standards.
- (b) Outside toilets should be painted as well as other buildings to present a neat looking appearance.

17-802. Garbage pits and incinerators.

- (a) Rural residents should construct and use garbage and disposal pits that meet the sanitary standards of the Public Health Service.
- (b) Approved incinerators should be used for burning of paper, etc.

Chapter 9. Yard Maintenance

17-901. Maintenance.

The lots in any area on which any building is located shall be maintained in a neat and tidy condition. Trash, junk, garbage and debris shall not be allowed to accumulate. Inoperative automobiles shall be promptly removed.

17-902. Lawns and plants.

To the extent practical, all homeowners shall encourage the growth of grass, trees, flowers and shrubs by planting and watering their lawns and plants.

Chapter 10. Fire Prevention

17-1001. Application.

The provisions of this Chapter shall apply equally to new and existing conditions except that existing conditions not in strict compliance with the terms of this Chapter shall be permitted to continue where the exceptions do not constitute a distinct hazard to life or property in the opinion of the Code Supervisor.

Whenever the Code Supervisor shall find any buildings or upon any premises dangerous or hazardous conditions or materials he shall order such dangerous conditions or materials to be removed or remedied.

Examples are listed below:

- (a) Dangerous or unlawful amounts of combustible or explosive or otherwise hazardous materials.
- (b) The hazardous conditions arising from defective or improperly installed equipment for handling or using combustible or explosive or otherwise hazardous materials.
- (c) Dangerous accumulations of rubbish, wastepaper, boxes or other highly flammable materials.
- (d) Obstructions to or on fire escapes, stairs, passage ways, doors or windows liable to interfere with the fire fighting or exit of occupants in case of fire.
- (e) Any building or other structure which for the want of repairs, lack of adequate exit facilities, or by reason of age or dilapidated conditions or for any other cause creating a hazardous condition.

17-1002. Service of orders.

The service of orders for correction of violation of this Chapter shall be made upon the owner, occupant or other person responsible for the conditions by delivery of a copy of the order to such persons, or by leaving it with any person in charge of the premises, or by affixing a copy of the order in a conspicuous place on the door to the entrance of such premises, or by sending a copy by registered mail to the owner's last known post office address.

If the building or premises are owned by one person or occupied by another by lease or otherwise, the order issued in connection with the enforcing of this Chapter shall apply to the occupant thereof, except where the rules or orders require making the additions or changes to the premises themselves, such as would immediately become real estate and become property of the owner of the premises. In such cases the rules in effect shall affect the owner and not the occupant unless it is otherwise agreed between the owner and the occupant.

17-1003. Enforcement and sanctions.

Any person who shall violate any of the provisions of the Chapter hereby adopted or fail to comply therewith any order made thereunder by the Code Supervisor shall be charged before the Standing Rock Tribal Court within ten (10) days for each and every such violation and non-compliance, respectively, and shall be guilty of a misdemeanor punishable by a fine of not less than ten (\$10.00) dollars and not more than one hundred (\$100.00) dollars or by imprisonment of not less than five (5) days nor more than twenty (20) days, or

by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation nor permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten (10) days that the prohibited conditions shall be maintained shall constitute a separate offense.

The application of the above penalties shall not be held to prevent the enforced removal of the prohibited conditions through court orders issued by the Standing Rock Tribal Court.

17-1004. Regulations.

- (a) All doors and fire escapes in public buildings shall open to the outside, be kept clear and unlocked at all times when the building is occupied. There shall be a minimum of two (2) exits from all parts of public buildings.
- (b) All public buildings must contain fire extinguishers approved by the National Board of Fire Underwriters. There shall be at least one fire extinguisher for every 2,500 square feet of floor space. Fire extinguishers shall not be of a type which contains materials which are toxic when vaporized.
- (c) All gasoline containers and pipe lines shall be painted bright red and labeled or tagged "Gasoline".
- (d) All containers and exterior fuel tanks or pipelines containing kerosene or fuel oil must be painted aluminum and tagged or labeled accordingly.

- (e) No vehicle shall be parked unattended within fifteen
(15) feet of a fire hydrant or entrance to a fire station.
- (f) When a building has been damaged by fire to an extent of
50 percent of its evaluation, it shall be torn down and
removed.
- (g) The practice of using long extension cords, double and
triple sockets, and other makeshift arrangements is dangerous
and shall be avoided.
- (h) Any gas cooking stoves or space heaters which involve the
possibility of partial combustion must be provided with
adequate flue openings to the outside air.
- (i) Installation of L.P. Gas Appliances.
 - (A) All portable containers containing low pressure gas
such as propane or butane which are used for cooking
or heating must be located outside of the building,
securely fastened in an upright position, and equipped
with a pressure regulator and a shut off valve.
 - (B) Pressure regulator shall be located below the pipe
entrance into the building.
 - (C) Piping.
 - (1) New seamless copper pipe, testing not less than
125 pounds per square inch of not less than one
half inch in diameter or new black steel pipe of
not less than three fourths inch in diameter with
new fittings properly sealed and tightened.
 - (2) All bends in copper pipe shall be made with a
copper pipe bending tool.

- (3) An approved L.P. Gas shut off valve shall be used to each gas consuming appliance.
 - (4) No inside piping shall be installed in any wall, ceiling or any inaccessible area.
 - (5) All horizontal and vertical pipe runs shall be supported by hangers or suitable clamps.
- (D) No gas fired appliance shall be installed closer than six (6) inches to any combustible material.
- (j) Controlled burning of buildings, stubble, grass, brush, etc. will be accomplished only after proper coordination with the local fire control organizations.
 - (k) Burning of trash and other debris will be done only in approved incinerators or containers.
 - (l) Residences and their premises shall at all times be kept free from accumulations of trash and debris which are likely to cause fire hazards such as old papers, magazines and rags.
 - (m) Flammable liquids such as paints, varnishes, thinners, gasoline and kerosene shall not be stored in residences.
 - (n) Dust cloths and oil soaked rags should be stored in air tight metal containers.
 - (o) Matches shall be stored out of the reach of children and in containers with a closed top.
 - (p) Ashes from coal or wood stoves shall be removed regularly and deposited where they will not constitute a hazard.

Chapter 11. Administration and Enforcement of
Chapters 3-10

17-1101. Purpose and policy.

- (a) Purpose. The purpose of this Chapter is to provide fair and efficient means of enforcing the various zoning, building, plumbing, electrical, rural area sanitation, yard maintenance, and fire prevention chapters which have been adopted for the Standing Rock Reservation.
- (b) Compliance policy. It shall be the duty of the persons charged with the administration of this Chapter to attempt at all times to attain compliance with the various codes through education, explanation and persuasion. Every effort will be made to have people understand that fair code enforcement is for the benefit of themselves and their neighbors. Compulsion and penalties for non-compliance shall be used only when all efforts at persuasion have failed.

17-1102. Application.

This Chapter shall control the administration of the zoning, building, plumbing, electrical, rural area sanitation, yard maintenance and fire prevention codes that are in effect and may be added from time to time.

17-1103. Code Supervisor.

- (a) Position created. There is hereby created the position of Code Supervisor. This position shall be filled in accordance with Title 18 of the Code of Justice. This position may be held on a full or part time basis.

(b) Qualifications. The person selected as Code Supervisor shall be knowledgeable in the field of building construction. He shall possess or be able to acquire a basic knowledge of sanitation. He shall be the type of person who is able to work effectively with people, and to explain the value of codes and code compliance.

(c) Responsibilities.

- (1) The Code Supervisor shall be the person primarily responsible for the administration and enforcement of all codes subject to this Chapter.
- (2) He shall maintain records concerning code compliance adequate to meet the annual reporting requirements of the Department of Housing and Urban Development.
- (3) He shall keep informed about new construction and alterations on the Reservation.
- (4) He shall provide technical assistance to persons planning or constructing any building or facility to which the various codes subject to this Chapter apply.

17-1104. Assistant Code Supervisors.

The Tribal Council is hereby authorized to deputize as Assistant Code Supervisors such other persons as it may determine. Selected persons in various districts may be given supervisory jurisdiction of their district. All such persons shall work under the supervision of the Code Supervisor.

Best Practices

Building Codes

Grand Traverse Band Building and Related Codes

Basic Structure

The code is set out as Title XII with four chapters. The first establishes a Utility Authority for the community water system, the second details use of the community water and sewage system, the third adopts primarily national standards for building and related codes as an interim measure, and the final, brief section places reservation roads in the Bureau of Indian Affairs Reservation Road Need Inventory.

Overall Comments

1. This code contains definition sections in each chapter, a good practice.
2. It offers a code that combines adoption of national standards with sections addressing locally specific needs. The standards adopted are listed and references are made to specific state and local codes that use the standards.
3. The code includes "Historical and Statutory Notes" which explains the enactment of the Building Code in some detail. The explanation cites the Tribe's intent to regulate and license all activities on tribal lands, and identifies it as an interim measure for the purpose of continuity until the Tribe adopts a comprehensive plan. A "note" or comment section allows the Tribe to offer the user insight and details about the code that aid in its application.
4. The notes include several useful kinds of information such as dates of enactment, Tribal Act number and cross-references to other code provisions.
5. The grouping of these chapters under one title and the notes showing some sections were adopted at different dates show the code is organized by subject matter rather than by date of passage. This makes it easier to locate provisions of interest.

Analysis of Specific Sections

Chapter 1

1. The Purpose section in the first chapter explains the purposes of the Utility Authority, not of the whole title.
2. This chapter also contains definitions based on common usages of the terms and clarifies that the Housing Authority is the same entity as the Utility Authority. The list of powers covers primarily the financial operations necessary to operate the water and sewer facility.

Chapter 2

1. This section establishes both civil and criminal penalties for failing to comply with its provisions. A tribe that is located in a PL 280 state should review the enforcement provisions and consider limiting the possibility of imprisonment.
2. The code provides primarily for connection requirements rather than for operating requirements. Codes are often "works in progress" requiring updating as needs change. This section covers the Tribe's immediate needs for connecting the community to the water and sewer system without adopting extensive provisions about needs that have not yet arisen.
3. Exceptions are available for some requirements. For example, specifically described, temporarily occupied buildings may be exempted from connection requirements if the owner demonstrates the water source and sewage and waste disposal is safe and adequate to protect the public health.
4. Authority to adopt rules and regulations under the ordinance is delegated to the Utility Authority with requirements about public posting. The Tribal Council must approve selected rules and retains approval authority, at its option, for others. The Council determined some decisions needed its direct oversight and others could be left to the regulating board. This is an example of the extent and type of authority delegated being specifically covered in the language of a code. This delegation will vary widely from community to community.

Chapter 3

1. The practice here of linking administrative responsibilities for the building code to the zoning administrator's duties is logical for a smaller tribe.
2. Local needs are addressed in this code by allowing the Tribal Council to waive standards for good cause. This is one way to accommodate local historic or traditional practices. The section could also have defined good cause or given examples to clarify for users of the code what was acceptable.

Contents of Title XII

- Chapter 1 - Grand Traverse Band Utility Authority
- Chapter 2 - Sanitary Facilities
- Chapter 3 - Building Code
- Chapter 4 - Roads

Chapter 1 - Grand Traverse Band Utility Authority

§ 101 - Establishment of Utility Authority

- (a) Be it enacted by the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indian Reservation, in special session assembled on June 1, 1989, pursuant to provisions contained in the Tribal Constitution and By-Laws, an ordinance to establish the Grand Traverse Band Utility Authority to regulate the operation and maintenance of the community water system
- (b) Pursuant to the authority vested in the Grand Traverse Band Tribal Council by its constitution, and particularly to articles and authority relating to the health, safety, morals and welfare of the Tribe, the Grand Traverse Band Tribal Council hereby establishes an organization known as the Grand Traverse Band Utility Authority, and enacts this ordinance which shall establish the authority of the organization.

Source: Adopted by Tribal Council in special session on June 1, 1989.

§ 102 - Purpose

The organization shall be organized and operated for the following purposes:

- (a) To provide for sanitary community water supply (and sewerage) systems;
- (b) To assume control of and responsibility for the operation, repair and maintenance of the water (and sewer) facilities and equipment so as to keep said facilities in good operating condition, in accordance with accepted standards and practices;
- (c) To establish, with the advice and cooperation of the Indian Health Service, service charges sufficient to sustain the proper operation, maintenance and repair of the system, and to provide for depreciation, and contingencies; and to collect such service charges from individuals, businesses, concerns and establishments and any other entities served by the system.

Source: Adopted by Tribal Council in special session on June 1, 1989.

§ 103 - Definitions

- (a) "Tribe or Band" means the Grand Traverse Band of Ottawa and Chippewa Indians.
- (b) "Council" means the governing body of the Grand Traverse Band Tribal Council.
- (c) "Utility" means the Grand Traverse Band Utility Authority which consists of five (5) members, which is also the Grand Traverse Band Housing Authority.
- (d) "Community Water System" means the waters supply system owned by the Tribe.
- (e) "Community Sewerage System" means the sewerage system owned and operated by the Tribe for the collection and disposal of liquid and water-carried domestic and industrial wastes.
- (f) "Plumbing Fixture" means the receptacles, devices or appliances supplied with water or which receive or discharge liquids or liquid-borne wastes, all necessary connecting pipes, fittings, control valves and appurtenances in or adjacent to the building.
- (g) "Individual Sewage Disposal System" means a sewage disposal system other than the community sewerage system for the collection and disposal of human excreta, or liquid or water-carried wastes, or both from one or more premises and includes privies, septic tanks, soil-absorption systems, chemical type toilets and similar facilities, together with all necessary connecting pipes, fittings, control valves and appurtenances.
- (h) "Domestic Well" means a well which serves or is intended to serve as a source of water supply or domestic use or drinking water.
- (i) "Persons" means an individual, firm, partnership, association, organization, corporation, or other legal entity.

Source: Adopted by Tribal Council in special session on June 1, 1989.

§ 104 - Organization

- (a) The affairs of the Utility Authority shall be managed by the Board of Directors composed of five (5) persons. The board members shall be the Housing Authority Board and appointments shall also be as outlined in the Housing Authority Board appointments under the Tribal Housing Ordinance [13 G.T.B.C.L. Chapter 1].
- (b) The Board shall have authority to exercise, by majority vote of those present and voting, any and all powers delegated to the Authority by this ordinance or any amendments thereto.
- (c) Meetings of the Board shall be held at regular monthly intervals as provided in the by-laws. Emergency meetings shall be held upon twenty-four (24) hours actual notice and business transacted, provided that a quorum concurs in the proposed action.

Source: Adopted by Tribal Council in special session on June 1, 1989.

§ 105 - Powers

- (a) To enter into agreements, contracts, and understandings with any governmental agency, federal, state, or local (including the Council) or with any person, partnership or corporation; provided, that any contracts involving payment of money by the Authority in excess of one thousand dollars (\$1,000.00) in any one fiscal year shall be subject to the approval of the Tribal Council.
- (b) To borrow money, to issue evidence of indebtedness, and to repay the same.
- (c) To purchase insurance for any property or against any risk or hazard.
- (d) To establish and maintain such bank accounts as may be necessary and convenient provided such accounts shall be fully covered by F.D.I.C.
- (e) To establish water and sewer service charges. The temporary water (and sewer) service charges and the billing procedures established by resolution, shall be adhered to by the Authority, until such time as they may change such charges or procedures by official action in accordance with by-laws of the Authority.
- (f) To issue bills and collect payment for sewer and water service from each individual, concern, or establishment served by the community water (and sewerage) system, and to maintain records of the income, disbursements, and expense of the operation of the systems.
- (g) To employ personnel to operate the water and sewer facilities, to establish the duties and compensation of employees, and to pay this compensation as an operating expense of the community water (and sewerage) system.
- (h) To disburse monies in payment of existing and future operation and maintenance expenses of the community water (and sewerage) systems including repayment to the Tribe of monies which the Tribe has heretofore advanced to defray such expenses.
- (i) To prepare public notice of charge for water and sewer service to set the date for such charges to begin, and to send this notice to each individual, concern, or establishment served by the community water (and sewerage) systems.
- (j) To establish a "connection fee" for water (and sewer) service connections to all persons, businesses and non-Indian residences using water according to the size of water service and the purpose for which use is intended.
- (k) To take such further actions, including adoption of by-laws, as are commonly engaged in by bodies of this character as the Board may deem necessary to effectuate the purposes of the organization.
- (l) To establish a water service deposit according to the size and intended use of the water service in advance of usage. This deposit will be refunded to the customer upon termination of service; provided all payments for services are current.

Source: Adopted by Tribal Council in special session on June 1, 1989.

Chapter 2 - Sanitary Facilities

§ 201 - Definitions

When used in the provisions of this ordinance for the regulation of water (and sewer) facilities, the following words shall be defined as follows:

- (a) "Community" means the governmental entity known as the Grand Traverse Band of Ottawa and Chippewa Indians in the State of Michigan.
- (b) "Utility" means the Grand Traverse Band Utility Authority created through Tribal Resolution 89-006 pursuant to the Constitution and By-Laws of the Grand Traverse Band.
- (c) "Person" means an individual, firm, partnership, association, organization, corporation or other legal entity.
- (d) "Community Water System" means the water supply system owned and operated by the Authority.
- (e) "Community Sewerage System" means the sewerage system owned and operated by the Authority for the collection and disposal of liquid and water-carried domestic and industrial wastes.
- (f) "Plumbing Fixtures" means the receptacles, devices or appliances supplied with water or which receive or discharge liquids or liquids-borne wastes, all necessary connecting pipes, fittings, control valves and appurtenances in or adjacent to the building.
- (g) "Individual Sewage Disposal System" means a sewage disposal system other than the community sewerage system for the collection and disposal of human excreta, or liquid or water-carried wastes, or both, from one or more premises and includes privies, septic tanks, soil-absorption systems, chemical type toilets and similar facilities, together with all necessary connecting pipes, fittings, control valves, and appurtenances.
- (h) "Domestic Well" means a well which serves or is intended to serve as a source of water supply for domestic use or drinking water.
- (i) "Owner" means the holder of the title of record to the premises upon which water or sewer service is to be provided.
- (j) "Occupant" is the person of record who at that time is the head of the household occupying the home whether being rented, leased or authorized by the owner.

Source: Adopted by Tribal Council on May 20, 1989.

§ 202 - Utilization of Community Water and Sewerage Systems

(a) Prohibited Acts

- (1) Use of Water Source Other Than Community Water System. It shall be unlawful for any person to construct, maintain or utilize a source of water supply other than the community system for drinking and

sanitation purposes upon any premises located within two hundred (200) feet of lines of the community water system. Individually owned and maintained domestic wells for irrigation purposes shall be permitted only upon compliance with requirements of the State of Michigan, the Michigan Department of Public Health, and the ordinances and regulations of the Grand Traverse Reservation.

- (2) **Disposal of Sewage and Liquid Wastes.** It shall be unlawful for any person to dispose of sewage, liquid wastes, or human excretion upon any premises located within two hundred (200) feet from any line of the community sewerage system or to provide for the disposal of such wastes from such premises other than through the utilization of the community sewerage system.
- (3) **Occupancy of Certain Buildings.** It shall be unlawful for any person to occupy or knowingly permit the occupancy by one or more persons, as a place of permanent or temporary residence, of any building located within two hundred (200) feet of lines of the community water and sewerage systems or to conduct any business in any such buildings unless said building is connected to the community water line and the community sewerage system, provided, that in the case of temporary buildings to be occupied for periods of not more than thirty (30) days in any one year, the organization may, notwithstanding the foregoing provisions, grant a permit for occupancy for a period not to exceed thirty (30) days in any one year upon application by the owner of such buildings and a showing satisfactory to the Authority that the source of water supply and the provision for sewage and waste disposal from such building is safe and adequate to protect the public health.
- (4) **Commercial Agricultural Uses.** It shall be unlawful for any person to utilize the water from the system for any commercial agricultural uses. Individual gardens shall be considered domestic uses.
- (5) **Unauthorized Connections**
 - (A) It shall be unlawful for any person to connect any individual water service line to the community water system, or to repair, modify, or disconnect any such connection except as provided herein.
 - (B) It shall be unlawful for any person to connect any individual sewer service line into the community sewerage system or to repair, modify, or disconnect any such connection except as provided herein.

(b) **Order for Connection and Failure to Comply.**

- (1) If any person fails to comply for more than ten (10) days after notice in writing from this Tribe or from the Utility to make a connection or otherwise comply with this ordinance and any regulations issued pursuant thereto, the Tribe may cause connection to be made or compliance to be effected, and the expense thereof shall be assessed as a special tax against the property.

- (2) The owner may within thirty (30) days after the completion of the work file a written option with the Tribe stating that he cannot pay such amount in one sum and ask that it be levied in not to exceed five equal annual installments, and the amount shall be collected with interest at the rate of ten percent (10%) per annum from the completion of the work.
- (3) The unpaid balance shall constitute a special tax lien.
- (4) Nothing in the foregoing provisions shall exempt such owner from being proceeded against for creating a public nuisance or from any of the penalties provided in this ordinance.

(c) Connections to Community Systems

- (1) **Making of Connections.** All individual water service and sewer service connections and repairs, modifications, or disconnections shall be made only by the Grand Traverse Utility Organization, upon approval of an application and shall be done at the expense of the applicant or user.
- (2) **Application for Water Service Connection**
 - (A) Each application for water service connection, repair, modification or disconnection shall be made in writing to the Organization and shall be signed by the owner of the premises and shall include the following:
 - (i) Legal name and address of the applicant.
 - (ii) Description of the property and building for which the water service is requested. The name and address of the person who will install the service lines from the building to be served to the community water system.
 - (iii) The name and address of the person who will install the service lines from the building to be served to the community water system.
 - (iv) A description of the fixtures to be used in the structure or building.
 - (v) An agreement to be responsible for and to pay promptly all charges for the service in accordance with the applicable schedule of charges for the service.
 - (vi) Such additional information as the Organization may require to demonstrate that the proposed connection complies with this ordinance and any applicable regulations promulgated by the Grand Traverse Band Utility Organization.
 - (B) Each application shall be accompanied by a deposit equal to the amount of the connection fee established by the applicable schedule of charges. In addition, one quarterly minimum water and sewer service charge as an advance deposit will be paid by each customer according to the size of the service line. This deposit will be refunded to the customer upon termination of service provided all payments for services are current.

(3) Application for Sewer Service Connection

(A) Each application for sewer service connection, repair, or modification shall be made in writing to the Utility, shall be signed by the owner of the premises and shall include the following:

- (i) Legal name and address of the applicant.**
- (ii) Description of the property and building to be served.**
- (iii) A plan of the proposed location of all fixtures to be served, and of the service lines to be installed including a description of the type and size of pipe showing the elevation of all fixtures and the service lines.**
- (iv) The name and address of the person who will install the service lines from the building to be served to the community sewerage system.**
- (v) An agreement to be responsible for and to pay promptly all charges for service in accordance with the applicable schedule of charges for the service.**
- (vi) Such additional information as the Authority may require to demonstrate that the proposed connection complies with this ordinance and any regulations promulgated by the Grand Traverse Utility Authority.**

(B) Each application shall be accompanied by a deposit in the amount of the connection fee established by the applicable schedule or charges.

(4) Approval of Application. If the Utility is satisfied that the application and the proposed connection complies with this ordinance and applicable regulations hereunder related to the utilization of the community water and sewerage system, it shall approve the application and make or allow the connection applied for, provided that, the Utility may impose such conditions on its approval as it considers necessary to assure the safe and proper utilization and operation of the community water and sewerage systems.

(5) Hearing on Denial of Application. Any person whose application for a connection has been denied or approved with conditions may within ten (10) days of official notification of the Utility's action, file a written request for a hearing before the Board of Directors. Such hearing shall be held within thirty (30) days after the filing of the request and upon reasonable notification of the applicant. The Utility shall affirm, modify, or revoke the application.

(6) Installation of Service Lines

(A) All service lines from the building to be served to the point of connection to the community water or sewerage system shall be installed by the user or owner at his/her expense, including the connection to the main.

- (B) The user or the owner shall be responsible for the cost of maintenance and repair of his/her water and sewer service lines.

Source: Adopted by Tribal Council on May 20, 1989.

§ 203 - Inspections

- (a) **Authorized Inspections.** The Grand Traverse Band Utility Authority, and its authorized agents, as well as the authorized agents of the Tribe, are hereby authorized to make such inspections at reasonable times during daylight hours as are necessary to determine satisfactory compliance with this ordinance and the regulations promulgated hereunder.
- (b) **Duty to Permit Entry.** The owner and occupant of a property shall provide such agents of the Utility and of the Tribe access to the property for the purpose of making such inspections.

Source: Adopted by Tribal Council on May 20, 1989.

§ 204 - Operation and Maintenance

(a) **Administration**

- (1) Responsibility for operation and maintenance of the water and sewerage systems shall be vested solely in the Grand Traverse Band Utility Authority, including the responsibility of making the necessary inspections.
- (2) Responsibility for enforcement of this ordinance shall be vested in the Utility, which shall report all instances of violation and non-compliance to the Grand Traverse Band Council. Responsibility for legal action to enjoin violation, to enjoin public nuisances, to collect penalties, and to prosecute violators shall be vested in the Utility Authority, which shall be obligated to take any appropriate legal action based upon a complaint filed by a resident of the community or customer of the Utility.
- (3) The Authority shall collect, retain and disburse all charges and fees in accordance with the schedule of charges and fees established. Such schedule of fees and charges may be amended or altered by the Utility in the manner provided, but such schedule and the amendments thereto shall have no force nor effect until duly posted as provided. Such schedules shall be approved by the Tribal Council of the Grand Traverse Band.
- (4) **Regulations**
- (A) Rules and regulations of the Utility under this ordinance shall be adopted or amended after a public hearing. Notice of the proposed action shall contain the entire text of the proposed rules or regulations or shall state generally the substance thereof and advise where the text is available for public inspection at

regular business hours, shall give the time and place of the hearing, and shall be posted for public inspection at the office of the Utility for a period of not less than ten (10) days prior to the date of the hearing.

- (B) A current file of all rules and regulations adopted by the Utility under this ordinance shall be available for public inspection during regular business hours at the office of the Utility.
- (C) The Utility is authorized to adopt and amend from time to time, rules and regulations to carry out the provisions of this ordinance; but no person shall be bound for any such rule or regulation unless it shall have been posted for public inspection for ten (10) consecutive days before its adoption. All amendments are subject to approval or disapproval by the Grand Traverse Band Council.

(b) Operation and Maintenance of Water and Sewerage Systems

- (1) **Standards for Installation.** The Utility may promulgate, alter and amend regulations establishing standards for the installation of domestic fixtures to be served by connections to the community water and sewerage systems, and for the installation of water and sewer service lines, for the purpose of assuring the safe and efficient utilization of the community systems. All service lines shall be installed in accordance with such applicable standards.
- (2) **Standards of Operation and Maintenance.** The Utility shall operate and maintain the water and sewer systems in accordance with the provisions of this ordinance, as amended, and in compliance with the standards and requirements for operation and maintenance from time to time promulgated, ordered or defined by the Federal Government.
- (3) **Consumer's Option to Install Meter.** If the consumer is unhappy with the basis of charge, he/she can at his/her own expense obtain a water meter of a type approved by the American Water Works Association. The consumer also must furnish test results to verify that the meter registers within two percent (2%) plus or minus of the true amount of water delivered on the maximum flow for the size and type of meter supplied. The meter will then be installed at the consumer's expense and read periodically by Utility employees. The water bill will then be computed on the basis of the gallons actually used according to the rate in the fee schedule. The sewer bill will equal to 100 percent (100%) of the water bill and in no case will the minimum charge for water and sewer service be less than the flat rate charge for residential use. Meter accuracy must be affirmed by a qualified test facility at least once every three (3) years at the consumer's expense. No meter shall be removed or otherwise disturbed except by Utility employees or parties authorized by the Manager to do so.
- (4) **General Rules with Respect to Large Users of Water**

- (A) Before proceeding with the purchase of any equipment which will necessitate the use of large quantities of water within short periods of time, the Utility shall be consulted for advice as to the best method of installation and for information concerning the conditions under which the water will be supplied to the premises of the customer.
- (B) In general, the Utility reserves the right to limit the size of service connections or opening through which its service is furnished for filling storage tanks, hydraulic equipment, private fire service, or other classes of service capable of drawing relatively large quantities of water and thereby causing undue fluctuations of pressure in portions of the system.
- (5) Vacation of Premises. When premises are vacated, the consumer shall notify the Utility, in writing, in advance of the intended vacation, so that the Commission may, if so desired, shut off the supply at the curb stop. The consumer shall be liable to the Utility for any damage to the utility resulting from failure to notify of such vacancy.
- (6) Emergency and Occasional Service. Water taken from a tap and used for construction work, must be covered by a written permit which can be obtained only from the Supervisor. In no case will any employee of the Utility turn on water for construction work, the contractor of the same, or foreman in charge will return the original permit to the Utility. No consumer whose water is from a tap shall allow any contractor, mason, laborer or other person to take water from the consumer's premises without presentation of a permit from the Utility. Any consumer failing to comply with this rule shall have his service shut off, and upon conviction thereof shall be punished as provided in Chapter II.
- (7) Waste of Water Prohibited. Excessive use, or waste, of water whether caused by carelessness or defective or leaking plumbing is strictly prohibited and is cause for termination of service. The Utility shall reserve the right to determine excessive use.
- (8) Limitations of Sprinkling. In the event there shall be a shortage of supply of water for any reason, and particularly in the summer due to heavy sprinkling, the Utility may declare an emergency to exist in which event the water users shall be restricted in the use of water for sprinkling, as determined by the Utility. The emergency shall be deemed to exist until the Supervisor of Services shall proclaim by another notice that the same has terminated.

Source: Adopted by Tribal Council on May 20, 1989.

§ 205 - Penalties, Savings Clause, Effective Date

- (a) **Penalties.** Any person who violates, refuses to comply with, or resists the enforcement of, any of the provisions of this ordinance shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00) and/or imprisonment not to exceed six (6) months in the County Jail. Each day a person is in violation shall constitute a separate offense. Upon failure to pay a fine legally assessed; a violator may be required to serve out his fine in the County Jail at the established county rate for such incarceration.
- (b) **Other Proceedings.** Nothing in the foregoing subsection (a) shall exempt such violator from being proceeded against by the Utility for creating a public nuisance nor from having water or sewerage services terminated by the Utility.
- (c) **Conflict of Ordinances or Regulations; Effect of Partial Invalidity**
 - (1) In any case where a provision of this ordinance is found to be in conflict with a provision of any zoning, building, fire safety, or health ordinance, code or resolution, existing on the effective date of this ordinance, the provision which, establishes the higher standard for the promotion and protection of the health and safety of the people, shall prevail; in any case, a provision of any ordinance, code or resolution, existing on the date of this ordinance, which establishes a lower standard for the promotion and protection of the health and safety of the people than the provisions of this ordinance, shall be superseded by this ordinance, and such other ordinance, codes, resolutions are hereby declared to be repealed to the extent that they may be found in conflict with this ordinance.
 - (2) If any section, subsection, paragraph, sentence, clause or phrase of this ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance, which shall remain in full force and effect; and, to this end, the provisions of this ordinance are hereby declared to be severable.
- (d) **Damages, No Claims For.**
 - (1) No persons using water or sewer services provided by the Utility shall enter a claim against the Utility, the Tribe or the Officer thereof for damages to any fixture or appurtenance by reason of back-up of sewage or sewer gas or interrupted water supply or variation pressure, or for damages of any nature caused by turning off or on either partially or entirely, of the water supply for any premises, either for repairs or alterations of any water main, or for the discontinuance of the service to his or their premises for violation of any rule or regulation of the Utility.
 - (2) No claims will be allowed against the Utility on account of interruption of supply caused by breaking of pipes or by stoppage for repairs for fire or other emergency.

- (3) In case of a probable stoppage of water supply when time of interruption can be forecast, every reasonable attempt will be made by the Utility to acquaint the consumer with the action proposed.
- (e) Effective Date. The foregoing ordinance duly adopted this day by resolution of the Grand Traverse Band Council, shall become effective in fifteen (15) days [after May 20, 1989].

Source: Adopted by Tribal Council on May 20, 1989.

Chapter 3 - Building Code

§ 301 - Adoption of State Standards

Historical and Statutory Notes: The preamble to the following ordinance reads as follows:

Whereas the Grand Traverse Band of Ottawa and Chippewa Indians became duly acknowledged as an Indian tribe with a government-to-government relationship with the United States by action of the Department of the Interior effective May 27, 1980; and whereas the Tribe desires to effectuate the federal policy of self-determination for Indian people through their tribal governments; and whereas the Tribe desires to exercise its right to self-government by regulating and licensing all activities upon Tribal lands; and whereas national standards regarding construction activities are established by Building Officials & Code Administrators International, Inc., which publishes the BOCA Basic Building Code, as well as the BOCA Basic Mechanical, Plumbing, Fire Prevention, Property Maintenance and Energy Conservation Codes; and whereas state standards regarding construction activities are established by several state departments, including Commerce (the Michigan Energy Code) and Labor (Bureau of Construction Code); and whereas state standards addressing public health concerns arising from commercial activities are established by laws and regulations administered by several state departments, including Agriculture (Michigan Food Law of 1968, Food Processing Act of 1977, Food Establishments Regulation No. 541, and others not enumerated) and Public Health (regulations involving commercial kitchens, food service and others not enumerated); and whereas state and local standards regarding sanitary conditions are established in the Sanitary Code of Grand Traverse-Leelanau-Benzie District Health Department and certain state guidelines concerning commercial uses; and whereas that certain of these standards incorporate licensing requirements; and whereas as an interim measure and for the sake of continuity until such time that the Tribe adopts a comprehensive land use and development plan, it is appropriate to follow the above-referenced standards to the extent applicable to activities upon Tribal lands.

The Grand Traverse Band of Ottawa and Chippewa Indians incorporates by reference and adopts as a Tribal ordinance the above-referenced standards as well as any other state or local laws and/or regulations which might otherwise apply, with the following provisos:

- (a) that the Tribe's Zoning Administrator shall administer these standards and determine that appropriate requirements are followed for all activities upon Tribal lands;
- (b) that the Tribal Council shall issue any necessary licenses upon request from the Administrator showing that the appropriate requirements are satisfied; and
- (c) that upon recommendation of the Administrator and for good cause shown, the Tribal Council may approve a waiver of any standard, law or regulation which might otherwise be applicable.

Source: Tribal Act #83-121, enacted by Tribal Council on February 25, 1983.

CROSS-REFERENCE: This provision is also contained in 14 G.T.B.C.L. § 602.

Chapter 4 - Roads

§ 401 - Reservation Roads Placed under BIA Inventory

All Indian Reservation Roads accessing Grand Traverse Band Tribal lands are hereby placed in the Bureau of Indian Affairs Reservation Road Need Inventory.

Source: Tribal Act #94-12.189, enacted by Tribal Council on December 20, 1994.

Part Seven

Commercial Codes

The importance of the Uniform Commercial Code to aid economic and housing development

The "Self Determination Era" ushered in by the proclaimed abandonment of previously unsuccessful and often-destructive federal policy has given new life to reservation governments.¹ As tribal governments exert themselves in an attempt to recover from an age of Federal Government paternalism, reservation governments are examining current reservation conditions and searching for lasting solutions to the problems that face their communities.

The median income of reservation Indians continues to hover at or below the poverty level with reservations experiencing an average poverty rate of 31%. Reservation unemployment levels consistently exceed the federal unemployment statistics and unemployment levels of the surrounding non-reservation communities. At present, Indian unemployment is approximately 46%.² Similarly, reservation housing conditions are significantly below what many consider modern. Many houses are barely inhabitable. They commonly lack modern plumbing, electrical service or telephone service. Any one who has worked on reservations can often tell when they enter a reservation by observing the quality of housing. In light of this alarming information, it is not surprising that among the diverse issues identified by tribal governments, economic development and housing development are important issues to reservation populations.

The UCC³ is an important tool for creating a climate in which reservations can experience positive economic growth. The UCC can also assist in meeting the housing needs of reservation Indians. Manufactured homes are personal property⁴ that individual Indians can borrow money to purchase. This is in sharp contrast with "stick built" frame construction that becomes part of the land upon which it sits. The trust characteristic of a considerable portion of Indian Country often makes it difficult for an individual Indian to finance the construction of a home through a conventional home mortgage. The UCC applies to manufactured homes and through the UCC individual Indians would be able to purchase modern housing. Beyond acquisition of the home, the UCC also applies to the purchase of household furnishings such as a stove or furnace.

Washington Mutual Savings Bank, in cooperation with a few Washington Indian tribes have independently created a pilot program to increase the quality of reservation housing through

¹ President Nixon reversed previous federal policy in July 1970 when he called for a new federal policy to strengthen the Indian of autonomy without threatening the Indian community. Responsibility for programs previously operated by the federal government was to be placed with individual tribes.

² Income and employment statistics per the National Congress of American Indians.

³ Any reference to the UCC unless otherwise stated is towards the UCC as developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

⁴ The law creates two types of property, real and personal. As a rule of thumb real property is generally land and things affixed to the land. Personal property is everything else.

financing manufactured housing purchases that are placed on assigned trust land.⁵ The tribes have not enacted any portion of the UCC so the terms of the entire transaction have to be reprinted and incorporated into each transaction, the general structure of the program mirrors the requirements of the UCC. The tribes and Washington Mutual should be commended on creatively working together to improve the housing conditions on the reservation. The downside of cooperative programs such as this is that there is only one bank providing services to the reservation. Other financial institutions that desire to enter the reservation must create their own financing package. If a tribe were to enact standard legislation, tailored to the needs of the reservation, the tribal housing authority could pursue other financial institutions to provide similar financing agreements instead of negotiating with each financial institution individually. The tribe benefits from having a standard code for all the financial institutions conducting business within the reservation which in turn provided for easier monitoring. A second benefit would be the presents of competitive market pressures driving down the cost to individual Indians making housing more affordable and thereby further improving reservation housing. A Copy of the Washington Mutual pilot program with the Port Gamble S'Klallam Tribe is included as Exhibit A.

The UCC's role in economic development is undeniable. The UCC is the codification of hundreds of years of commercial activity into a standard of commercial dealings. In adopting a tribal UCC, off reservation business may feel more comfortable in the familiarity of a commercial code. There are many reasons given by off reservation business for not conducting business within the reservations to Indians. One reason often cited is the inability of the parties to establish and secure their position in the deal. Bankers and finance people like predictability. Bankers are accustomed to dealing with risk but need a way to qualify and assess the risk. The UCC Article 9 is one of the tools a banker uses to assess the risk involved in any particular deal. Article 9 governs secured transactions. It establishes the rights and obligations of each party to the deal in all stages of the transaction; first in considering the deal, their security during the life of the deal, and in the event the deal turns sour, the course of conduct to protecting themselves. The alternative to a predictable outcome is the necessity of seeking legal redress through the tribal courts. While the outcome may be the same as if Article 9 were governing law, a trial on the issue adds expense and time.⁶ The lack of predictability also increases the cost to reservation Indians when they are debtors in these transactions.

Article 9 of the UCC is not the only section important in establishing a secure basis for economic development. The other key Article of the UCC that a tribal counsel should consider adopting is Article 2. Article 2 sets forth provisions for the sale of goods. This section provides default rules for people selling items, whether raw materials such as wire or sheet metal, or completed goods like a refrigerator. It sets out standard provisions for the formation of an enforceable contract. The standard provisions operate as default provisions if not otherwise stated in the contract. Article 2 also provides standards for assessing the quality of the goods, performance under the terms of the contract and the rights and remedies upon breach of the contract.

A tribal UCC assists parties negotiating a contract by specifying the tribal expectations for commercial standards. It also adds credibility to tribal courts by giving the courts a codified set of laws to apply rather than having to rely on common law. Common law is the body of law

⁵ Washington Mutual's tribal lending program was developed by the banks Community Reinvestment Office in Washington State in cooperation with the Port Gamble S'Klallam Tribe and Makah Tribe.

⁶ Seeking redress though a trial should not be confused with the necessity for obtaining a Writ of Replevin in order to repossess property. Trials and trial preparation are costly, lengthy procedures, the potential for which is enough to cause a business deal negation to fail. The recommendations on Recourse for securing a Writ of Replevin are short proceeding done in open court, presenting evidence to the judge that the parties have an agreement that has resulted in default by the borrower and the secured party is simply seeking permission to retake possession of the property per the parties agreement.

created over time by judicial rulings. The difficulty of common law is that you do not know the rule of law until the problem arises and the judge makes a decision. Statutory law created by legislative action does not suffer from this problem. In the later case, the Tribal Council establishes the rules and the role of the judge shifts towards deciding whether the parties complied with the rules.

Tribal courts are another commonly referenced reason for not dealing with reservation Indians. There is a pervasive misperception of tribal courts as a protective big brother against which a non-Indian can not win. The application of a codified set of laws like the UCC provides legal predictability and assists in repelling this myth of tribal court bias. The ability to reference existing tribal law applicable within the courts helps place the tribal court on a similar standing as the courts in rural jurisdictions. In rural communities, the sense of community and the interpersonal ties between town members is significant, and yet business transactions occur with regularity without a paralyzing fear of the court system.

General background to the UCC

The UCC represents the recommendations of the NCCUSL on the best way to do business between parties. As currently drafted the UCC has 12 Articles, 1, 2, 2a, 3, 4, 4a, 5, 6, 7, 8, 9, 10 and 11. The scope of each article is as follows:

- Article 1: General Provisions
- Article 2: Sales
- Article 2a: Leases
- Article 3: Negotiable Instruments
- Article 4: Bank Deposits and Collections
- Article 4a: Funds Transfers
- Article 5: Letters of Credit
- Article 6: Bulk Transfers/Bulk Sales
- Article 7: Warehouse Receipts, Bills of Lading and Other Documents of Title
- Article 8: Investment Securities
- Article 9: Secured Transactions; Sales of Accounts and Chattel Paper
- Article 10: Effective Date and Repealer
- Article 11: Effective Date and Transition Provisions

Articles 2-9 are the substantive provisions of the UCC. Article 1 addresses general provisions of the UCC applicable to the other Articles. Article 10 and Article 11 deal with implementation of the code.

The NCCUSL is comprised of code commissioners appointed from each state. The commissioners examine and analyze legal trends from throughout the United States to determine where a uniform set of laws to govern a particular type of law would be useful. As an example and in no way is this an exhaustive list, the NCCUSL has promulgated uniform laws on Uniform Child Custody Jurisdiction and Enforcement Act, Uniform Probate Code and Uniform Interstate Enforcement of Domestic Violence Orders Act. The uniform laws are not simply a compilation of the standard practices in and between the states. They also represent the recommendations of the Code Commissioners on the way things should be. Until a legislative body adopts a particular provision of any uniform law drafted by the NCCUSL, it does not have any mandatory controlling value.

The NCCUSL first decided to draft a UCC in the late 40's. Some portions of the UCC were addressed in earlier uniform laws promulgated by the NCCUSL, but the UCC was the commissioners first effort to create a unified set of regulations that would affect almost every commercial transaction. The NCCUSL first passed the UCC in 1952. Each individual state has since gone on to debate whether to enact the code into state law as written or whether to modify the code to meet to meet the specific needs of the state. Since the NCCUSL first drafted the UCC, all fifty states have passed all or at least portions of it, but each state has made at least a few minor changes prior to enactment.

The UCC is a work in progress. Since first introduction of the code, the Code Commissioners have revised it numerous times. There is currently a proposed revision of Article 1 – General Provisions, Article 2 – Sales and Article 2a – Leases in the drafting stages with the NCCUSL. Code Commissioner's are also working on the creation of a new section, Article 2b - Licenses. Article 9 – Secured Transactions is in the final stages of a significant review and re-codification. The implication for tribal governments considering the adoption of a UCC is that the UCC must be reviewed occasionally. A tribal government must consider whether any changes to the UCC introduced through a revision by the NCCUSL are applicable and beneficial to the reservation economic environment. If so, should the tribe adopt them as tribal law?

The UCC is not a simple code by any stretch of the imagination. It is subject to substantial debate and interpretation by attorneys who practice in the Commercial Law arena. For a non-legally trained individual, the UCC can be a formidable opponent. To assist in the application of the code, the NCCUSL also publish an Official Comment after each code section. Unfortunately, the same people who write the code often write the comments. The official comment is often extremely helpful for UCC practitioners and should be included within a tribal code UCC development project. A good suggestion for a tribe considering to adopt a tribal UCC is to also draft a Plain Language Comment, not more then a few sentences in length, that describes the purpose of that section. The Navajo Nation added this to their code and it is very effective. A copy of the Navajo Nation Code is attached as Exhibit B.

The UCC operates on a few basic presumptions that control the majority of the substantive provisions. The primary assumption is that the parties have equal knowledge and power. This assumption is applicable in some situations but in the vast number of transactions seems inaccurate. This imbalance of power and knowledge is not a reservation phenomenon. Commonly the person with the money or item in demand has a superior position. Often the small business owner is very good at the technical side of the business but is not a trained businessperson. They decide to go into business because of what they like doing but without the knowledge of what it takes to run a business. The bank or supplier is often in a superior position because they have the money or the "stuff" that is needed and commonly more experience. In many smaller communities it is completely possible that the bank or supplier is the only source of the commodity needed. The lack of competitive market forces escalates the power imbalance.

While the UCC is an important tool for the creation of a strong tribal economy, the UCC is not a wonder code that will fix all of the reservation problems. Its usefulness is focussed at the governance of business dealings which has a spillover to improving tribal housing. However, the UCC is not a consumer protection code. It will help in thwarting or seeking redress from the questionable practices of some business that prey on tribal populations. The tribe should consider enacting a consumer protection code that addresses for example the use of deception, fraud, misrepresentation and concealment if consumer protection is objective. The UCC can be an effective tool for increasing the quality of reservation housing, but it is not a substitute for a good housing or land use code. The UCC is not applicable to transactions involving real property except as effected by improvements made by the addition of personal property. The UCC also does not directly affect the flow of reservation dollars off the reservation. As reservation economies grow, people will spend more money within the reservation boundaries instead of in

business surrounding the reservation. This is due to economic forces and not regulatory forces. Tribes enacting a UCC will not change any federal law requirements. For example, certain federal farming programs and some BIA loan guarantee programs require filing financing statements in accordance with the state UCC filing requirements. Any transaction under these programs will have to comply with the federal and thereby state requirements.

Significant considerations in adopting a UCC

One issue that needs to be understood about the UCC is that it is the codification of hundreds of years of commercial transactions from an Anglo-American viewpoint. Not the commercial view point of the entire world. While some of its provisions have found favor in foreign jurisdictions, other portions of the code are different from the usual and customary method of doing business in foreign countries and are not accepted. The same holds true when considering whether to enact a UCC into reservation law. The basic underlying presumption of interpersonal dealings of a tribe considering whether to adopt a UCC may be such that some of the UCC provisions will have to be changed in order to meet the expectations of the tribal culture and perspective. Embarking on an in-depth discussion of tribal culture and politics as compared with non-Indian presumptions of reservation populations and the non-Indian commercial expectations is far beyond the scope of text. Each tribe must examine the code in relations to its own tribal viewpoint to determine where changes are appropriate. Enacting a tribal UCC without conducting such an examination could have an unintended result by introducing a standard of conduct to the reservation population that is unwanted or which does not fit with the tribal expectations. There is always the potential that if the code does not fit with the commercial practices within the reservation, people will disregard the code. When this occurs, the code intended to simplify and streamline commercial dealings will have just the opposite effect. Conflicts will be drawn into the tribal courtroom and in the tribal counsel chambers. If the code causes hardship or unpopular results to the reservation population then the tribal counsel will have to answer for their actions. The following sections are recommendations that have broad implications for tribal counsels considering the adoption of a tribal UCC. These issues for review should in no way be considered exhaustive.

The following sections address general issues that concern the adoption of a code such as the UCC. Section (a) – (g) address general concerns applicable to all of the UCC. Section (h) – (k) address specific clauses with in articles 2 and 9 that are significant and should be discussed early in the drafting process. For a tribe considering the adoption of Article 9, attached as Exhibit C is a summary sheet outlining the issues addressed by the Model Tribal Code developed by the University of Montana.

Tribal Counsel Support

Any code-drafting project requires the support from the tribal counsel from the outset. This may seem self evident, but enacting a tribal UCC that is appropriate to the tribal environment is potentially a project that will require a commitment of a significant amount of tribal personnel or fiscal resources. It is unlikely that the tribal counsel will be involved in every aspect of developing a tribal code. Drafting a tribal UCC will most likely be the job of the tribal attorney or the business development office. By including the tribal counsel from the out set of the project in discussions and revisions, the tribal counsel can be introduced to the code and informed of the benefits of the code as the project develops. This will facilitate the final enactment of the code when it is completed without having to subject the counsel to hours of code talk. The UCC is an extremely importance piece of commercial legislation but for the majority of individuals it is not "edge of your seat" reading.

Analogous to tribal counsel support is the timing of when to begin a UCC code development project. If at all possible, a project such as this should not be undertaken when there is a potential for a substantial change of personnel on the tribal counsel. A tribal counsel election that replaces a large number of counsel members may cause a shift in counsel priorities. The UCC could be subordinate to other projects of the new counsel. At minimum the election of new counsel members could require the introduction of the new counsel members to the code and informed of the benefits of the project. The importance of this second point depends upon time limitations placed on the project, the scope of the project and the nature of the tribe. If a completed code is expected in a relatively short period of time or the tribal counsel is relatively stable, less consideration must be given to when to begin a UCC code drafting project.

Where to Start

A tribe considering whether to adopt a tribal UCC has many choices of where to begin the project. The tribe could elect to draft an entirely new commercial code based on the tribes needs and expectations. An undertaking such as this would require a significant commitment of resources including personnel and money. The result of such an undertaking could potentially be a code completely unfamiliar to the business, banking and finance community. Unfortunately, unfamiliarity fosters uncertainty and the continuation of an uneducated bias; biases that work against reservation Indians. The alternative outcome is that the tribe would expend considerable effort to reproduce a product very similar to the UCC as drafted by the NCCUSL.

A second possible starting point for enacting a tribal UCC is to redraft the existing UCC in language that involves less legalese. This would require commitment of less time and resources from the tribe to redraft the code, but the drafting process would remain a sizeable project. As with drafting a tribal UCC from scratch, the issue of unfamiliarity could again cloud the business arena. The benefit to this approach is a UCC that is more accessible to non-legally trained persons.

A third option and the option used by the majority of the tribes enacting tribal UCC is to take the existing UCC as a base. The tribe then works from this base to create a tribal UCC that meets the needs of the tribe. This method has the benefit of working from a base with which the business, banking and finance people are familiar. It is common for people who work with the UCC to rely on commercially prepared documentation that summarizes the differences between different state versions of the UCC. Were this drafting option selected, it would be helpful for the drafters to prepare a summary sheet of code provisions that differ from the UCC. A similar summary would be useful promoting reservation based business dealings. The summary should specifically indicate that it is for reference purposes only and not as a complete statement of the law. As this is the most commonly utilized approach to tribal UCC drafting, the remainder of this text will be based on the presumption that a tribe engaging in a UCC drafting project will base the tribal UCC on an existing UCC.

What Version of The UCC To Use As A Base

As addressed elsewhere in this text, the UCC is the creation of the NCCUSL based upon the commissioner's view of how business transactions are conducted and how they ought to be conducted. This is one choice of a code to use as a base for drafting a tribal UCC. The issue remains as to which version of the NCCUSL UCC to use as a basis. The current NCCUSL UCC is accepted standard baseline for the UCC. However revisions to Article 9 are in the final stages and

revisions to Articles 1 and 2 are in the works. What code provisions to use as a base must be determined by each tribe. Using the current NCCUSL UCC places the tribal UCC at the same starting place as each of the state's UCC's. Within a few years, the revisions to the UCC proposed by the NCCUSL will be before the state legislatures. If states accept the new changes and the tribe has based its UCC on the old NCCUSL UCC there is the potential for a split between the legal expectations of the jurisdictions. Conversely, the tribe can select the recent revisions as the base code thereby placing the tribe on the leading edge of UCC legislation. However, until the states follow suit, there will again be a divide in the legal expectations.

Each state has made a legislative choice to enact at least portions of the UCC. In enacting each portion of the UCC, each state takes the NCCUSL's UCC and makes some changes to the code before the legislature passes it. This modified UCC becomes the controlling law within each state's jurisdiction. This is second possible starting place for tribal UCC drafters. Using this code as the base is has its own problems. The primary consideration is that it is the State's UCC; modified to meet the states needs. The concerns of the state may not be the same as those of the tribe. It has the advantage of starting with a code that business, banking and financial people in the area are familiar with thereby helping to reduce the problems associated with uncertainty.

There is a third option in selecting a base UCC on which to base a tribal UCC. Model tribal codes have been developed. The University of Montana developed a model tribal secured transactions code. A copy of this code is included as Exhibit D. The Model Tribal Code uses a draft of the NCCUSL's recent revisions to Article 9 as a base. The NCCUSL has made revisions to Article 9 not included in the Model Tribal Code. Reliance on any model code raises some interesting issues that are a hybrid of previously stated questions. Who drafted the code? What base code does the Model use? What point of view did the Model code drafter have? Was it to maximize tribal sovereignty, promote financial dealings within the reservation or some combination of the two?

There are no simple answers to these questions. There is no reason the tribes have to follow suit with state law. Tribes are free to make decisions for the benefit of their people. A full discussion and debate of the issues is encouraged.

How much of the Code to Adopt

The NCCUSL created the UCC as a unified set of laws to govern business transactions. The significance of the code in commercial dealings can not be under stated. Due to the size of the UCC, the question of whether a tribe wants to devote the energy and resources towards the adoption of the entire UCC first time around is questionable. This is not to say that a tribe should not consider adopting the entire UCC. In enacting an entire UCC, a tribe runs a risk that if the tribe does not devote enough time and resources to the project there is the potential for over-legislation. Over-legislation is the incorporation of unintended laws and regulations upon the tribe. Regulations that the tribe is not prepared to manage or which do not meet needs of the tribe.

Commentators generally agree that a tribe that adopts an abbreviated code including Article 1 – General Provisions, Article 2 – Sales, and Article 9 – Secured Transactions will provide a good foundation for most business transactions. As the economy of the reservation grows, the tribal counsel can adopt other sections of the code. Article 2a – Sales and Article 3 – Negotiable Instruments are good candidates for future enactment by a tribe.

As mentioned above, the UCC is intended as a comprehensive set of legislation. The UCC commonly cross-references other parts of the code mostly for definitional provisions. In the

adoption of only part of the code there may be voids in the legislative scheme. One solution is to do nothing about this and wait for a lawsuit in tribal court. Legal counsel involved in the suit would have the obligation to argue to the judge how the missing terms should be dealt with. Most likely the attorneys would argue the NCCUSL's UCC provisions as persuasive or state law as persuasive. Neither would be mandatory. A second option and probably a more sound decision is to incorporate a provision to deal with these shortcomings. The provision would direct that any missing terms should be defined by a specific version of the code, but only to provide meaning to the code provisions enacted by the tribe. The reference sections do not create a separate and enforceable right.

How to Codify a UCC as Tribal Law

One method for codifying a UCC is simply for the tribe to ratify an existing UCC, either state or the NCCUSL's UCC by Ordinance. This method assumes that the tribe does not want to make any changes to the UCC. There is an inherent danger in passing legislation in this manner. Tribal sovereignty is always a key issue that needs to be protected. The UCC has filing requirements in order to provide notice to other parties. Codifying a UCC by an incorporation ordinance could be viewed as an abdication of sovereignty. State and NCCUSL versions of the UCC contain provisions allowing for repossession of goods provided there is no breach of the peace. However, many reservations specifically forbid repossessions. Filing and repossessions are mentioned only as examples, there may be other unintended baggage that will be drawn onto the reservation if the tribal counsel is not careful. Reference codification of a UCC can also carry all of the supporting interpretation of the code if the ordinance does not specifically address the intent of the Tribal Council. The potential for this type of difficulty may increase in PL 280 states. Care must be taken to specify which version of the UCC the tribe is incorporating. Is it the UCC as currently worded or are future revisions to the UCC included? This is particularly significant in light of the revisions of Article 1, 2, and 9 currently in progress by the NCCUSL. This method should probably receive the lowest consideration from tribal counsels but conversely it is the one most often recommended by people who do not understand tribal sovereignty. Each state will not enact the UCC as written by the NCCUSL without modifying it to meet that states particular needs. Why expect a tribe to enact a law without carefully considering the potential to harm the tribe and its people?

The second method for codifying a tribal UCC is to incorporate a state's or the NCCUSL's UCC by reference except for specific provisions. Replacement provisions are specifically enumerated within the incorporating ordinance. This is the approach taken by the Lummi Indian Nation. A copy of the Lummi code is included as Exhibit E. There is less of an abdication issue with this type of codification. It is also easier for off reservation people using the code because it is easier to determine which provision the tribe has modified. In order for this to work, the non-reservation people must be able to find the tribal ordinance that adopted the code. In some situations this is not an easy task. The ordinance needs to state specifically whether it is the code as now enacted or as may be modified in the future that the tribe is adopting.

A final method for codifying a tribal UCC is to reprint the UCC provisions the tribe is adopting within the body of the tribal code. The base code, whether modified or not, is reprinted. This method is the preferred method for avoiding any question of what the tribe adopted as a UCC. The abdication argument also loses much of its credibility in using this method. However, it is the most cumbersome method. The UCC is not a small document. It will swell the tribal code by many pages and in order to be an effective method of regulatory

control, people who deal with the code in a business setting must be able to retrieve and reverence the code.

Jurisdiction

Tribal regulatory and adjudicatory jurisdiction is not static. It is relatively impossible to refine a precise purely territorial statement of jurisdiction due to the currently required "Indian party" component for tribal jurisdiction. With each court decision on the subject, tribal jurisdiction shifts. Congress also enacts legislation that effects tribal regulatory jurisdiction, sometimes in minor ways but other times significantly. A jurisdiction statement that does not restrict jurisdiction beyond the then current judicial rulings and congressional actions is an important clause to include.

Scope of Code Provisions

Who should be bound to comply with the tribal UCC? The answer to this question is not as apparent as it might originally seem. Of course, a tribal UCC applies where there is an Indian component to a transaction with the reservation boundaries. However, some commentators and attorneys feel that tribes should limit application of the UCC to big transactions (e.g. transactions over \$100,000). For some tribes, this is a good decision. Particularly if the tribe is focusing its efforts on tribal enterprises, and there is little "small business" within the reservation. However, this will eliminate the possibility of an individual Indian using the code as a tool for improving tribal housing conditions. For many smaller tribes, high dollar limits may not be realistic.

Placing high dollar requirements for code application draws into question the rationale for endeavoring to enact a UCC in the first place. The purpose of the UCC is to provide a framework for general commerce. The number of large transactions is most likely very limited. For these few transactions, perhaps incorporating the terms of the UCC within the contract provisions⁷ or through a choice of law provision would better serve the tribe.

A second approach is to establish a tiered approach within the tribal UCC based on whether the debtor is an individual or business. A particular set of rights and obligations apply to individual debtors. Business debtors require application different rules. For example, individual debtors could be granted a one-time right to cure a default as opposed to a business debtor who would not receive such protections. This approach creates a potential problem for determining the appropriate character of the debtor. An artisan is a prime example of this. He or she may purchase materials and might sell the art produced. Is this personal or business use? What if the artisan has a regular job and any money realized from the sale of the art is supplemental income?

A similar approach to determining the rights and obligations based on the nature of the debtor is to base application of the tribal UCC on the dollar amount of the transaction. Transactions under a specified dollar amount would receive greater protections under the tribal UCC. This approach allows for large-scale business development such as a tribal enterprise but does not hurt this individual Indian. Conceivably, a manufactured home loan

⁷ Inclusion of the UCC through contract provisions can still cause problems with the contract. In the event of litigation it is possible that a judge could rule that the contract provisions are against the public policy of the tribal government and not applicable or in the worst case scenario the contract is void.

could exceed the minimum dollar level for self help repossessions. If a tribe selects this approach, the code should create an exception for loans related to housing.

Repossession

Creditors entering reservations to repossess property has consistently represented a significant problem to reservation Indians and the tribal governments. Not all creditors abuse their power. Many creditors operate successful business within the requirements of the law. However, there has been sufficient abuse that the only way the majority of reservations have been able to curb these abusive actions by creditors has been to completely restrict any repossession within the reservation. The ability of a creditor to exercise self-help repossession in the event of a default is often cited as one of the more important aspects of the UCC. This ability allows creditors to reduce their losses in the event that a business transaction enters default. Arguably some parties may not be willing to deal in Indian Country due to this restriction and this could have a stifling effect on development of a reservation economy. This factor is often cited, yet many transactions occur in spite of these restrictions so perhaps there are other issues controlling the decision making process.

Restricting self-help repossessions is the general rule in Indian Country, but it is not universal. Some tribes allow repossessions to occur. Other tribes have negotiated individual deals with a particular bank or financial institution to allow repossessions provided the bank issues appropriate notice to the tribal police department. The Washington Mutual manufactured home loan pilot program includes this type of a provision. Some tribal governments have made a decision that the most effective way to attract outside money onto the reservation to solve a pressing tribal problem is to reach these limited agreements with the banks or financial institutions.

Within a creditor - debtor relationship, there are three possible scenarios applicable to a deal that has gone into default. In the majority of situations under the UCC a secured creditor⁸ has the right and is able to repossess property. Any repossession must occur without a breach of the peace. What constitutes a breach of the peace under judicial interpretation is not as limited as one might expect. Provided the creditor can accomplish repossession without a breach of the peace, the creditor is within his or her rights. When it is not possible to repossess collateral without a breach of the peace, a secured creditor must appeal to the court for the issuance of a Writ of Replevin. A Writ of Replevin issued by the court is essentially permission from the court to retake property. In the third creditor - debtor relationship, the creditor is unsecured. Upon default, the creditor must sue in court for damages and then petition the court to attach and sell the property. This third remedy is the most expensive and takes the most time. The creditor must present an entire trial and the judge must rule in the creditor's favor in order to be successful.

Any tribe considering adopting a UCC must address and determine the best solution to the issue of self help repossessions with the reservation. Tribes do not have to allow self-help repossessions in order to enact an effective code. The Navajo Nation UCC and the Standing Rock Sioux UCC do not allow for self help repossessions unless written consent is given by the debtor at the time of repossession. Failure to obtain the written consent mandates that creditors seek court approval before repossession can occur.

⁸ A Secured Creditor is a creditor who has loaned money to a debtor so that the debtor can acquire some type of personal property. In exchange for the borrower receiving the money, the debtor gives the creditor rights in some type of collateral. Upon default the creditor can repossess the property and then sell it in order to get the money back.

Another possible solution to the repossession issue is to treat business debtors differently from individual Indian debtors. The presumption is that business debtors have greater knowledge and power than an individual Indian debtor. As addressed elsewhere, this presumption may not be altogether accurate.

A third possible method for protecting individual debtors while not creating a barrier to business development is to create a minimum transaction value above which repossessions can occur. As an example, the tribe could authorize repossessions of collateral if the total loan amount was more than \$30,000. A loan for less than \$30,000 would require some type of consent at the time of repossession or court authorization.

Sovereignty

Sovereignty is an inherent part of tribal government's status as in independent government. It is difficult to understate the importance of sovereignty and the immunity that flows from this sovereignty. Although the United States has long exerted its paternalistic plenary power over the tribes, the courts have consistently affirmed tribal sovereign immunity. Often tribal enterprises and corporations inherit tribal sovereign immunity.⁹ A clause within a tribal UCC addressing the issue of sovereign immunity is a good idea. Assumedly the tribal UCC would specifically state that the tribal UCC does not waive any tribal sovereign immunity of the government or that of its economic enterprises.

Filing

Filing is an integral part of the UCC. Creditors must file a Financing Statement in order to protect their rights. As with repossessions, this is another difficult area the tribe must consider when debating UCC legislation. The purpose of filing is to give notice to others that some one other than the debtor has an interest in the items identified. The identification of the items can be as specific as a particular piece of machinery or as general as "all equipment" of the debtor. Each state UCC establishes the appropriate location to file in order for a creditor to protect their interest. Failure to properly file the notice can cause the creditor to be last in line among secured creditors even though they were the first party to lend money to the debtor.

Tribes must consider whether they want to take on the responsibility of establishing and maintaining a tribal filing office. In order to give other creditors the notice anticipated under the UCC, creditors must be able to access and rely on the information in the filing office. This requires that the filings be securely stored and maintained and that there is a method for reviewing the filings. This will cost money. Filing fees and record fees can help defray the cost, but it is unlikely the fees will offset all of the cost of maintaining the records. Creation of a tribal filing office gives the tribes the ability to monitor the number and nature of transactions occurring with the reservation. Requiring tribal filings in order to protect creditor interest helps the tribe assert itself as the proper regulatory authority of the parties. Following the requirements of the tribal UCC demonstrates that parties are aware of tribal regulatory authority and for the potential for other applicable tribal regulations.

The alternative to the tribe taking responsibility for their own filing office is for the tribe to use the states filing office. Some tribes take advantage of the state offices, co-opting them

⁹ Whether a tribal corporation has sovereign immunity is dependent upon the articles of formation that created the corporation. The issue can only be resolved by an examination of these articles.

for tribal purposes. Many tribes are unwilling to do this due to the constant wrangling over sovereignty and jurisdiction between the tribe and the state. Unfortunately, tribes must remain ever vigilant in this regard.

Agreement Not To Assert Defenses against Assignee

Assignees of the right to receive payments under a contract usually stand in a superior position under the UCC. The typical contract provision provides that the debtor agrees not to assert any defenses against an assignee of the contract right to receive payments. For the debtor this means that although the product purchased may be defective for some reason, the debtor is still obligated to make payments to the assignee. The debtor must pursue a separate claim against the original creditor or the manufacturer. The argument for allowing these type of contract terms is that it facilitates the flow of commerce. There is some validity to this assertion. Parties purchasing the right to receive future payments must have some assurances of the right to receive payments. On the other hand, it does not seem equitable for the debtor to have to make payments for a faulty product.

The injustice of these arrangements is particularly troubling when there is a substantial tie between the manufacturer and the financing company. For example, it is common for "Machine Corp."¹⁰ to assign the right to receive payments to "Machine Finance Corp." whose primary customer is Machine Corp. and who share common ownership. Tribes may want to consider eliminating or reducing the ability of companies to take advantage of such contract terms. One method is to make such assignment provisions unenforceable. A second option is to create a "substantial relation" doctrine whereby related companies, as determined by such factors as ownership and who is the primary customer, can not assert this defense. In either situation, in order for the debtor to secure relief from the obligation to make payments due to a faulty product, the debtor should be required to give notice to the assignee and the original creditor of any claim.

Tribal Governments That Have Enacted a Tribal UCC

The following tribal governments are or have enacted a tribal version of the UCC. When possible, attempts to confirm the accuracy of the following information were made. Some of the information is second hand information. The intent is that the following information will assist tribes considering adoption of a tribal UCC.

Crow Tribe, Crow Agency, Montana

The Crow Tribe is in final stages of enacting a tribal UCC. At this time, the tribe is considering Articles 1 and 9 for adoption. The tribe used the Model Tribal UCC developed by the University of Montana as a base code.

¹⁰ Machine Corp. and Machine Finance Corp. are fictitious corporations and in no way should the use of these names be construed as a commentary on any company that could be confused with these two fictitious corporations.

Hoopa Valley Tribe, Hoopa, California

The Hoopa Valley Tribe recently finished an extensive business code development project. The tribal council adopted the following titles into tribal law. Title 57 addresses the UCC provisions and is based on the Model Tribal UCC developed by the University of Montana. The Hoopa Valley Tribe maintains its own filing office and in case of default does not allow for self-help repossessions unless the debtor consents at the time of repossession.

- Title 50 - Tribal Comprehensive Business Policy Code
- Title 51 - Tribal Corporations and Entities Code
- Title 52 - Tribal Entities Code
- Title 53 - Tribal Business Corporations Code
- Title 54 - Tribal Non-Profit Corporations Code
- Title 55 - Tribal Business Partnership Code
- Title 56 - Tribal Business License and Standards Code
- Title 57 - Tribal Secured Transactions Code
- Title 58 - Federal Government Surplus and Excess Property Code (reserved)
- Title 59 - Tribal Small Business Incentive Program Code
- Title 60 - Tribal Business Miscellaneous Provisions Code.

Lummi Indian Nation, Bellingham, Washington

The Lummi Nation enacted a tribal UCC in December 1985. The Lummi Nation UCC codifies the Articles primarily by referencing the codification of the Washington State UCC except for specific provisions that are printed in the Lummi Nation Code. Section 2-316 of the Lummi UCC makes any contract in which the buyer waives his right to assert the implied warranty of merchantability void.

Mille Lacs Band, Onamia, Minnesota

The Mille Lacs Band has enacted a Uniform Commercial Code codified at Title 18 chapter 3 of the Mille Lacs Band code. Unfortunately, a copy of this portion of the code was not available for review.

Navajo Nation, Window Rock, Arizona

The Navajo Nation has enacted Articles 1, 2, 3, and 9 of the UCC. In general, the code is based on the UCC drafted by the NCCUSL. However, the tribe has modified it to meet their specific needs. The Navajo UCC includes a "Plain Language Comment" to assist in understanding the code. The Navajo UCC is codified at Title 5A, Section 1-9. The Navajo Nation does not allow for repossessions and the tribe maintains its own filing office.

Northern Cheyenne Tribe, Lame Deer, Montana

The Northern Cheyenne Tribal Counsel has enacted some type of a commercial code. Available information indicates that it is focused more on consumer protection issues rather than the UCC. The code was not available for review.

Rosebud Sioux Tribe, Rosebud, South Dakota

The Rosebud Sioux Tribe has adopted articles 1, 2 and 9 of the UCC. In general, the tribal UCC uses the UCC as the base code. It is codified at Title 14, Chapters 1, 2 and 9 of their code. Among other changes, the tribal UCC eliminates the "writing" requirement for enforcement of transactions over \$5,000. The code does not allow for self-help repossession unless there is consent at the time of repossession. The tribe has made the decision to use the state filing requirements for filing of any security interests.

Standing Rock Sioux Tribe, Fort Yates, North Dakota

The Standing Rock Sioux Tribe initiated the process of adopting a UCC. The best information available indicates they were considering Articles 1, 2, 3, 4 and 9. The information available was an early draft of the documents from 1986. Whether the tribe went on to adopt the article under consideration is unknown.

Exhibit A

Navajo Nation
Uniform Commercial Code

Exhibit B

University of Montana, Indian Law Clinic
Model Tribal Code
Secured Transactions

Exhibit C

Lumini Indian Nation
Uniform Commercial Code

**Best Practices
Commercial Code
Code #1: Navajo Uniform Commercial Code**

T i t l e 5 A

***Navajo Uniform Commercial
Code***

Note. The numbering of Navajo Uniform Commercial Code sections remains as close to the original Uniform Commercial Code as possible to maintain the principle of uniformity.

ARTICLE		SECTION
	Description of Articles	—
1.	General Provisions	1-101
2.	Sales	2-101
3.	Commercial Paper	3-101
4.	[Reserved]	4-101
5.	[Reserved]	5-101
6.	[Reserved]	6-101
7.	[Reserved]	7-101
8.	[Reserved]	8-101
9.	Secured Transactions; Sales of Accounts and Chattel Paper	9-101

Description of Articles

Article 1

Article 1 of the UCC is a general article which defines terms which are used throughout the UCC. (This section of the Navajo UCC has been substantially unchanged with the exception of the addition of §1-110 which excludes certain types of barter transactions from the Navajo UCC.)

Article 2

Article 2 of the UCC governs the sale of personal property ("goods"). Goods means all things which are moveable at the time of their identification in the contract of sale. Goods do not include: (i) intangibles, such as patent rights; (ii) real property, such as houses and land; or (iii) services such as legal or accounting work.

Article 2 codifies contract law as applied to the sales of personal property. It deals with the four basic questions of contract law: (1) Is there sufficient agreement to be a contract?; (2) What are the terms of the contract?; (3) Have the parties properly performed their duties under the contract?; and (4) What are the remedies for breach of those duties? Although Article 2 establishes some rules which apply to all sales contracts, for the most part the rules in Articles 2 apply only where the parties themselves have not made their intentions clear. For example, one rule which applies to all contracts under Article 2 is that contracts for goods valued at more than \$500 must be in writing to be enforceable (the Navajo UCC exempts certain barter transactions from this requirement under §1-110).

Article 2 governs the formation of the contract, such as when an offer to sell or purchase has been made, how to change such an offer and how to accept it. For example, if a business makes an offer by mail to sell shoes and does not specify how the offer can be accepted, the offer can be accepted by any "reasonable means". Thus, the offer could be accepted by mail, telegram or even a telephone call if those methods were found to be reasonable.

Article 2 governs certain of the terms in a contract if the parties have not agreed on that term or have failed to provide for a situation. These terms include price, time of delivery, the point at which the risk of loss passes, warranties concerning the goods and remedies for failure to perform. For example, if the parties fail to agree upon or forget to include the place and time of delivery for the goods, the UCC states that the goods will be delivered at the seller's place of business and the time allowed for delivery will be "a reasonable time" as determined by prior dealings between the parties and industry custom.

Article 2 also governs the performance of the obligations under the contract. The questions which arise in this area concern the seller's obligation to deliver "conforming" goods, the buyer's obligation to accept "conforming" goods, the buyer's right to inspect the goods and the buyer's obligation to pay for the goods. For example, unless the parties agree otherwise, the buyer is obligated to pay for the goods at the time and place the goods are received.

Finally, Article 2 sets out the remedies for either party upon the failure of the other party to adequately perform its obligations. The remedies must deal with situations, for the seller, in which the buyer refuses to accept delivery, cancels the order, refuses to pay or becomes insolvent. For the buyer, these situations include those in which the seller has failed to deliver, has delivered "non-conforming" goods, or has delivered goods which causes an injury. For example, unless otherwise agreed by the parties, if during the course of several shipments the

buyer refuses to make a payment when due: (i) the seller may withhold future delivery; (ii) may resell the remaining goods and sue to recover damages; or (iii) may sue to recover the full purchase price.

Article 3

Article 3 of the UCC deals with negotiable instruments, which include drafts, business and personal checks, certificates of deposits and promissory notes. Article 3 does not apply to money, documents of title or investment securities such as stocks and bonds. Commercial paper is frequently used as a cash substitute. Thus, a check could be used as a medium of payment instead of cash or a note may be used as a deferred methods of payment.

Article 3 sets out the obligations and liabilities of the persons who issue negotiable instruments and those who are involved in their transfer. In the case of a check, they would include the person who writes the check, his bank, the banks who process the check, the bank which finally accepts the check and the person or company to whom the check is written. The type of situations for which Article 3 sets out rules include those in which the check is drawn on insufficient funds or the signature is forged.

Article 9

Article 9 of the UCC governs the creation and enforcement of security interests. A security interest is an interest of a creditor in specific property ("collateral") owned by a debtor. A security interest permits the secured creditor after default to sell particular collateral and to apply the proceeds of its sales to the payment of his secured debt. In contrast to a secured creditor, an "unsecured" creditor (i.e., a creditor without a security interest) has only general rights against the property of the debtor *after* the secured creditors have been paid, and an unsecured creditor has no rights against any particular property of a debtor. The most common examples of a security interest arise from the purchase of a vehicle such as a car or tractor by an individual. However, security interests are very important for business in financing the acquisition of capital equipment, such as machines, as well as the purchasing of inventory and selling goods on credit.

Article 9 facilitates the purchase of goods by improving the chances of a creditor's being repaid and thus encouraging him to sell goods on credit or, in the case of a bank, to lend money. It represents a comprehensive scheme of regulation of security interests in personal property. Article 9 does not regulate transactions in land or improvements. The

Article establishes a central filing system so that creditors can determine the extent of the obligations of a debtor to other creditors and establishes procedures for a creditor to enforce a security interest in the case of a debtor's failure to pay. (The enactment of this article does not affect Navajo repossession law.)

A large part of Article 9 is concerned with establishing the priority of secured parties against each other or other creditors of the debtor. For example, if two creditors are depending on the same "collateral" of the debtor to "secure" their loans, then, generally, the first creditor to "file" a notice of his interest will have the right to have his loan repaid first from the sale of the collateral. However, Article 9 establishes special priority rules for secured parties who loan the money to "purchase" the collateral. This rule encourages the purchase of capital equipment by giving priority protection to loans or credit extended for the initial purchase of goods.

HISTORY

CJA-1-86, January 29, 1986.

Note. A "Background and Executive Summary of the Proposed NUCC" which included "The NUCC Development Process" and "The Purpose of the NUCC" was incorporated in CJA-1-86. However, for codification purposes, only the "Description of Articles 1, 2, 3 and 9" has been provided.

Article 1. General Provisions

Part 1. Short Title, Construction, Application, and Subject Matter of the Code

SECTION

- 1-101. Short title
- 1-102. Purposes; rules of construction; variation by agreement
- 1-103. Supplementary general principles of law applicable
- 1-104. Construction against implicit repeal
- 1-105. Territorial application of the Code; parties, power to choose applicable law
- 1-106. Remedies to be liberally administered
- 1-107. Waiver or renunciation of claim or right after breach
- 1-108. Severability
- 1-109. Section captions
- 1-110. Special limitations on the application of the Code
- 1-111. Administration of the NUCC; regulations

Part 2. General Definitions and Principles of Interpretation

- 1-201. General definitions
- 1-202. Prima facie evidence by third party documents
- 1-203. Obligation of good faith
- 1-204. Time; reasonable time; "seasonably"
- 1-205. Course of dealing and usage of trade
- 1-206. Statute of Frauds for kinds of personal property not otherwise covered
- 1-207. Performance or acceptance under reservation of rights
- 1-208. Option to accelerate at will
- 1-209. Subordinated obligations

Part 1. Short Title, Construction, Application, and Subject Matter of the Code

§ 1-101. Short title

This Navajo Uniform Commercial Code (5A NNC §1-101 *et seq.*) shall be known and may be cited as the "Navajo Uniform Commercial Code".

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. The Code makes no substantive change to this section except deleting references to Articles not adopted by the Navajo Nation.

Commentary. Each Article of the Code (except this article) may also be cited by its own short title. See §§2-101, 3-101 and 9-101.

SPECIAL PLAIN LANGUAGE COMMENT

This provision provides a method of naming parts of the Navajo Uniform Commercial Code (the "Code").

§ 1-102. Purposes; rules of construction; variation by agreement

A. The Code shall be liberally construed and applied to promote its underlying purposes and policies.

B. Underlying purposes and policies of the Code are:

1. To simplify, clarify and modernize the law governing commercial transactions;
2. To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and
3. To make uniform the law of commercial transactions throughout the Navajo Nation.

C. The effect of provisions of this Code may be varied by agreement, except as otherwise provided in this Code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Code may not be disclaimed by agreement, but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

D. The presence in certain provisions of this Code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (C).

E. In this Code unless the context otherwise requires:

1. Words in the singular number include the plural, and in the plural include the singular; and
2. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

F. The "Official Comments" and the "Special Plain Language Comments" are informational only and not binding on the courts, since they do not purport to be comprehensive statements of the meaning and effect of the statute to which they refer.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. The Code adds a new section, "Special Plain Language Comments", to facilitate use of the Code, but new subsection (F) makes clear that such comments and the Official Comments are not the law.

Commentary. 1. Subsections (A) and (B) are intended to make it clear that:

This Code is drawn to provide flexibility so that, since it is intended to be a semi-permanent piece of legislation, it will provide its own machinery for expansion of commercial practices. It is intended to make it possible for the law embodied in this Code to be developed by the courts in the light of unforeseen and new circumstances and practices. However, the proper construction of the Code requires that its interpretation and application be limited to its reason.

The Code should be construed in accordance with its underlying purposes and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in question, as well as of the Code as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.

2. Subsection (C) states affirmatively at the outset that freedom of contract is a principle of the Code: "the effect" of its provisions may be varied by "agreement". The meaning of the statute itself must be found in its text, including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. But the Code seeks to avoid the type of interference with evolutionary growth found in *Manhattan Co. v. Morgan*, 242 N.Y. 38, 150 N.E. 594 (1926). Thus, private parties cannot make an instrument negotiable within the meaning of Article 3 except as provided in §3-104; nor can they change the meaning of such terms as "bona fide purchaser", "holder in due course", or "due negotiation", as used in this Code. But an agreement can change the legal consequences which would otherwise flow from the provisions of the Code. "Agreement" here includes the effect given to course of dealing, usage of trade and course of performance by §§1-201, 1-205 and 2-208; the effect of an agreement on the rights of third parties is left to specific provisions of this Code and to supplementary principles applicable under the next section. The rights of third parties under §9-301 when a security interest is unperfected, for example, cannot be destroyed by a clause in the security agreement.

This principle of freedom of contract is subject to specific exceptions found elsewhere in the Code and to the general exception stated here. The specific exceptions vary in explicitness: the Statute of Frauds found in §2-201, for example, does not explicitly include oral waiver of the requirement of a writing, but a fair reading denies enforcement to such a waiver as part of the "contract" made unenforceable; §9-501(C), on the other hand, is quite explicit. Under the exception for "the obligations of good faith, diligence, reasonableness and care prescribed by this Code", provisions of the Code prescribing such obligations are not to be disclaimed. However, the section also recognizes the prevailing practice of having agreements set forth standards by which due diligence is measured and explicitly provides that, in the absence of a showing that the standards manifestly are unreasonable, the agreement controls. In this connection, §1-205 incorporating into the agreement prior course of dealing and usage's of trade is of particular importance.

3. Subsection (D) is intended to make it clear that, as a matter of drafting, words such as "unless otherwise agreed" have been used to avoid controversy as to

whether the subject matter of a particular Section does or does not fall within the exceptions to subsection (C), but absence of such words contains no negative implications since under subsection (C) the general and residual rule is that the effect of all provisions of the Code may be varied by agreement, subject to the prior comments.

4. Subsection (F) is intended to clarify the status of the "Special Plain Language Comments". These comments are only to assist the lay reader and are not to be used by parties to interpret the Code. The Official Comments have been adapted from the "Official Comments" of the Commissioners On Uniform State Laws to the corresponding sections of the Uniform Commercial Code as adopted by the States. The Official Comments to this Code do not attempt to describe the respects in which they depart from those other "Official Comments".

SPECIAL PLAIN LANGUAGE COMMENT

This section describes the basic principles of the Code and how it relates to other laws. The section also describes generally the extent to which the Code may be varied by agreement by the parties to a contract.

CROSS REFERENCES

NUCC §1-110.

§ 1-103. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this Code or other applicable Navajo law, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause shall supplement its provisions. The adoption of the Code does not preempt the consumer protection laws of the states which continue to apply to appropriate transactions pursuant to 7 NNC §204 to the extent that such laws would be applicable.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. Except as stated in this paragraph, this section is intended to have the same meaning and effect as §1-103 of the Uniform Commercial Code as adopted by the States. In addition, since the Uniform Sales Code was never adopted by the Navajo Nation, the Navajo Nation has adopted certain statutory provisions regarding capacity to contract. The final sentence has been added to clarify the status of consumer protection laws after the adoption of the Code.

Commentary. 1. This section indicates the continued applicability to commercial contracts of all supplemental bodies of law except insofar as they are explicitly displaced by this Code.

2. The general law of capacity will be limited by any Navajo statute or ordinance which limits the capacity of a non-complying person to sue. These limits are equally applicable to contracts of sale to which such person is a party.

3. The listing given in this section is merely illustrative; no listing could be exhaustive. Nor is the fact that in some sections particular circumstances have led

to express reference to other fields of law intended at any time to suggest the negation of the general application of the principles of this section.

4. Except as provided in §1-110, the Code does not preempt the consumer protection laws of the states which apply to a transaction pursuant to 7 NNC §204. However, the application of such state laws to transactions governed by this Code may be varied or preempted by subsequent Navajo legislation.

SPECIAL PLAIN LANGUAGE COMMENT

The Code does not settle all questions in commercial law. A person or a court must depend on other bodies of law to aid in the interpretation of its provisions.

§ 1-104. Construction against implicit repeal

This Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-104 of the Uniform Commercial Code as adopted by the States.

Commentary. This section is intended to express the policy that no Code which bears evidence of carefully considered permanent regulative intention should lightly be regarded as impliedly repealed by subsequent legislation. This Code, carefully integrated and intended as a uniform codification of permanent character covering an entire "field" of law, is to be regarded as particularly resistant to implied repeal.

SPECIAL PLAIN LANGUAGE COMMENT

The Code should not be considered repealed by later laws unless no other interpretation is possible.

§ 1-105. Territorial application of the Code: parties' power to choose applicable law

A. Except as provided hereafter in this section, when a transaction bears a reasonable relation to the Navajo Nation and also to another state or nation, the parties may agree that the law either of the Navajo Nation or of such state or nation shall govern their rights and duties. Failing such agreement, this Code applies to transactions bearing an appropriate relation to the Navajo Nation.

B. Where one of the following provisions of this Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified: Rights of creditors against sold goods. Section 2-402. Perfection provisions of the Article on Secured Transactions. Section 9-103.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-105 of the Uniform Commercial Code as adopted by the States, except that deletions were made to conform the Code to the legal status of the Navajo Nation.

Commentary. 1. Subsection (A) states affirmatively the right of the parties to a multi-jurisdiction transaction or a transaction involving foreign trade to choose their own law. That right is subject to the firm rules stated in the sections listed in subsection (B), and is limited to jurisdictions to which the transaction bears a "reasonable relation". In general, the test of "reasonable relation" is similar to that laid down by the Supreme Court in *Seeman v. Philadelphia Warehouse Co.*, 274 U.S. 403, 47 S.Ct. 626, 71 L.Ed. 1123 (1927). Ordinarily, the law chosen must be that of a jurisdiction where a significant enough portion of the making or performance of the contract is to occur or occurs. But an agreement as to choice of law may sometimes take effect as a short-hand expression of the intent of the parties as to matters governed by their agreement, even though the transaction has no significant contact with the jurisdiction chosen.

2. Where there is no agreement as to the governing law, the Code is applicable to any transaction having an "appropriate" relation to the Navajo Nation. Of course, the Code applies to any transaction which takes place in its entirety in the Navajo Nation. But the mere fact that suit is brought in the Navajo Nation does not make it appropriate to apply the substantive law of the Navajo Nation. Cases where a relation to the Navajo Nation is not "appropriate" include, for example, those where the parties have clearly contracted on the basis of some other law, as where the law of the place of contracting and the law of the place of contemplated performance are the same and are contrary to the law under the Code.

3. Where a transaction has significant contacts with the Navajo Nation and also with other jurisdictions, the question what relation is "appropriate" is left to judicial decision. In deciding that question, the court is not strictly bound by precedents established in other contexts. Thus, a conflict-of-laws decision refusing to apply a purely local statute or rule of law to a particular multi-jurisdiction transaction may not be valid precedent for refusal to apply the Code in an analogous situation. Application of the Code in such circumstances may be justified by its comprehensiveness, by the policy of uniformity, and by the fact that it is in large part a reformulation and restatement of the law merchant and of the understanding of a business community which transcends Navajo Nation, state and even national boundaries. (Compare *Global Commerce Corp. v. Clark-Babbitt Industries, Inc.*, 239 F.2d 716, 719 (2d Cir. 1956).) In particular, where a transaction is governed in large part by the Code, application of another law to some detail of performance because of an accident of geography may violate the commercial understanding of the parties.

4. Choice of law decisions often appropriately rest on policies of giving effect to agreements and of uniformity of result, regardless of where suit is brought. To the extent that such policies prevail, the relevant considerations are similar in such a court to those outlined above.

5. Subsection (B) spells out essential limitations on the parties' right to choose the applicable law. Especially in Article 9, parties taking a security interest or asked to extend credit which may be subject to a security interest must have sure ways to find out whether and where to file and where to look for possible existing filing.

6. Section 9-103 should be consulted as to the rules for perfection of security interests and the effects of perfection and non-perfection.

SPECIAL PLAIN LANGUAGE COMMENT

Persons who make a commercial agreement may choose the law of either the Navajo Nation or another state or nation if their agreement has sufficient connection to the place they choose. Where the parties do not choose which law to use, the Code will apply if the transaction has enough contacts with the Navajo Nation.

§ 1-106. Remedies to be liberally administered

A. The remedies provided by this Code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential nor special nor penal damages may be had except as specifically provided in this Code or by other rule of law.

B. Any right or obligation declared by this Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-106 of the Uniform Commercial Code as adopted by the States.

Commentary. Subsection (A) is intended to effect three things:

1. First, to negate the unduly narrow or technical interpretation of some remedial provisions of prior commercial statutes in other States by providing that the remedies in this Code are to be liberally administered to the end stated in the section. Second, to make it clear that compensatory damages are limited to compensation. They do not include consequential or special damages, or penal damages; and the Code elsewhere makes it clear that damages must be minimized. Cf. §§1-203, 2-706(A), and 2-217(B). The third purpose of subsection (A) is to reject any doctrine that damages must be calculable with mathematical accuracy. Compensatory damages are often at best approximate: they have to be proved with whatever definiteness and accuracy the facts permit, but no more. Cf. §2-204(C).

2. Under subsection (B) any right or obligation described in this Code is enforceable by court action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether specific performance or other equitable relief is available is determined not by this section but by specific provisions and by supplementary principles. Cf. §§1-103, 2-716.

3. "Consequential" or "special" damages and "penal" damages are not defined terms in the Code, but are used in the sense given them by the leading cases on the subject.

CROSS REFERENCES

NUCC §§1-103, 1-203, 2-204(C), 2-701, 2-706(A), 2-712(B), and 2-716.

DEFINITIONAL CROSS REFERENCES

"Action". Section 1-201.

"Aggrieved party". Section 1-201.

"Party". Section 1-201.

"Remedy". Section 1-201.

"Rights". Section 1-201.

SPECIAL PLAIN LANGUAGE COMMENT

Remedies for breaking an agreement or failing to perform a promise under the Code should be applied in a way which puts both parties, as much as possible, in the same position as they would have been if the agreement had not been breached. The Code also limits the ability to recover damages greater than the loss.

§ 1-107. Waiver or renunciation of claim or right after breach

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-107 of the Uniform Commercial Code as adopted by the States.

Commentary. This section makes consideration unnecessary to the effective renunciation or waiver of rights or claims arising out of an alleged breach of a commercial contract where such renunciation is in writing and signed and delivered by the aggrieved party. Its provisions, however, must be read in conjunction with the section imposing an obligation of good faith (§1-203). There may, of course, also be an oral renunciation or waiver sustained by consideration but subject to Statute of Frauds provisions and to the section of Article 2 on Sales dealing with the modification of signed writings (§2-209). As is made express in the latter Section, this Code fully recognizes the effectiveness of waiver and estoppel.

CROSS REFERENCES

NUCC §§1-203, 2-201 and 2-209. And see §2-719.

DEFINITIONAL CROSS REFERENCES

"Aggrieved party". Section 1-201.

"Rights". Section 1-201.

"Signed". Section 1-201.

"Written". Section 1-201.

§ 1-108. Severability

If any provision or clause of this Code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-108 of the Uniform Commercial Code adopted by the States.

Commentary. This is the model severability section recommended by the National Conference of Commissioners on Uniform State Laws for inclusion in all acts of extensive scope.

DEFINITIONAL CROSS REFERENCES

"Person". Section 1-201

§ 1-109. Section captions

Section captions are parts of the Code.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-109 of the Uniform Commercial Code adopted by the States.

Commentary. To make explicit in all jurisdictions that section captions are a part of the text of this Code and not mere surplusage.

§ 1-110. Special limitations on application of Code

Notwithstanding any other provision of this Code to the contrary, this Code shall not apply to any exclusively barter transaction in which the aggregate market value of all the goods and services involved in the transaction does not exceed \$10,000 at the time of the transaction. Such transactions shall be governed by the customs and usages of the Navajo Nation.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section does not appear in the Uniform Commercial Code as adopted by the States. It has been added in order to prevent the Code from interfering in the types of transactions found in the traditional Navajo economy. This section preempts state law, including state consumer protection statutes, for these transactions which will be governed solely by the customs and usages of the Navajo Nation. See §1-103, Comment 4.

SPECIAL PLAIN LANGUAGE COMMENT

This section exempts certain transactions in the traditional Navajo economy from the Code.

§ 1-111. Administration of the NUCC; regulations

A. The Department of Commerce within the Division of Economic Development, or its designated successor, shall be charged with the

administration of this Code. Said Department is authorized to employ such personnel as may be necessary for the administration of this Code.

B. The Department of Commerce within the Division of Economic Development, or its designated successor, is authorized to promulgate, upon the review and approval of the Attorney General and the Economic Development Committee of the Navajo Nation Council, regulations regarding those matters designated to be set by regulation herein. Provided, the Department shall set forth in such regulations the specific section herein to which they relate.

HISTORY

CD-61-86, December 11, 1986.

Note. Slightly reworded for purposes of statutory form.

Part 2. General Definitions and Principles of Interpretation

§ 1-201. General definitions

Subject to additional definitions contained in the subsequent Articles of this Code which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Code:

A. "Action" in the sense of a judicial proceeding including recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

B. "Aggrieved party" means a party entitled to resort to a remedy.

C. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Code (§§1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this Code, if applicable; otherwise by the law of contracts (§1-103). (Compare "Contract".)

D. "Bank" means any person engaged in the business of banking.

E. "Barter" means to exchange goods without exchanging money.

F. "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

G. "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air way bill.

H. "Branch" includes a separately incorporated foreign branch of a bank.

I. "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

J. "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale, but does not include a transfer in bulk or as security for, or in total or partial satisfaction of a money debt.

K. "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

L. "Contract" means the total legal obligation which results from the parties' agreement as affected by this Code and any other applicable rules of law. (Compare "Agreement".)

M. "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

N. "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

O. "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

P. "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be

issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

Q. "Fault" means wrongful act, omission or breach.

R. "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Code to the extent that under a particular agreement or document unlike units are treated as equivalents.

S. "Genuine" means free of forgery or counterfeiting.

T. "Good faith" means honesty in fact in the conduct or transaction concerned.

U. "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to him or his order or to bearer or in blank.

V. To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

W. "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

X. A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

Y. "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

Z. "Navajo Indian Country" means the territory defined in 7 NNC §254. Certain communities within the exterior boundaries of "Navajo Indian Country" are excepted from the definition of "Navajo Indian Country" if they are predominantly non-Indian in character. 7 NNC §254(D).

AA. A person has "notice" of a fact when:

1. He has actual knowledge of it; or
2. He has received a notice or notification of it; or
3. From all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Code.

BB. A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

1. It comes to his attention; or
2. It is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

CC. Notice, knowledge or a notice of notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

DD. "Organization" includes a corporation, government or governmental subdivision, agency or tribal enterprise, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

EE. "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Code.

FF. "Person" includes an individual or an organization (see §1-102).

GG. "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

HH. "Purchase" includes taking by sale, barter, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

I. "Purchaser" means a person who takes by purchase.

JJ. "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

KK. "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

LL. "Rights" includes remedies.

MM. "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding

shipment or delivery to the buyer (§2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under §2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (§2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (1) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (2) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

NN. "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

OO. "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

PP. "Surety" includes guarantor.

QQ. "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

RR. "Term" means that portion of an agreement which relates to a particular matter.

SS. "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes forgery.

TT. "Value". Except as otherwise provided with respect to negotiable instruments (§3-303), a person gives "value" for rights if he acquires them:

1. In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

2. As security for or in total or partial satisfaction of a pre-existing claim; or

3. By accepting delivery pursuant to a pre-existing contract for purchase; or

4. Generally, in return for any consideration sufficient to support a simple contract.

UU. "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

VV. "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. Except as stated in this paragraph, this section is intended to have the same meaning and effect as §1-201 of the Uniform Commercial Code as adopted by the States. The phrase "tribal enterprise" has been added to the definition of "Organization". The word "barter" has been added to the definition of "Purchase". The definitions of the words "Barter" and "Navajo Indian Country" have been added.

Commentary. A-B. [Omitted]

C. "Agreement". As used in this Code the word is intended to include full recognition of usage of trade, course of dealing, course of performance and the surrounding circumstances as effective parts thereof, and of any agreement permitted under the provisions of the Code to displace a stated rule of law.

D-I. [Omitted]

J. "Buyer in ordinary course of business". The definition clarifies the type of person protected. Its major significance lies in §2-403 and in the Articles on Secured Transactions (Article 9).

The reference to minerals and the like makes clear that a buyer in ordinary course buying minerals under the circumstances described takes free of a prior mortgage created by the sellers. See Comment to §9-103.

A pawnbroker cannot be a buyer in ordinary course of business because the person from whom he buys goods (or acquires ownership after foreclosing an initial pledge) is typically an ordinary user and not a person engaged in selling goods of that kind.

K. "Conspicuous". This is intended to indicate some of the methods of making a term attention-calling. But the test is whether attention can reasonably be expected to be called to it.

L-N. [Omitted]

O. "Delivery" refers to physical possession.

P. "Document of title". By making it explicit that the obligation of designation of a third party as "bailee" is essential to a document of title, this definition clearly rejects any such result which treats a conditional sales contract as a document of title. Also the definition is left open so that new types of documents may be included. It is unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of lading. Truck transport has already opened up problems which do not fit the patterns of practice resting upon the assumption that a draft can move through banking channels faster than the goods themselves can reach their destination. There lie ahead air transport and such probabilities as teletype transmission of what may some day be regarded commercially as "Documents of Title". The definition is stated in terms of the

function of the documents with the intention that any document which gains commercial recognition as accomplishing the desired result shall be included within its scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of which they are a part.

The goods must be "described", but the description may be by marks or labels and may be qualified in such a way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel checks and similar "tokens" of storage which identify stored goods only as those received in exchange for the token are not covered by this article.

The definition is broad enough to include an airway bill.

Q. [Omitted]

R. "Fungible". Fungibility of goods "by agreement" has been added for clarity and accuracy.

S. [Omitted]

T. "Good faith". "Good faith", whenever it is used in the Code, means at least what is here stated. In certain Articles, by specific provision, additional requirements are made applicable. See, e.g., §2-103(A)(2). To illustrate, in the Article on Sales, §2-103, good faith is expressly defined as including in the case of a merchant observance of reasonable commercial standards of fair dealing in the trade, so that throughout that Article wherever a merchant appears in the case an inquiry into his observance of such standards is necessary to determine his good faith.

U-W. [Omitted]

X. "Insolvent". The three tests of insolvency—"ceased to pay his debts in the ordinary course of business", "cannot pay his debts as they become due", and "insolvent within the meaning of the federal bankruptcy law"—are expressly set up as alternative tests and must be approached from a commercial standpoint.

Y. "Money". The test adopted is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected.

Z. "Navajo Indian Country". This definition was added to clarify the scope of the Code.

AA. "Notice". Under the definition a person has notice when he has received a notification of the fact in question. But by the last sentence the Code leaves open the time and circumstances under which notice or notification may cease to be effective. Therefore, such cases as *Graham v. White-Phillips Co.*, 296 U.S. 27, 56 S.Ct. 21, 80 L.Ed. 20 (1935), are not overruled.

BB. "Notifies". This is the word used when the essential fact is the proper dispatch of the notice, not its receipt. Compare "Send". When the essential fact is the other party's receipt of the notice, that is stated. The second sentence states when a notification is received.

CC. This makes clear that reason to know, knowledge, or a notification, although "received" for instance by a clerk in Department A of an organization, is effective for a transaction conducted in Department P only from the time when it was or should have been communicated to the individual conducting that transaction.

DD. "Organization". This is the definition of every type of entity or association, excluding an individual, acting as such. The definition of "organization" given here includes a number of entities or associations not specifically mentioned in prior definition of "person", namely, government, governmental subdivision (including tribal enterprise) or agency, business trust, trust and estate.

EE. "Party". Mention of a party includes, of course, a person acting through an agent. However, where an agent comes into opposition or contrast to his principal, particular account is taken of that situation.

FF. "Person". See Comment to definition of "Organization". The reference to §1-102 is to subsection (E) of that section.

GG. [Omitted]

HH. "Purchase" includes acquisition of property by barter. Barter transfers of property within the "traditional economy" of the Navajo People are purchases under this Code. See also §1-110.

II. [Omitted]

JJ. "Remedy". The purpose is to make it clear that both remedy and rights (as defined) include those remedial rights of "self help" which are among the most important bodies of rights under this Code, remedial rights being those to which an aggrieved party can resort on his own motion.

KK. [Omitted]

LL. "Rights". See Comment to "Remedy".

MM. "Security Interest". The present definition is elaborated, in view especially of the complete coverage of the subject in Article 9. Notice that in view of the Article the term includes the interest of certain outright buyers of certain kinds of property. The last two sentences give guidance on the question whether reservation of title under a particular lease of personal property is or is not a security interest.

NN. "Send". Compare "notifies".

OO. "Signed". The inclusion of authentication in the definition of "signed" is to make clear that as the term is used in this Code a complete signature is not necessary. Authentication may be printed, stamped or written; it may be by initials or by thumbprint. It may be on any part of the document and in appropriate cases may be found in a billhead or letterhead. No catalog of possible authentications can be complete and the court must use common sense and commercial experience in passing upon these matters. The question always is whether the symbol was executed or adopted by the party with present intention to authenticate the writing.

PP-RR. [Omitted]

SS. "Value". Commercial usage has tended to define value as any consideration sufficient to support a simple contract, including the taking of property in satisfaction of or as security for a pre-existing claim. Subsections (A), (B) and (D) in substance continue the definitions of "value" in such commercial usage. Subsection (C) makes explicit that "value" is also given in a third situation: where a buyer by taking delivery under a pre-existing contract converts a contingency into a fixed obligation.

This definition is not applicable to Article 3. A bank or other financing agency which in good faith makes advances against property held as collateral becomes a bona fide purchaser of that property even though provision may be made for charge-back in case of trouble. Checking credit is "immediately available" within the meaning of this section if the bank would be subject to an action for slander of credit in case checks drawn against the credit were dishonored, and when a charge-back is not discretionary with the bank, but may only be made when difficulties in collection arise in connection with the specific transaction involved.

TT. "Warehouse receipt". Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods are different persons.

SPECIAL PLAIN LANGUAGE COMMENT

When reading any sections in this Code, it is very important to check to see if any of the terms are defined and to read the definitions of those terms. Unless one reads the definitions, the full meaning of a statute may not be understood.

§ 1-202. Prima facie evidence by third party documents

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-202 of the Uniform Commercial Code as adopted by the States.

Commentary. 1. This section is designed to supply judicial recognition for documents which have traditionally been relied upon as trustworthy by participants in commercial dealings.

2. This section is concerned only with documents which have been given a preferred status by the parties themselves, who have required their procurement in the agreement, and for this reason the applicability of the section is limited to actions arising out of the contract which authorized or required the document. The documents listed are intended to be illustrative and not all inclusive.

3. The provisions of this section go no further than establishing the documents in question as prima facie evidence and leave to the court the ultimate determination of the facts where the accuracy or authenticity of the documents is questioned. In this connection the section calls for a commercially reasonable interpretation.

DEFINITIONAL CROSS REFERENCES

"Bill of lading". Section 1-201.

"Contract". Section 1-201.

"Genuine". Section 1-201.

SPECIAL PLAIN LANGUAGE COMMENT

Certain types of documents have special meaning and are presumed to be what they look like. Reliance on such documents is generally presumed to be reasonable.

§ 1-203. Obligation of good faith

Every contract or duty within this Code imposes an obligation of good faith in its performance or enforcement.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-203 of the Uniform Commercial Code as adopted by the States.

Commentary. This section sets forth a basic principle running throughout this Code. The principle involved is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties. Particular applications of this general principle appear in specific provisions of the Code such as the option to accelerate at will (§1-208), the right to cure a defective delivery of goods (§2-508), the duty of a merchant buyer who has rejected goods to effect salvage operations (§2-603), substituted performance (§2-614), and failure of presupposed conditions (§2-615). The concept, however, is broader than any of these illustrations and applies generally, as stated in this section, to the performance or enforcement of every contract or duty within this Code. It is further implemented by §1-205 on course of dealing and usage of trade.

It is to be noted that under the Sales Article definition of good faith (§2-103), contracts made by a merchant have incorporated in them the explicit standard not only of honesty in fact (§1-201), but also of observance by the merchant of reasonable commercial standards of fair dealing in the trade.

CROSS REFERENCES

Sections 1-201; 1-205; 1-208; 2-103; 2-508; 2-603; 2-614; 2-615.

DEFINITIONAL CROSS REFERENCES

"Contract". Section 1-201.

"Good faith". Section 1-201; 2-103.

§ 1-204. Time; reasonable time; "seasonably"

A. Whenever this Code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

B. What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

C. An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-204 of the Uniform Commercial Code as adopted by the States.

Commentary. 1. Subsection (A) recognizes that nothing is stronger evidence of a reasonable time than the fixing of such time by a fair agreement between the parties. However, provision is made for disregarding a clause which whether by inadvertence or overreaching fixes a time so unreasonable that it amounts to eliminating all remedy under the contract. The parties are not required to fix the most reasonable time but may fix any time which is not obviously unfair as judged by the time of contracting.

2. Under the section, the agreement which fixes the time need not be part of the main agreement, but may occur separately. Notice also that under the definition of "agreement" (§1-201) the circumstances of the transaction, including course of

dealing or usages of trade or course of performance may be material. On the question what is a reasonable time these matters will often be important.

DEFINITIONAL CROSS REFERENCES

"Agreement". Section 1-201.

§ 1-205. Course of dealing and usage of trade

A. A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

B. A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing, the interpretation of the writing is for the court.

C. A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

D. The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other, but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

E. An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

F. Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-205 of the Uniform Commercial Code as adopted by the States.

Commentary. 1. This Code rejects both the "lay-dictionary" and the "conveyancer's" reading of a commercial agreement. Instead, the meaning of the agreement of the parties is to be determined by the language used by them and by their action, read and interpreted in the light of commercial practices and other surrounding circumstances. The measure and background for interpretation are set by the commercial context, which may explain and supplement even the language of a formal or final writing.

2. Course of dealing under subsection (A) is restricted, literally, to a sequence of conduct between the parties previous to the agreement. However, the provisions of the Code on course of performance make it clear that a sequence of conduct after or under the agreement may have equivalent meaning. (§2-208.)

3. "Course of dealing" may enter the agreement either by explicit provisions of the agreement or by tacit recognition.

4. This Code deals with "usage of trade" as a factor in reading the commercial meaning of the agreement which the parties have made. The language used is to be interpreted as meaning what it may fairly be expected to mean to parties involved in the particular commercial transaction in a given locality or in a given vocation or trade. By adopting in this context the term "usage of trade" this Code expresses its intent to reject those cases which see evidence of "custom" as representing an effort to displace or negate "established rules of law". A distinction is to be drawn between mandatory rules of law such as the Statute of Frauds provisions of Article 2 on Sales whose very office is to control and restrict the actions of the parties, and which cannot be abrogated by agreement, or by a usage of trade, and those rules of law (such as those in Part 3 of Article 2 on Sales) which fill in points which the parties have not considered and in fact agreed upon. The latter rules hold "unless otherwise agreed" but yield to the contrary agreement of the parties. Part of the agreement of the parties to which such rules yield is to be sought for in the usages of trade which furnish the background and give particular meaning to the language used, and are the framework of common understanding controlling any general rules of law which hold only when there is no such understanding.

5. A usage of trade under subsection (B) must have the "regularity of observance" specified. The ancient English tests for "custom" are abandoned in this connection. Therefore, it is not required that a usage of trade be "ancient or immemorial", "universal" or the like. Under the requirement of subsection (B), full recognition is thus available for new usages and for usages currently observed by the great majority of decent dealers, even though dissidents ready to cut corners do not agree. There is room also for proper recognition of usage agreed upon by merchants in trade codes.

6. The policy of this Code controlling explicit unconscionable contracts and clauses (§§1-203, 2-302) applies to implicit clauses which rest on usage of trade and carries forward the policy underlying the ancient requirement that a custom or usage must be "reasonable". However, the emphasis is shifted. The very fact of commercial acceptance makes out a prima facie case that the usage is reasonable, and the burden is no longer on the usage to establish itself as being reasonable. But the anciently established policing of usage by the courts is continued to the extent necessary to cope with the situation arising if an unconscionable or dishonest practice should become standard.

7. Subsection (C), giving the prescribed effect to usages of which the parties "are or should be aware", reinforces the provision of subsection (B) requiring not universality but only the described "regularity of observance" of the practice or method. This subsection also reinforces the point of subsection (B) that such usages may be either general to trade or particular to a special branch of trade.

8. Although the terms in which this Code defines "agreement" include the elements of course of dealing and usage of trade, the fact that express reference is made in some sections to those elements is not to be construed as carrying a contrary intent or implication elsewhere. Compare §1-102(D).

9. In cases of a well established line of usage varying from the general rules of this Code where the precise amount of the variation has not been worked out into a single standard, the party relying on the usage is entitled, in any event, to the

minimum variation demonstrated. The whole is not to be disregarded because no particular line of detail has been established. In case a dominant pattern has been fairly evidenced, the party relying on the usage is entitled under this section to go to the trier of fact on the question of whether such dominant pattern has been incorporated into the agreement.

10. Subsection (F) is intended to insure that this Code's liberal recognition of the needs of commerce in regard to usage of trade shall not be made into an instrument of abuse.

CROSS REFERENCES

Point 1: Sections 1-203, 2-104 and 2-202.
 Point 2: Section 2-208.
 Point 4: Section 2-201 and Part 3 of Article 2.
 Point 6: Sections 1-203 and 2-302.
 Point 8: Sections 1-102 and 1-201.
 Point 9: Section 2-204(C).

DEFINITIONAL CROSS REFERENCES

"Agreement". Section 1-201.
 "Contract". Section 1-201.
 "Party". Section 1-201.
 "Term". Section 1-201.

SPECIAL PLAIN LANGUAGE COMMENT

This section recognizes that words in a contract acquire meaning from the way the parties have acted toward each other as well as by how people in that type of situation usually deal with each other.

§ 1-206. Statute of Frauds for kinds of personal property not otherwise covered

A. Except in the cases described in subsection (B) of this section, a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars (\$5,000) in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

B. Subsection (A) of this section does not apply to contracts for the sale of goods (§2-201) nor to security agreements (§9-203).

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-206 of the Uniform Commercial Code as adopted by the States.

Commentary. To fill the gap left by the Statute of Frauds provisions for goods (§2-201) and security interests (§9-203). The principal gap relates to sale of the "general intangibles" defined in Article 9 (§9-106) and to transactions excluded from Article 9 by §9-104. Typical are the sale of bilateral contracts, royalty rights or the like. The informality normal to such transactions is recognized by lifting the

limit for oral transactions to \$5,000. In such transactions there is often no standard of practice by which to judge, and values can rise or drop without warning; troubling abuses are avoided when the dollar limit is exceeded by requiring that the subject matter be reasonably identified in a signed writing which indicates that a contract for sale has been made at a defined or stated price.

DEFINITIONAL CROSS REFERENCES

"Action". Section 1-201.
"Agreement". Section 1-201.
"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Goods". Section 2-105.
"Party". Section 1-201.
"Sale". Section 2-106.
"Signed". Section 1-201.
"Writing". Section 1-201.

§ 1-207. Performance or acceptance under reservation of rights

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-207 of the Uniform Commercial Code as adopted by the States.

Commentary. 1. This section provides machinery for the continuation of performance along the lines contemplated by the contract despite a pending dispute, by adopting the mercantile device of going ahead with delivery, acceptance, or payment "without prejudice", "under protest", "under reserve", "with reservation of all our rights", and the like. All of these phrases completely reserve all rights within the meaning of this section. The section therefore contemplates that limited as well as general reservations and acceptance by a party may be made "subject to satisfaction of our purchaser", "subject to acceptance by our customers", or the like.

2. This section does not add any new requirement of language of reservation where not already required by law, but merely provides a specific measure on which a party can rely as he makes or concurs in any interim adjustment in the course of performance. It does not affect or impair the provisions of this Code such as those under which the buyer's remedies for defect survive acceptance without being expressly claimed if notice of the defects is given within a reasonable time. Nor does it disturb the policy of those cases which restrict the effect of a waiver of a defect to reasonable limits under the circumstances, even though no such reservation is expressed.

The section is not addressed to the creation or loss of remedies in the ordinary course of performance but rather to a method of procedure where one party is claiming as of right something which the other feels to be unwarranted.

CROSS REFERENCES

Section 2-607.

DEFINITIONAL CROSS REFERENCES

"Party". Section 1-201.

"Rights". Section 1-201.

SPECIAL PLAIN LANGUAGE COMMENT

If there is a dispute about a deal, the person who wants to object will not lose the right to do so, if he states that he makes payment or otherwise performs "without prejudice" or "under protest".

§ 1-208. Option to accelerate at will

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-208 of the Uniform Commercial Code as adopted by the States.

Commentary. The increased use of acceleration clauses either in the case of sales on credit or in time paper or in security transactions has led to some confusion in the cases as to the effect to be given to a clause which seemingly grants the power of an acceleration at the whim and caprice of the party. This section is intended to make clear that despite language which can be so construed and which further might be held to make the agreement void as against public policy or to make the contract illusory or too indefinite for enforcement, the clause means that the option is to be exercised only in the good faith belief that the prospect of payment or performance is impaired.

Obviously, this section has no application to demand instruments or obligations whose very nature permits call at any time with or without reason. This section applies only to an agreement or to paper which in the first instance is payable at a future date.

DEFINITIONAL CROSS REFERENCES

"Burden of establishing". Section 1-201.

"Good faith". Section 1-201.

"Party". Section 1-201.

"Term". Section 1-201.

SPECIAL PLAIN LANGUAGE COMMENT

Some contract forms provide that one party has the power to demand that the other act or pay quicker than normally contemplated, relying upon words like

those used in the statute. This section somewhat limits that right to avoid abuse of that power.

§ 1-209. Subordinated obligations

An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §1-209 of the Uniform Commercial Code as adopted by the States.

Commentary. 1. Billions of dollars of subordinated debt are held by the public and by institutional investors. Commonly, the subordinated debt is subordinated on issue or acquisition and is evidenced by an investment security or by a negotiable or non-negotiable note. Debt is also sometimes subordinated after it arises, either by agreement between the subordinating creditor and the debtor, by agreement between two creditors of the same debtor, or by agreement of all three parties. The subordinated creditor may be a stockholder or other "insider" interested in the common debtor; the subordinated debt may consist of accounts or other rights to payment not evidenced by any instrument. All such cases are included in the terms "subordinated obligation", "subordination", and "subordinated creditor".

2. Subordination agreements are enforceable between the parties as contracts; and in the bankruptcy of the common debtor dividends otherwise payable to the subordinated creditor are turned over to the superior creditor. This "turn-over" practice has on occasion been explained in terms of "equitable lien", "equitable assignment", or "constructive trust", but whatever the label the practice is essentially an equitable remedy and does not mean that there is a transaction "intended to create a security interest", a "sale of accounts, contract rights or chattel paper", or a "security interest credit by contract", within the meaning of §9-102. On the other hand, nothing in this section prevents one creditor from assigning his rights to another creditor of the same debtor in such a way as to create a security interest within Article 9, where the parties so intend.

3. The last sentence of this section is intended to negate any implication that the section changes the law. It is intended to be declaratory of pre-existing law. Both the history and the text of Article 9 make it clear that it was not intended to cover subordination agreements. The provisions of §9-203 for signature by the "debtor" would be entirely unworkable if read to require signature by public holders of subordinated investment securities. The priorities, filing provisions and remedies on default provided by Article 9 would also be largely inappropriate in many situations. The precautionary language of §9-316 preserving subordination of priority by agreement between secured parties points to the conclusion that

similar arrangements among unsecured lenders are not covered unless otherwise within the scope of the Article.

4. The enforcement of subordination agreements is largely left to supplementary principles under §1-103. If the fact of subordination is noted on a negotiable instrument, a holder under §§3-302 and 3-306 is subject to the term because notice precludes him from taking free of the subordination. Section 3-302(C)(1) and 3-306 severely limit the rights of levying creditors of a subordinated creditor in such cases.

DEFINITIONAL CROSS REFERENCES

"Agreement". Sections 1-201.

"Creditor". Section 1-201.

"Debtor". Section 9-105.

"Person". Section 1-201.

"Rights". Section 1-201.

"Security interest". Section 1-201.

SPECIAL PLAIN LANGUAGE COMMENT

This section recognizes that two or more creditors may agree among themselves who should be paid first, who has first rights to collateral, and who should have the greatest risk of loss if the debtor is unable to pay all of them. Such agreements are not subject to regulation under Article 9 as security interests.

Article 2. Sales

Part 1. Short Title, General Construction and Subject Matter

SECTION

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Part 1. Short Title, General Construction, and Subject Matter

§ 2-101. Short title

This article shall be known and may be cited as the Navajo Uniform Commercial Code—Sales.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §2-101 of the Uniform Commercial Code adopted by the States.

Commentary. The arrangement of the present Article is in terms of contract for sale and the various steps of its performance. The legal consequences are stated as following directly from the contract and action taken under it without resorting to the idea of when property or title passed or was to pass as being the determining factor. The purpose is to avoid making practical issues between practical men and women turn upon the location of an intangible something, the passing of which no man or woman can prove by evidence and to substitute for such abstractions proof of words and actions of a tangible character.

§ 2-102. Scope; certain security and other transactions excluded from this article

Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §2-102 of the Uniform Commercial Code adopted by the States. Certain federal and Navajo statutes regulating trade with Indians should be reviewed to determine their applicability. Transactions with Indians or Indian tribes may also require approval under certain federal and tribal statutes. See 25 U.S.C. §§81, 196, 261, 396 *et seq.* (1976); 25 C.F.R. §162 (1984); 7 NNC §204; and titles 3, 5, 18, and 24 of the Navajo Nation Code. "Security transaction" is used in the same sense as in the Article on Secured Transactions (Article 9).

CROSS REFERENCES

NUCC Article 9.

DEFINITIONAL CROSS REFERENCES

"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Present sale". Section 2-106.
"Sale". Section 2-106.

SPECIAL PLAIN LANGUAGE COMMENT

This section limits the scope of this article to transactions in "goods" (see §2-105 for the definition of "goods") and distinguishes it from Article 9 which governs "secured transactions" or contracts for services. It also clearly states that special statutes relating to consumers and other groups are not repealed by the Code although the Code may effect such transactions governed by such statutes in areas not regulated by specific statutes.

§ 2-103. Definitions and index of definitions

- A. In this article unless the context otherwise requires:
1. "Buyer" means a person who buys or contracts to buy goods.
 2. "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
 3. "Receipt" of goods means taking physical possession of them.
 4. "Seller" means a person who sells or contracts to sell goods.
 5. "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

6. "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

B. Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

- "Acceptance". Section 2-606.
- "Banker's credit". Section 2-325.
- "Between merchants". Section 2-104.
- "Cancellation". Section 2-106(D).
- "Commercial unit". Section 2-105.
- "Confirmed credit". Section 2-325.
- "Conforming to contract". Section 2-106.
- "Contract for sale". Section 2-106.
- "Cover". Section 2-712.
- "Entrusting". Section 2-403.
- "Financing agency". Section 2-104.
- "Future goods". Section 2-105.
- "Goods". Section 2-105.
- "Identification". Section 2-501.
- "Installment contract". Section 2-612.
- "Letter of Credit". Section 2-325.
- "Lot". Section 2-105.
- "Merchant". Section 2-104.
- "Overseas". Section 2-323.
- "Person in position of seller". Section 2-707.
- "Present sale". Section 2-106.
- "Sale". Section 2-106.
- "Sale on approval". Section 2-326.
- "Sale or return". Section 2-326.
- "Termination". Section 2-106.

C. The following definitions in other Articles apply to this article:

- "Check". Section 3-104.
- "Consumer goods". Section 9-109.
- "Dishonor". Section 3-507.
- "Draft". Section 3-104.

D. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. The Definitions of "consignee" and "consignor" have been added to the definitions in this section since they are used in Article 2, but normally defined in Article 7 of the Uniform Commercial Code which has not been adopted by the Navajo Nation.

Commentary. 1. The phrase "any legal successor in interest of such person" is not included in the definition of buyer and seller since §2-210 of this article, which limits some types of delegation of performance on assignment of a sales contract, makes it clear that not every such successor can be safely included in the definition. In every ordinary case, however, such successors are as of course included.

2. "Receipt" must be distinguished from delivery particularly in regard to the problems arising out of shipment of goods, whether or not the contract calls for making delivery by way of documents of title, since the seller may frequently fulfill his obligations to "deliver" even though the buyer may never "receive" the goods. Delivery with respect to documents of title is defined in Article 1 and requires transfer of physical delivery. Otherwise the many divergent incidents of delivery are handled incident by incident.

CROSS REFERENCES

Point 1: See §2-210 and Comment thereon.

Point 2: Section 1-201.

DEFINITIONAL CROSS REFERENCES

"Person". Section 1-201.

§ 2-104. Definitions: "merchant"; "between merchants"; "financing agency"

A. "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. The definition of merchant shall not include individual artists.

B. "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (§2-707).

C. "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §2-104 of the Uniform Commercial Code adopted by the States except that individual artists are not considered merchants. The official comments establish standards for determining whether a farmer or rancher is a merchant.

Commentary. 1. This article assumes that transactions between professionals in a given field require special and clear rules which may not apply to a casual or inexperienced seller or buyer. It thus adopts a policy of expressly stating rules applicable "between merchants" and "as against a merchant", wherever they are needed instead of making them depend upon the circumstances of each case as in the statutes cited above. This section lays the foundation of this policy by defining those who are to be regarded as professionals or "merchants" and by stating when a transaction is deemed to be "between merchants".

2. The term "merchant" as defined here roots in the "law merchant" concept of a professional in business. The professional status under the definition may be based upon specialized knowledge as to the goods, specialized knowledge as to business practices, or specialized knowledge as to both and which kind of specialized knowledge may be sufficient to establish the merchant status is indicated by the nature of the provisions.

The special provisions as to merchants appear only in this article and they are of three kinds. Sections 2-201(B), 2-205, 2-207 and 2-209 dealing with the Statute of Frauds, firm offers, confirmatory memoranda and modification rest on normal business practices which are or ought to be typical of and familiar to any person in business. For purposes of these sections almost every person in business would, therefore, be deemed to be a "merchant" under the language, "who . . . by his occupation holds himself out as having knowledge or skill peculiar to the practices . . . involved in the transaction . . .", since the practices involved in the transaction are non-specialized business practices such as answering mail. In this type of provision, banks or even universities, for example, well may be "merchants". But even these sections only apply to a merchant in his mercantile capacity; a lawyer or bank president buying fishing tackle for his own use is not a merchant.

On the other hand, in §2-314 on the warranty of merchantability, such warranty is implied only "if the seller is a merchant with respect to goods of that kind". Obviously this qualification restricts the implied warranty to a much smaller group than everyone who is engaged in business and requires a professional status as to particular kinds of goods. Similarly in §2-312(C) the warranty that the goods are delivered free of any rightful claim of a third party is limited to those who are dealing in the goods of that kind. The exception in §2-402(B) for retention of possession by a merchant-seller falls in the same class; as does §2-403(B) on entrusting of possession to a merchant "who deals in goods of that kind".

A third group of sections includes §2-103(A)(2), which provides that in the case of a merchant, "good faith" includes observance of reasonable commercial standards of fair dealing in the trade; §§2-327(A)(3), 2-603 and 2-605, dealing with responsibilities of merchant buyers to follow seller's instructions, etc.; 2-509 on risk of loss, and 2-609 on adequate assurance of performance. This group of sections applies to persons who are merchants under either the "practices" or the "goods" aspect of the definition of merchant.

3. Individual artists generally do not have the familiarity with business customs such as firm offer (§2-205) and confirmatory memorandum (§2-207) which is assumed by §2-104(A). Accordingly, individual artists are not considered merchants.

The determination of whether a farmer (or a rancher) is a merchant under the Code should consider the following factors: quantity and dollar amount of the transactions, the frequency and length of time which the farmer (or rancher) had engaged in selling the crops (or livestock) in the transaction, whether it was his principal crop (or type of livestock), and the farmer's (or rancher's) familiarity with the market in which the crop (or livestock) is sold. A farmer (or rancher) shall not be considered a merchant under the Code if the transaction involves the isolated sale of his own crops (or livestock). See *Fear Ranches, Inc. v. Berry*, 470 F.2d 905 (10th Cir. 1972).

4. The "or to whom such knowledge or skill may be attributed by his employment of an agent or broker . . ." clause of the definition of merchant means that even persons such as universities, for example, can come within the definition of merchant if they have regular purchasing departments or business personnel who are familiar with business practices and who are equipped to take any action required.

CROSS REFERENCES

Point 1: See Sections 1-102 and 1-203.

Point 2: See Sections 2-314, 2-315 and 2-320 to 2-325, of this article, and Article 9.

DEFINITIONAL CROSS REFERENCES

"Bank". Section 1-201.

"Buyer". Section 2-103.

"Contract for sale". Section 2-106.

"Document of title". Section 1-201.

"Draft". Section 3-104.

"Goods". Section 2-105.

"Person". Section 1-201.

"Purchase". Section 1-201.

"Seller". Section 2-103.

SPECIAL PLAIN LANGUAGE COMMENT

This section defines merchants as those who are either: (i) familiar with general business practices; or (ii) familiar with a particular good because they deal in it regularly. Merchants are generally held to higher standards of conduct. A person's status as a merchant depends on the type of transaction and the goods involved.

§ 2-105. Definitions: "transferability"; "goods"; "future goods"; "lot"; "commercial unit"

A. "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (§2-107).

B. Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

C. There may be a sale of a part interest in existing identified goods.

D. An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

E. "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

F. "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §2-105 of the Uniform Commercial Code adopted by the States. In certain circumstances goods attached to the land may be considered trust property and thus subject to certain trusteeship obligations of the federal government.

Commentary. 1. The definition of "goods" is based on the concept of movability. It is not intended to deal with things which are not fairly identifiable as moveables before the contract is performed.

Growing crops are included within the definition of goods since they are frequently intended for sale. The young of animals are also included expressly in this definition since they, too, are frequently intended for sale and may be contracted for before birth. The period of gestation of domestic animals is such that the provisions of the section of identification can apply as in the case of crops to be planted. The reason for this definition also leads to the inclusion of a wool crop or the like as "goods" subject to identification under this article.

The exclusion of "money in which the price is to be paid" from the definition of goods does not mean that foreign currency which is included in the definition of money may not be the subject matter of a sales transaction. Goods is intended to cover the sale of money when money is being treated as a commodity but not to include it when money is the medium of payment.

As to contracts to sell timber, minerals, or structures to be removed from the land §2-107(A) controls.

The use of the word "fixtures" is avoided in view of the diversity of definitions of that term. This article in including within its scope "things attached to realty" adds the further test that they must be capable of severance without material harm thereto. As between the parties any identified things which fall within that definition become "goods" upon the making of the contract for sale. "Things attached to realty" may be considered, in some instances, trust property and thus subject to

certain limitations on transfer by the federal government. See 25 U.S.C. §§81, 196, 261, 396, 406, 407, 635, 2101 (1984) See also F. Cohen, *Handbook of Federal Indian Law* (1982).

"Investment securities" are expressly excluded from the coverage of this article. It is not intended by this exclusion, however, to prevent the application of a particular section of this article by analogy to securities when the reason of that section makes such application sensible and the situation is not governed by Article 8 of the Uniform Commercial Code (Article 8 of the Uniform Commercial Code has not been adopted by the Navajo Nation); the rights of parties which would be governed under Article 8 are governed by Navajo law pursuant to 7 NNC §204.

2. References to the fact that a contract for sale can extend to future or contingent goods and that ownership in common follows the sale of a part interest have been omitted here as obvious without need for expression; hence no inference to negate these principles should be drawn from their omission.

3. Subsection (D) does not touch the question of how far an appropriation of a bulk of fungible goods may or may not satisfy the contract for sale.

4. Subsections (E) and (F) on "lot" and "commercial unit" are introduced to aid in the phrasing of later Sections.

5. The question of when an identification of goods takes place is determined by the provisions of §2-501 and all that this section says is what kinds of goods may be the subject of a sale.

CROSS REFERENCES

Point 1: Section 2-107, 2-201 and 2-501.

Point 5: Section 2-501.

See also §1-201.

DEFINITIONAL CROSS REFERENCES

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Contract for sale". Section 2-106.

"Fungible". Section 1-201.

"Money". Section 1-201.

"Present sale". Section 2-106.

"Sale". Section 2-106.

"Seller". Section 2-103.

SPECIAL PLAIN LANGUAGE COMMENT

This section defines "goods", which are the subject of Article 2. The definition is based on the "movability" of the goods. The Code distinguishes between goods presently in existence and identifiable and those either not presently in existence or not identifiable; the latter, "future" goods, are not insurable and may not be claimed by the buyer upon the seller's insolvency.

§ 2-106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming to contract"; "termination"; "cancellation"

A. In this article, unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the

passing of title from the seller to the buyer for a price (§2-401). A "present sale" means a sale which is accomplished by the making of the contract.

B. Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

C. "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

D. "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §2-106 of the Uniform Commercial Code adopted by the States.

Commentary. 1. Subsection (A): "Contract for sale" is used as a general concept throughout this article, but the rights of the parties do not vary according to whether the transaction is a present sale or a contract to sell unless the Article expressly so provides. See §2-501.

2. Subsection (B): It is in general intended to continue the policy of requiring exact performance by the seller of his obligations as a condition to his right to require acceptance. However, the seller is in part safeguarded against surprise as a result of sudden technicality on the buyer's part by the provisions of §2-508 on seller's cure of improper tender or delivery. Moreover usage of trade frequently permits commercial leeway in performance and the language of the agreement itself must be read in the light of such custom or usage and also, prior course of dealing, and in a long term contract, the course of performance.

3. Subsections (C) and (D): These subsections are intended to make clear the distinction carried forward throughout this article between termination and cancellation.

CROSS REFERENCES

Point 2: Sections 1-203, 1-205, 2-208 and 2-508.

DEFINITIONAL CROSS REFERENCES

"Agreement". Section 1-201.

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Goods". Section 2-105.

"Party". Section 1-201.

"Remedy". Section 1-201.

"Rights". Section 1-201.

"Seller". Section 2-103.

SPECIAL PLAIN LANGUAGE COMMENT

The definition of agreement and contract limit the application of Article 2 to contracts involving goods, rather than all contracts. The next definition, "conforming goods", expresses the rule that sellers must provide the goods exactly as ordered (although certain exceptions are later found in the Code).

§ 2-107. Goods to be severed from realty: recording

A. A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller but until severance, a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

B. A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (A) or of timber to be cut is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

C. The provisions of this section are subject to the trust responsibilities of the federal government. The provisions of this section are also subject to any third party rights provided by the law relating to realty records. The contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Change. This section is intended to have the same meaning and effect as §2-107 of the Uniform Commercial Code adopted by the States. Contracts relating to this type of goods may require approval by the federal government as part its trust responsibilities.

Commentary. 1. Notice that subsection (A) applies only if the minerals or structures "are to be severed by the seller". If the buyer is to sever, such transactions are considered contracts affecting land and all problems of the Statute of Frauds and of land rights apply to them. Therefore, the Statute of Frauds Section of this article does not apply to such contracts though they must conform to the Statute of Frauds affecting the transfer of interests in land.

2. "Things attached" to the realty which can be severed without material harm are goods within this article regardless of who is to effect the severance. The word "fixtures" has been avoided because of the diverse definitions of this term, the test of "severance without material harm" being substituted. In some cases fixtures may be considered trust property and, thus, subject to the trust obligation and regulations of the federal government. The federal government may have to approve certain contracts relating to such goods. (For minerals see 25 U.S.C. §§396-400a,

635 and 2101 *et seq.*, and 18 NNC §1 *et seq.*; for timber see 25 U.S.C. §§196, 406 and 407) See generally 25 U.S.C. §§81,261 (1976) See also §9-313 and F. Cohen, *Handbook of Federal Indian Law* (1982).

The provision in subsection (C) for recording such contracts is within the purview of this article since it is a means of preserving the buyer's rights under the contract of sale.

3. The security phases of things attached to or to become attached to realty are dealt with in the Article on Secured Transactions (Article 9) and it is to be noted that the definition of goods in that Article differs from the definition of goods in this article.

However, both Articles treat as goods growing crops and also timber to be cut under a contract of severance.

CROSS REFERENCES

Point 1: Section 2-201.

Point 2: Section 2-105.

Point 3: Articles 9 and 9-105.

DEFINITIONAL CROSS REFERENCES

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Contract for sale". Section 2-106.

"Goods". Section 2-105.

"Party". Section 1-201.

"Present sale". Section 2-106.

"Rights". Section 1-201.

"Seller". Section 2-103.

SPECIAL PLAIN LANGUAGE COMMENT

This section provides that only minerals severed by the seller are subject to this article, but that timber and growing crops are subject to this article whether severed by the seller or buyer.

Part 2. Form, Formation and Readjustment of Contract

§ 2-201. Formal requirements; Statute of Frauds

A. Except as otherwise provided in this section a contract for sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

B. Between merchants if within reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the

requirements of subsection (A) against such party unless written notice of objection to its contents is given within 10 days after it is received.

C. A contract which does not satisfy the requirements of subsection (A) but which is valid in other respects is enforceable:

1. If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

2. If the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

3. With respect to goods for which payment has been made and accepted or which have been received and accepted (§2-606).

D. This section does not apply to certain types of transactions involving solely barter (see §1-110).

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §2-201 of the Uniform Commercial Code adopted by the States.

Commentary. 1. The required writing need not contain all the material terms of the contract and such material terms as are stated need not be precisely stated. All that is required is that the writing afford a basis for believing that the offered oral evidence rests on a real transaction. It may be written in lead pencil on a scratch pad. It need not indicate which party is the buyer and which the seller. The only term which must appear is the quantity term which need not be accurately stated but recovery is limited to the amount stated. The price, time and place of payment or delivery, the general quality of the goods, or any particular warranties may all be omitted.

Special emphasis must be placed on the permissibility of omitting the price term in view of the insistence of some courts on the express inclusion of this term even where the parties have contracted on the basis of a published price list. In many valid contracts for sale the parties do not mention the price in express terms, the buyer being bound to pay and the seller to accept a reasonable price which the trier of fact may well be trusted to determine. Again, frequently the price is not mentioned since the parties have based their agreement on a price list or catalogue known to both of them and this list serves as an efficient safeguard against perjury. Finally, "market" prices and valuations that are current in the vicinity constitute a similar check. Thus if the price is not stated in the memorandum it can normally be supplied without danger of fraud. Of course if the "price" consists of goods rather than money the quantity of goods must be stated.

Only three definite and invariable requirements as to the memorandum are made by this subsection. First, it must evidence a contract for the sale of goods;

second, it must be "signed", a word which includes any authentication which identifies that party to be charged; and third, it must specify a quantity.

2. "Partial performance" as a substitute for the required memorandum can validate the contract only for the goods which have been accepted or for which payment has been made and accepted.

Receipt and acceptance either of goods or of the price constitutes an unambiguous overt admission by both parties that a contract actually exists. If the court can make a just apportionment, therefore, the agreed price of any goods actually delivered can be recovered without a writing or, if the price has been paid, the seller can be forced to deliver an apportionable part of the goods. The overt actions of the parties make admissible evidence of the other terms of the contract necessary to a just apportionment. This is true even though the actions of the parties are not in themselves inconsistent with a different transaction such as a consignment for resale or a mere loan of money.

Part performance by the buyer requires the delivery of something by him that is accepted by the seller as such performance. Thus, part payment may be made by money or check, accepted by the seller. If the agreed price consists of goods or services, then they must also have been delivered and accepted.

3. Between merchants, failure to answer a written confirmation of a contract within ten days of receipt is tantamount to a writing under subsection (B) and is sufficient against both parties under subsection (A). The only effect, however, is to take away from the party who fails to answer the defense of the Statute of Frauds; the burden of persuading the trier of fact that a contract was in fact made orally prior to the written confirmation is unaffected. Compare the effect of a failure to reply under §2-207.

4. Failure to satisfy the requirements of this section does not render the contract void for all purposes, but merely prevents it from being judicially enforced in favor of a party to the contract. For example, a buyer who takes possession of goods as provided in an oral contract which the seller has not meanwhile repudiated is not a trespasser. Nor would the Statute of Frauds provisions of this section be a defense to a third person who wrongfully induces a party to refuse to perform an oral contract, even though the injured party cannot maintain an action for damages against the party so refusing to perform.

5. The requirement of "signing" is discussed in the comment to §1-201.

6. It is not necessary that the writing be delivered to anybody. It need not be signed or authenticated by both parties but it is, of course, not sufficient against one who has not signed it. Prior to a dispute no one can determine which party's signing of the memorandum may be necessary but from the time of contracting each party should be aware that to him it is signing by the other which is important.

7. If the making of a contract is admitted in court, either in a written pleading, by stipulation or by oral statement before the court, no additional writing is necessary for protection against fraud. Under this section it is no longer possible to admit the contract in court and still treat the statute as a defense. However, the contract is not thus conclusively established. The admission so made by a party is itself evidential against him of the truth of the facts so admitted and of nothing more; as against the other party, it is not evidential at all.

8. Most transactions within the traditional Navajo culture are based on oral agreements. To maintain this tradition, certain barter transactions are exempted from the Code.

CROSS REFERENCES

See Sections 1-201, 2-202, 2-207, 2-209 and 2-304.

DEFINITIONAL CROSS REFERENCES

- "Action". Section 1-201.
- "Between merchants". Section 2-104.
- "Buyer". Section 2-103.
- "Contract". Section 1-201.
- "Contract for sale". Section 2-106.
- "Goods". Section 2-105.
- "Notice". Section 1-201.
- "Party". Section 1-201.
- "Reasonable time". Section 1-204.
- "Sale". Section 2-106.
- "Seller". Section 2-103.

SPECIAL PLAIN LANGUAGE COMMENT

This section is meant to reduce disputes over the existence of oral agreements by requiring that certain types of agreements be in writing to be enforceable in court. All contracts for the sale of goods with a price greater than \$500 must have three characteristics to be enforceable in court: (1) they must be in writing, (2) they must be signed by the party against whom enforcement is sought, and (3) they must include the quantity of goods sold. The section also sets up a special rule to confirm transactions between merchants and two exceptions to the requirement of writing: (1) where there is partial performance of the contract and, (2) where goods have been "specially manufactured". Because of the oral traditions of the Navajo Nation, transactions involving only barter are not subject to this restriction.

§ 2-202. Final written expression: parol or extrinsic evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

A. By course of dealing or usage of trade (§1-205) or by course of performance (§2-208); and

B. By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §2-202 of the Uniform Commercial Code adopted by the States.

Commentary. 1. This section definitely rejects:

A. Any assumption that because a writing has been worked out which is final on some matters, it is to be taken as including all the matters agreed upon;

B. The premise that the language used has the meaning attributable to such language by rules of construction existing in the law rather than the meaning which arises out of the commercial context in which it was used; and

C. The requirement that a condition precedent to the admissibility of the type of evidence specified in subsection (A) is an original determination by the court that the language used is ambiguous.

2. Subsection (A) makes admissible evidence of course of dealing, usage of trade and course of performance to explain or supplement the terms of any writing stating the agreement of the parties in order that the true understanding of the parties as to the agreement may be reached. Such writings are to be read on the assumption that the course of prior dealings between the parties and the usages of trade were taken for granted when the document was phrased. Unless carefully negated they have become an element of the meaning of the words used. Similarly, the course of actual performance by the parties is considered the best indication of what they intended the writing to mean.

3. Under subsection (B), consistent additional terms not reduced to writing may be proved unless the court finds that the writing was intended by both parties as a complete and exclusive statement of all the terms. If the additional terms are such that, if agreed upon, they would certainly have been included in the document in the view of the court, then evidence of their alleged making must be kept from the trier of fact.

CROSS REFERENCES

Point 3: Sections 1-205, 2-207, 2-302 and 2-316.

DEFINITIONAL CROSS REFERENCES

"Agreed" and "agreement". Section 1-201.

"Course of dealing". Section 1-205.

"Parties". Section 1-201.

"Term". Section 1-201.

"Usage of trade". Section 1-205.

"Written" and "writing". Section 1-201.

SPECIAL PLAIN LANGUAGE COMMENT

A written agreement which is agreed to be "final" will supersede any evidence of simultaneous oral agreements. This section also provides that written contracts will be interpreted in light of the customs or practices of the particular industry.

§ 2-203. Seals inoperative

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

HISTORY

CJA-1-86, January 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §2-203 of the Uniform Commercial Code adopted by the States.

Commentary. 1. This section makes it clear that every effect of the seal which relates to "sealed instruments" as such is wiped out insofar as contracts for sale are

concerned. However, the substantial effects of a seal, except extension of the period of limitations, may be had by appropriate drafting as in the case of firm offers (see §2-205).

2. This section leaves untouched any aspects of a seal which relate merely to signatures or to authentication of execution and the like. Thus, a statute providing that a purported signature gives prima facie evidence of its own authenticity or that a signature gives prima facie evidence of consideration is still applicable to sales transactions even though a seal may be held to be a signature within the meaning of such a statute. Similarly, the authorized affixing of a corporate seal bearing the corporate name to a contractual writing purporting to be made by the corporation may have effect as a signature without any reference to the law of sealed instrument.

CROSS REFERENCES

Point 1: Section 2-205.

DEFINITIONAL CROSS REFERENCES

"Contract for sale". Section 2-106.

"Goods". Section 2-105.

"Writing". Section 1-201.

§ 2-204. Formation in general

A. A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

B. An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

C. Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is reasonably certain basis for giving an appropriate remedy.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §2-204 of the Uniform Commercial Code adopted by the States.

Commentary. 1. Subsection (A) continues without change the basic policy of recognizing any manner of expression of agreement, oral, written or otherwise. The legal effect of such an agreement is, of course, qualified by other provisions of this article.

2. Under subsection (A) appropriate conduct by the parties may be sufficient to establish an agreement. Subsection (B) is directed primarily to the situation where the interchanged correspondence does not disclose the exact point at which the deal was closed, but the actions of the parties indicate that a binding obligation has been undertaken.

3. Subsection (C) states the principle as to "open terms" underlying later Sections of the Article. If the parties intend to enter into a binding agreement, this subsection recognizes that agreement as valid in law, despite missing terms, if there is any reasonably certain basis for granting a remedy. The test is not certainty as to what the parties were to do nor as to the exact amount of damages due the

plaintiff. Nor is the fact that one or more terms are left to be agreed upon enough in itself to defeat an otherwise adequate agreement. Rather, commercial standards on the point of "indefiniteness" are intended to be applied, this Code making provision elsewhere for missing terms needed for performance, open price, remedies and the like.

4. The more terms the parties leave open, the less likely it is that they have intended to conclude a binding agreement, but their actions may be frequently conclusive on the matter despite the omissions.

CROSS REFERENCES

Subsection (A): Sections 1-103, 2-201 and 2-302.

Subsection (B): Sections 2-205 through 2-209.

Subsection (C): See Part 3.

DEFINITIONAL CROSS REFERENCES

"Agreement". Section 1-201.

"Contract". Section 1-201.

"Contract for Sale". Section 2-106.

"Goods". Section 2-105.

"Party". Section 1-201.

"Remedy". Section 1-201.

"Term". Section 1-201.

SPECIAL PLAIN LANGUAGE COMMENT

This section emphasizes that two parties may demonstrate an agreement in a variety of ways and that once an "agreement" is found to have been made the Code will attempt to resolve any unclear terms.

§ 2-205. Firm offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This section is intended to have the same meaning and effect as §2-205 of the Uniform Commercial Code adopted by the States.

Commentary. 1. This section is intended to modify the former rule which required that "firm offers" be sustained by consideration in order to bind, and to require instead that they must merely be characterized as such and expressed in signed writings.

2. The primary purpose of this section is to give effect to the deliberate intention of a merchant to make a current firm offer binding. The deliberation is shown in the case of an individualized document by the merchant's signature to the offer, and in the case of an offer included on a form supplied by the other party to the transaction by the separate signing of the particular clause which contains the offer. "Signed" here also includes authentication but the reasonableness of the authen-

Article 3. Commercial Paper

Part 1. Short Title, Form and Interpretation

SECTION

- 3-101. Short title
- 3-102. Definitions and index of definitions
- 3-103. Limitations on scope of article
- 3-104. Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note"
- 3-105. When promise or order unconditional
- 3-106. Sum certain
- 3-107. Money
- 3-108. Payable on demand
- 3-109. Definite time
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- 3-114. Date, antedating, postdating
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- 3-502. Unexcused delay; discharge
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Part 1. Short Title, Form and Interpretation

§ 3-101. Short title

This article shall be known and may be cited as the Navajo Uniform Commercial Code—Commercial Paper.

HISTORY

CJA-1-86, January 29, 1986.

§ 3-102. Definitions and index of definitions

A. In this article unless the context otherwise requires:

1. "Issue" means the first delivery of an instrument to a holder or a remitter.

2. An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

Article 4. [Reserved]

Article 5. [Reserved]

Article 6. [Reserved]

Article 7. [Reserved]

Article 8. [Reserved]

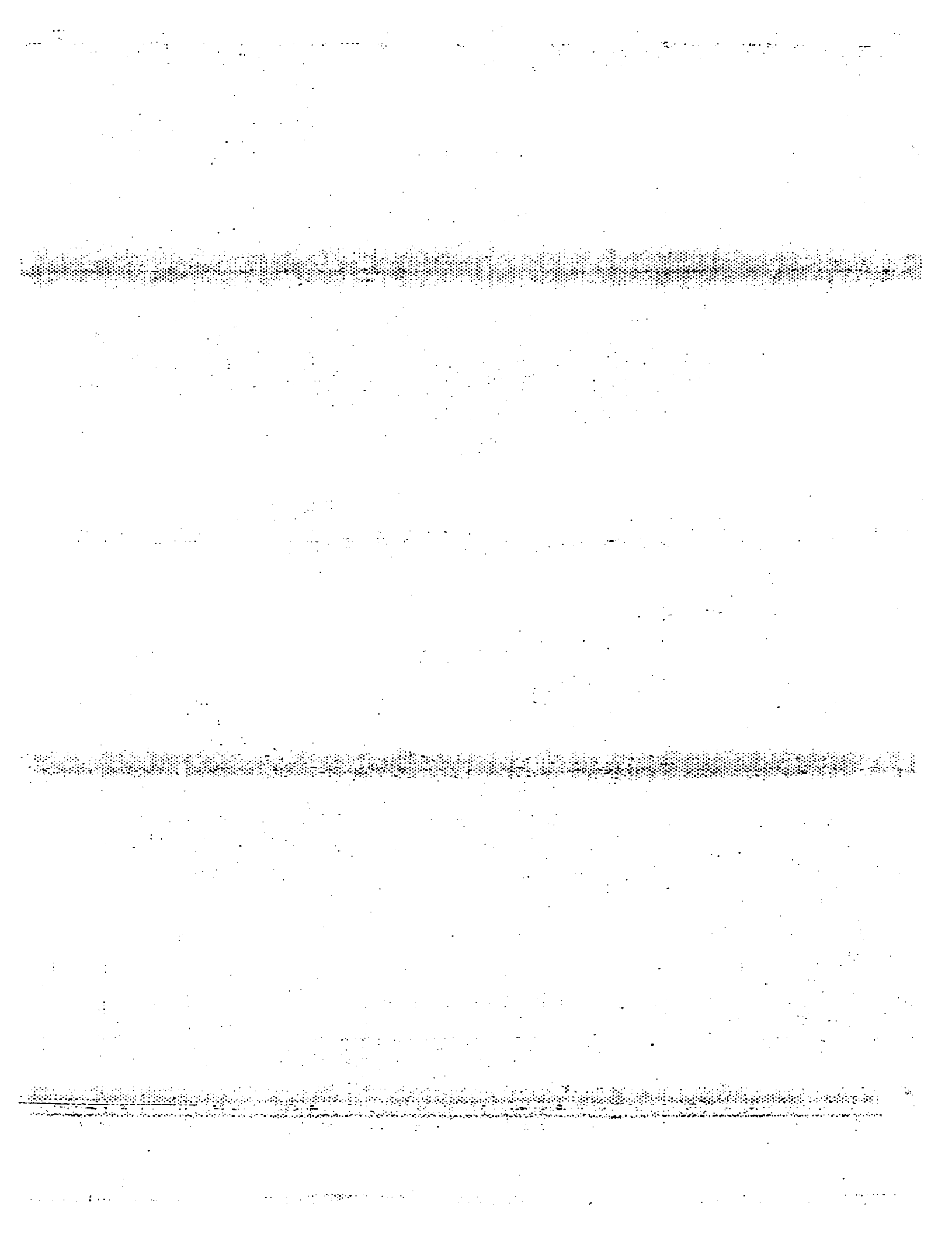
***Article 9. Secured Transactions; Sales of
Accounts and Chattel Paper***

Part 1. Short Title, Applicability and Definitions

- 9-101. Short title
- 9-102. Policy and subject matter of Article
- 9-103. Perfection of security interest in multiple state transactions
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- 9-110. Sufficiency of description
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***Part 2. Validity of Security Agreement and Rights of
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- 9-201. General validity of security agreement
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- 9-203. Attachment and enforceability of security interest; proceeds; formal requisites
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- 9-301. Persons who take priority over unperfected security interests; rights of "lien creditor"
- 9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply
- 9-303. When security interest is perfected; continuity of perfection
- 9-304. Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession
- 9-305. When possession by secured party perfects security interest without filing
- 9-306. "Proceeds"; secured party's rights on disposition of collateral
- 9-307. Protection of buyers of goods
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- 9-310. Priority of certain liens arising by operation of law
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- 9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment

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- 9-401. Place of filing; erroneous filing; removal of collateral
- 9-402. Formal requisites of financing statement; amendments; mortgage as financing statement
- 9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer
- 9-404. Termination statement
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- 9-501. Default; procedure when security agreement covers both real and personal property
- 9-502. Collection rights of secured party
- 9-503. Secured party's right to take possession after default
- 9-504. Secured party's right to dispose of collateral after default; effect of disposition
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- 9-506. Debtor's right to redeem collateral
- 9-507. Secured party's liability for failure to comply with this part

Part 1. Short Title, Applicability and Definitions

§ 9-101. Short title

This article shall be known and may be cited as the Navajo Uniform Commercial Code—Secured Transactions.

HISTORY

CJA-1-86, January 29, 1986.

OFFICIAL COMMENT

Changes. This article sets out a comprehensive scheme for the regulation of security interests in personal property and fixtures. In many respects this Code is based upon and similar to the Uniform Commercial Code adopted by most of the States in the United States. The Official Comments to this Code describe the reasons for most of the variations from the version proposed in such other States.

Commentary. Consumer installment sales and consumer loans present special problems of a nature which makes special regulation of them inappropriate in a general commercial codification. While this article applies generally to security interests in consumer goods, it is not designed to supersede such consumer legislation. See Official Comments to §§9-102 and 9-203.



MODEL TRIBAL CODE

SECURED TRANSACTIONS

THIRD DRAFT

DEVELOPED BY:

INDIAN LAW CLINIC
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This project represents the third draft of the model secured transaction code being developed for possible use in Indian Country. Comments made on the first two drafts were reviewed and when appropriate incorporated. This work primarily reflects the extensive and intensive efforts of a law student participating in the Indian Law Clinic, Morgan Damerow, who has diligently tried to unravel the complex nature of secured transactions. Janet Ellis, another clinical law student, also contributed in the initial development stages of this code. Profs. Scott Burnham and Sally Weaver from the University of Montana School of Law have provided much needed guidance at various points in this project. Supervision of this project was provided by Profs. Raymond Cross and Maylinn Smith from the University of Montana School of Law.

Although this is the third draft of this secured transaction code, it probably will not meet the commercial needs of every tribe. Tribes interested in developing a commercial transaction code should carefully evaluate this model code to determine whether it adequately reflects tribal goals or can be revised and modified to meet tribal requirements. Hopefully this model code benefits tribal governments interested in developing their own commercial codes as part of any tribal economic development plan.

To help individuals evaluate this code, cross reference guides are provided, as well as a summary of any major departures from provisions of the uniform commercial code for secured transaction. Written comments are welcome and encouraged. Please send them to:

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Model Tribal Code

Secured Transactions

CROSS REFERENCE GUIDE

The Model Tribal Code (MTC) adopts the new format for Article 9 - Secured Transactions as proposed by the National Conference of Commissioners on Uniform State Laws. We have provided this cross reference sheet to assist individuals in evaluating the MTC.

1995 Official Text Model Tribal Code

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1-102(2)	1-103(1)
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1-106(i)	1-107(1)
1-106(2)	1-107(2)
1-107	1-108
1-108	1-109
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1-204(2)	1-201(69)
1-204(3)	deleted
1-205(i)	1-201(78)
1-205(2)	1-201(86)
1-205(3)	1-205(1)
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1-205(5)	1-205(3)

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Model Tribal Code

Secured Transactions

MAJOR REVISIONS

This is a summary of major revisions in the Model Tribal Code (MTC) from the Uniform Commercial Code, 1995 Official Text, published by American Law Institute and the National Conference of Commissioners on Uniform State Laws (NCCUSL). The MTC incorporates some provisions from the October Draft of Article 9 - Secured Transactions published by the NCCUSL. Some of the MTC provisions represent a significant change from the 1995 edition or are new provision not included in the 1995 official text.

The first part of this summary indicates those areas where the MTC varies in structure and scope of coverage from the 1995 Official Text. The second part of the summary is a detailed list of those sections of the MTC that vary significantly from the 1995 Official Text. If a code section in the MTC based on a provision from the 1995 Official Text, the 1995 provision is listed in parentheses. Similarly this summary indicates new provisions as such.

Structure and Scope of Coverage

The MTC adopts the new format for Article 9 - Secured Transactions as proposed by the NCCUSL in the October. The NCCUSL determined that the previous structure of Article 9 resulted in code sections which were exceedingly long and also the grouping of topics which were not closely related. With this in mind a six part system was developed by the NCCUSL. A seventh section dealing with judicial process for code enforcement is included within the MTC. The MTC's structure is as follows:

Chapter 1: General Provisions

- Part 1: Short Title, Construction, Application and Subject Matter of the Title
- Part 2: Definitions and Principles of Interpretation

Chapter 2-8: Reserved

Chapter 9: Secured Transactions, Sales of Accounts and Chattel Paper

Part 1: General Provisions

- Sub-Part 1: Short Title
- Sub-Part 2: Concepts
- Sub-Part 3: Applicability of Chapter

Part 2: Validity of Security Agreement, Attachment of Security Interest and Rights of Parties to Security Agreement

- Sub-Part 1: Validity and Attachment
- Sub-Part 2: Rights of Parties

Part 3: Perfection of Security Interest

- Sub-Part 1: Law Governing Perfection and Priority
- Sub-Part 2: Perfection
- Sub-Part 3: Priority

- Part 4: Rights of Third Parties
- Part 5: Filing
 - Sub-Part 1: Place of Filing, Contents and Effectiveness of Financing Statement
 - Sub-Part 2: Duties and Operation of Filing Office
- Part 6: Default
 - Sub-Part 1: Default and Enforcement of Security Interest
 - Sub-Part 2: Noncompliance With This Title
- Part 7: Judicial Procedure

The MTC consolidates the definition provisions from throughout the Sections into Section 1-201. Additionally any reference to code sections not included within the scope of this drafting project are incorporated into the text of the MTC.

The MTC also includes provisions specifically relating to security interests in agricultural liens. The MTC, following the lead of NCCUSL, includes agricultural liens within the scope of this code. Similarly the MTC allows for a security interest in a deposit account.

Provisional Variations

1-106 (1-105) Territorial Application of the Title. The MTC removes the choice of law provision.

1-110 (new) Special Limitation on Application of Code. Any barter transaction which has an aggregate value less than a determined amount is excluded from coverage by the MTC. The parties to the transaction may elect to apply the provisions of the MTC to the transaction if they so desire.

1-207 (1-208) Option to Accelerate at Will. The Code continues to provide for acceleration, but only if the debtor agrees to the acceleration when the secured party exercises the option or if the secured party obtains leave of court. During a repossession proceeding in tribal court where the secured party includes a plea for acceleration, if the court grants an order of repossession the court must also grant the secured party's plea for acceleration. Part 7 contains the provisions for obtaining leave of court.

9-103 (new) Sufficiency of Description. The code places specific requirements for the description of a deposit account that is the subject of a security agreement.

9-304 (new) Perfection and Priority of Security Interest in Deposit Accounts. Tribal law governs perfection or nonperfection of a security interest in a deposit account.

9-306 (9-103) Perfection and Priority of Security Interest in Minerals. The Code excludes tribal resources held in trust by the federal government from the scope of coverage.

9-315 (9-301) **Interests That Take Priority Over and Take Free of Unperfected Security Interests or Agricultural Lien.** A security interest does not disrupt the possession of a lessee of goods provided the lessee takes delivery without knowledge of the security interest and before it is perfected.

9-318 (new) **Lesseees of Goods in Ordinary Course of Business.** A lessee in the ordinary course of business takes free of a security interest created as part of the lessors ordinary course of business.

9-321 (9-312) **Priority of Production Money Security Interests and Agricultural Liens.** The NCCUSL has determined that the old section is unworkable. The Production Money Security Interest is patterned after a Purchase Money Security Interest.

9-326 (new) **Priority of Security Interest in Deposit Accounts.** This section establishes a priority structure for security interests in deposit accounts. A secured party in control has priority followed by the depository institution and then other perfected security interests.

9-327 (new) **Priority of Security Interest in Letters of Credit.** The MTC essentially treats letters of credit the same as deposit accounts. Control is the determinative factor.

9-330 (new) **Transfer of Money, Transfer of Funds From Deposit Account.** A person who receives monies covered by a security interest takes the money free of the interest unless the transfer was an attempt to defraud the secured party.

9-338 (new) **Effectiveness of Right of Recoupment or Set-off Against Deposit Account.** The code preserves the right o set-off but adds a requirement for leave of court before exercising the right.

9-403 (9-206) **Agreement Not to Assert Defenses Against Assignee, Modification of Sales Warranties Where Security Agreement Exists.** The code adopts a provision from consumer law that makes an agreement not to assert defenses ineffective if there is a substantial relation between the assignor and assignee.

9-501 (9-401) **Place of Filing.** Filing must be in the tribal filing system if the transaction is within tribal jurisdiction.

9-504 (9-502) **Indication of Collateral.** The code specifies that a financing statement indicating all personal property is subject to a security interest is an effective indication of collateral.

9-506 (9-402) **Effect of Minor Errors.** If a financing statement fails to give the correct name of a debtor, the code provides that the secured party may still have a perfected interest if a search conducted following rules adopted pursuant to this code for conducting a search would have revealed the debtor's identity.

9-508 (new) Authorization of Financing Statement, Liability for Unauthorized Filing. The debtor must authorize the filing of an initial financing statement. The code provides a remedy if someone files a financing statement in violation of the code.

9-515/9-521 What Constitutes Filing a Record, Effectiveness of Filing / Acceptance of Refusal to Accept Record. The code specifies that the function of the filing office is that of a recorder. Deciding the validity or accuracy of information contained within a financing statement or record is not a duty of the filing office. The MTC specifically enumerates the grounds upon which a filing officer can refuse a filing. The filing office must give the filing party the reason the office did not accept the filing.

9-519 (new) Claim Concerning Inaccurate or Wrongfully filed Record, Failure to Send or File Termination Statement. A debtor has specified procedures and remedies if the Secured Party fails to conform with the requirements of this Title.

9-524 (new) Assignment of Functions to Third Party. The tribe can legally transfer some or all of the filing office requirements to a third party except that the tribe may not transfer the authority to adopt rules of operation. This would allow the tribe to transfer the filing office requirements to a private contractor or to take advantage of an existing state filing system.

9-602 (9-501) Waiver and Variance of Rights and Duties. The number of rights that may not be waived has increased. The increase focuses primarily on restricting the ability of a consumer debtor to waive the debtor's rights.

9-608 (9-503) Secured Party's Right to Take Possession After Default. The MTC does not allow self-help repossessions. The secured party must obtain leave from tribal court to reposes or otherwise take possession of property.

9-610 (9-504) Persons Entitled to Notification Before Disposition of Collateral. The notice requirement before disposition of collateral includes any secondary obligor. 9-622 of the MTC allows for the waiver of this right only at the time of default.

9-617/9-618 (9-505) Acceptance of Collateral in Full or Partial Satisfaction of Obligation, Compulsory Disposition of Collateral / Notification of Proposal to Accept Collateral. Generally this provision is the same except that the MTC goes into greater detail concerning the offer and acceptance of a proposal to retain the collateral. The MTC also requires notification of any secondary obligor of a proposed retention of collateral.

9-621 (new) Reinstatement of Secured Obligation Without Acceleration. With consumer goods, the debtor has the right to cure a default at least once before the disposition of the collateral without the secured party being able to exercise the right of acceleration.

9-622 (9-505) Waiver of Agreement by Debtor or Consumer Obligor. A debtor or consumer obligor can waive the right to notification of disposition only after default.

9-624 (9-507) Action in Which Deficiency or Surplus is at Issue. The MTC adopts the absolute bar rule for a consumer secured transactions and in all other cases the rebuttable presumption rule.

9-626 (new) Nonliability of Secure Party in Certain Circumstances, Liability of Secondary Obligor. The secured party is not liable for damages suffered by unknown debtor, secured party or secondary obligor if the secured party has made a good faith effort to detect the existence and location of other parties.

9-627 (new) Attorney's Fees in Consumer Secured Transactions. In a consumer secured transaction, the judge may award reasonable attorney fees and costs if the judge determines such an award to be appropriate. If the security agreement calls for the secured party to receive attorney fees and costs, a successful debtor is entitled to receive attorney fees and costs. In this scenario the award of attorney fees and cost is mandatory.

MODEL TRIBAL CODE
SECURED TRANSACTIONS
DRAFT

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GENERAL PROVISIONS

PART 1. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

1-101. Short Title.

This Title shall be known and may be cited as Commercial Transactions. Each Chapter of the Title (except this Chapter) may also be cited by its own short title.

1-102. Scope.

This Chapter, and all subsequent Chapters and Sections of this Title, shall apply to the over-all processes and procedures for engaging in commercial activities which are under the jurisdiction of the _____ Indian Tribe.

1-103. Purposes; Rules of Construction.

(1) Underlying purposes and policies of this Title are:

(a) to simplify, and clarify the law governing commercial transactions within Indian Country; and

(b) to promote the continued expansion of commercial practices within Indian Country.

(2) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

1-104. Supplementary General Principles of Law.

Unless specifically modified or deleted by a particular provision of this Title or other recognized and applicable law, the principles of

law and equity, including laws relating to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating legal concept shall supplement this title. The adoption of this code does not preempt any applicable consumer protection laws.

1-105. Construction Against Implicit Repeal.

No part of this Title shall be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

1-106. Territorial Application of the Title.

Except as provided elsewhere in this Title, this Title applies to all transactions which are under the jurisdiction of the _____ Indian Tribe.

1-107. Remedies to Be Liberally Administered.

(1) The remedies provided by this Title shall be liberally administered so that the aggrieved party may be put in the same position as if the other party had fully performed. Consequential, special or punitive damages may not be had unless specifically provided for in this Title or in other applicable law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect.

1-108. Waiver or Renunciation of Claim or Right After Breach.

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or

renunciation signed and delivered by the aggrieved party.

1-109. Severability.

If the application of any provision or clause of this Title is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this Title, if the remaining provisions can still be given effect without the invalid provisions or application.

1-110. Special Limitation on Application of Code.

Notwithstanding any other provision of this Title to the contrary, this Title shall not apply to any exclusively barter transaction in which the market value of all the goods and services involved in the transaction does not exceed \$XXX. Such transactions shall be governed by the customs and traditions of the _____ Indian Tribe.

1-111. Administration of the Commercial Transactions; Regulations.

The (Name of the department or division), or its designated successor, shall be charged with the administration of this Title. The (department) or its designated successor is authorized to promulgate upon review and approval of the appropriate tribal legislative body, regulations and revisions regarding those matters designated to be governed by this Title.

PART 2. DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1-201. General Definitions.

(1) "Account" means any right to payment for goods sold or leased or for services rendered

which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

(2) "Accord and Satisfaction" means the discharge of a debt where the parties agree to exchange money or an item of value as a full and complete payment of the debt. The amount of money or value of the item exchanged does not need to equal the debt which is being discharged.

(3) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(4) "Aggrieved party" means a party entitled to resort to a remedy.

(5) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing, usage of trade or course of performance as provided in this Title. Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by recognized contract principle.

(6) "Attach" means the ability to enforce a claim against a debtor with respect to collateral

(7) "Bank" means any person or institution that receives deposits, makes loans, or performs other money-related functions.

(8) "Barter" means to exchange goods or services without exchanging money.

(9) "Bearer form" means a security or similar commercial paper that is not registered on the books of the issuer. Such a security or paper is payable to the person having possession of the paper.

(10) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of

transporting or forwarding goods, and includes an airbill.

(11) "Branch" means any division or separate facility of an organization or business entity and includes a separately incorporated foreign branch of a bank.

(12) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its non-existence.

(13) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale is in violation of the ownership rights or security interest of a third party in the goods, buys in the regular business practice from a person in the business of selling goods of that kind. This definition does not extend to pawnbrokers. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash, secured or unsecured credit, contract for sale, exchange of other property. Transfers in bulk or as security for or in total or partial satisfaction of a money debt do not constitute buying.

(14) "Cash Proceeds" means money, checks, deposit accounts and the like.

(15) "Certificated security" means a recognized interest in property, an enterprise or an obligation of the issuer which is:

(a) represented by an instrument issued in bearer or registered form;

(b) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(c) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or

obligations.

(16) "Chattel paper" means a written instrument which evidence both a monetary obligation and a security interest in, or a lease of specific goods. A charter or other contract involving the use or hire of a vessel is not chattel paper.

(17) "Check" means a draft, other than a document draft, payable on demand and drawn on a bank or a cashier's check or teller's check. An item may be a check even though it is described on its face by another term, such as "money order."

(18) "Collateral" means property subject to a security interest, and includes accounts and chattel paper which have been sold.

(19) "Consequential Damages" means any indirect losses or injuries which are not the direct result from an action or failure to act. See also Special Damages and Punitive Damages.

(20) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (such as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger type or contrasting type or color. In a telegram any stated term is "conspicuous."

(21) "Consignee" is the person receiving goods to sale in accordance with the terms of an agreement with the consignor.

(22) "Consignment" is the act of placing goods with another for sale with the understanding that the consignee will pay the consignor for any goods sold and will return any unsold goods.

(23) "Consignor" is the person giving the goods to a consignee to sale.

(24) "Construction Mortgage" means a mortgage that secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(25) "Consumer" means any real person.

(26) "Consumer Goods" means goods that are used or bought for use primarily for personal, family or household purposes.

(27) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other recognized and applicable rules of law.

(28) "Contract for Sale" means an agreement for both the present sale of goods and a contract to sell goods at a future time.

(29) "Course of performance" means the understanding which develops by conduct without objection between two parties during the performance of a contract.

(30) "Creditor" means a person or organization to whom a debt is owed and includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(31) "Debtor" means the person who owes payment or other performance of the obligation, whether or not the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of this Title dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

(32) "Defendant" means a person or

organization against whom a legal action is brought and includes a person in the position of defendant in a cross-action or counterclaim.

(33) "Delivery" means the voluntary transfer of possession with respect to instruments, documents of title, chattel paper or certificated securities.

(34) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to person in possession of the goods and purport to cover goods in the person's possession.

(35) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(36) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary.

(37) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(38) "Equipment" means goods which are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods.

(39) "Farm Products" means goods which are crops, livestock, supplies used or produced in

farming operations, or are products or crops or livestock in their unmanufactured states (such as ginned cotton, woolclip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing, or other farming operations. If goods are farm products they are neither equipment nor inventory.

(40) "Fault" means wrongful act, omission or breach.

(41) "Financing statement" means a document setting out a secured party's security interest the collateral. A financing statement includes the original financing statement and any amendments.

(42) "Fixture" means goods when they become so related to particular real estate that an interest in them arises under real estate law.

(43) "General Damages" means damages which are usual and customary in the type of transaction at issue. They may be pled in broad terms which provides sufficient information to the opposing party as to the nature of the damages.

(44) "General Intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments and money.

(45) "Genuine" means free of forgery or counterfeiting.

(46) "Good faith" means honesty in fact in the conduct or transaction concerned.

(47) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures and includes "Consumer goods", "Equipment", "Farm products", and "Inventory" but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or natural resources (minerals or the like including oil and gas) before

extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(48) "Holder" with respect to a negotiable instrument payable to the bearer, means the person in possession of the instrument, in the case of an instrument payable to an identified person, if the identified person is in possession, with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(49) "Holder in due course" means the holder of an instrument if:

(a) the instrument when issued or negotiated to the holder does not bear apparent evidence of forgery, alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) the holder took the instrument:

(i) for value;

(ii) in good faith;

(iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment or another instrument issued as part of the same series;

(iv) without notice than the instrument contains an unauthorized signature or has been altered;

(v) without notice of any claim to the instrument; and

(vi) without notice than any party has a defense or claim in recoupment.

(50) "Honor" means to pay or to accept and

pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(51) "Indian country" as defined by 18 U.S.C Sec. 1151¹ means:

(a) land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(b) all dependent Indian communities with the borders of the United States whether the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of way running through the same.

(52) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(53) "Insolvent" means a person or organization who either has ceased to pay their debts in the ordinary course of business or cannot pay their debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(54) "Instrument" means a negotiable instrument or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business

transferred by delivery with any necessary indorsement or assignment. The term does not include investment property.

(55) "Inventory" means goods which are held by a person who holds them for sale or lease or to be furnished under contracts or service or if the person has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as equipment.

(56) "Investment Property" means a security, whether certificated or uncertificated, a security entitlement, a securities account, a commodity contract, or a commodity account.

(57) "Lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(58) "Money" means a medium of exchange authorized or adopted by a sovereign entity and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(59) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(60) "Notifies" means a person or organization taking such steps as may be reasonably required to inform another in ordinary course, independent of whether or not such other actually comes to know of it.

(61) "Organization" includes a corporation, government or government subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

¹ This is a criminal statute. The Supreme Court has indicated this definition may be extended "to questions of civil jurisdiction." DeCoteau v. District County Court, 420 U.S. 425, 427 n.2 (1975).

(62) "Party", means a person who has engaged in a transaction or made an agreement within the scope of this Title.

(63) "Payment intangible" means a general intangible under which the account debtor's principal obligation is to pay money.

(64) "Punitive Damages" means damages which are not related to the actual injury or harm suffered but which are awarded as a deterrent to keep a particularly malicious or willful act from happening again.

(65) "Person" an individual.

(66) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(67) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(68) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(69) "Purchase money security interest" means a security interest that is:

(a) taken or retained by the seller in the collateral to secure all or part of its price; or

(b) taken by a person who (by making advances to incurring an obligation) gives value to enable the debtor to acquire rights in or the use of collateral, if such value is in fact so used.

(70) "Purchaser" means a person who takes by purchase.

(71) "Pursuant to commitment" means that the secured party is bound to make an advance, whether or not a subsequent event of default, or other event not within the secured party's control has relieved or may relieve the secured party from the obligation.

(72) "Reasonable Time" means any time which is not manifestly unreasonable. Determination depends on the nature, purpose and circumstance of such action and may be fixed by agreement.

(73) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(74) "Representative" means any person empowered to act for another and includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate.

(75) "Sale" means the passing of title or interest from the seller to the buyer for a price.

(76) "Security" means property that has been designated as financial backing for a loan or other obligation. It is either certificated or uncertificated security. If a security is certificated, the terms security and certificated security may mean either intangible interest, the instrument representing that interest, or both, as the context requires.

(77) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a "security interest".

Whether a transaction creates a lease or security interest is determined by the facts of

each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee: and

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) the lessee has an option to renew the lease or to become the owner of the goods;

(d) the lessee has an option to renew the

lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time option is to be performed; or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection:

(a) Additional consideration is not nominal if:

(i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into;

otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(78) "Send" means to properly address and deposit in the mail or deliver for transmission by any other recognized and acceptable means of communication, with postage or cost or transmission provided for.

(79) "Sign" means to identify a document or record by means of a signature, mark, or other symbol with intent to authenticate the writing.

(80) "Special Damages" means damages which are unique to the course of conduct between the parties and which must be specifically enumerated in order to provide the opposing party with the necessary information to inform them of the damages.

(81) "Standard trade practices" means a sequence of previous conduct between the parties to a particular transaction which establishes a common basis of understanding for interpreting their expressions and other conduct.

(82) "Surety" includes guarantor.

(83) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(84) "Term" means that portion of an agreement which relates to a particular matter.

(85) "Trade fixture" means property placed on or within real estate for the purpose of conducting a trade or business. Trade fixtures are presumed not to become annexed to the real estate.

(86) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the

transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(87) "Tribe" means the _____
Tribe.

(88) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(89) "Usage of trade" means the prevailing and accepted customs within a particular trade or industry with preference being given to customs within the jurisdiction of the _____ Tribe.

(90) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections a person gives "value" for rights if the person acquires them:

(a) generally, in return for any consideration sufficient to support a simple contract;

(b) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;

(c) as security for or in total or partial satisfaction of a pre-existing claim; or

(d) by accepting delivery pursuant to a pre-existing contract for purchase.

(91) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(92) "Written" or "writing" means any printed, typewritten or other form of communication reduced to tangible form.

1-202. Prima Facie Evidence by Third Party Documents.

A document purporting to be: a bill of lading; policy or certificate of insurance; official weigher's or inspector's certificate; consular invoice; or any other document authorized or required by contract, to be issued, shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document.

1-203. Obligation of Good Faith.

Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement.

1-204. Notice.

(1) The time and circumstances under which a notice or notification may cease to be effective are determined by the nature, purpose, and circumstances of the transaction.

(2) Notice, knowledge or notification received by an organization is effective for a particular transaction:

(a) from the time when it is brought to the attention of the individual conducting that transaction; or

(b) from the time when it would have been brought to that person's attention if the organization had exercised due diligence.

1-205. Course of Dealing and Usage of Trade.

(1) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged, or of which they are or

should be aware may be considered for purposes of:

(a) determining the meaning of ambiguous terms in an agreement; or

(b) supplementing or qualifying the terms of an agreement.

(2) The express terms of an agreement and standard trade practices shall be construed, wherever reasonable as consistent with each other. When such construction is unreasonable:

(a) Express terms control standard trade practices; and

(b) Past trade practices control usage of trade.

(3) The standard trade practices in the place where any part of performance is to occur may be used in interpreting the agreement relating to that part of the performance.

(4) Evidence offered by one party relating to standard trade practices is not admissible unless and until sufficient notice has been given to the other party.

1-206. Performance or Acceptance Under Reservation of Rights.

(1) A party who performs or promises performance in a manner demanded, or proposed by the other party, does not waive any rights, provided the party explicitly reserves those rights. Such words as "without prejudice", "under protest" or the like are sufficient to reserve those rights.

(2) Subsection (1) does not apply to an accord and satisfaction.

1-207. Option to Accelerate at Will.

(1) A term providing that one party or the parties successor in interest may accelerate payment, performance, require collateral or require additional collateral "at will", "when insecure" or words of similar import shall only be effective upon a good faith belief that the prospect of payment or performance is impaired.

(2) Any party or the party's successor in interest desiring to accelerate payment, performance, require collateral or require additional collateral must obtain leave of the court, unless the debtor agrees to the terms of the acceleration at the time the option is exercised.

(3) A judicial decree under Section 9-608 allowing a secured party to repossess collateral shall include an order of acceleration if the secured party has made such a request in the pleadings.

(4) The burden of establishing lack of good faith initially is on the party against whom the power has been exercised. Upon presentation of prima facie evidence of lack of good faith, the burden of proof shifts to the party exercising the power. The party exercising the power must present a commercially reasonable justification beyond a reasonable doubt for the exercise of the power.

1-208. Subordinated Obligations.

An obligation may be designated as subordinate to payment of another obligation of the debtor, or a creditor may subordinate the creditors right to payment of an obligation by agreement with either the debtor or another creditor of the debtor. Such a subordination does not create a security interest as against either the debtor or a subordinated creditor.

1-209. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.

Except in the cases described in 1-110, a contract for the sale or personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value or remedy unless there is a writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party, or the parties authorized agent, the against whom enforcement is sought.

SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

PART 1. GENERAL PROVISIONS

Sub-Part 1. Short Title.

9-101. Short Title.

This Article may be cited as Commercial Transactions--Secured Transactions.

Sub-Part 2. Concepts.

9-102. Control Over Investment Property.

(1) Control of a certificated security in bearer form is effective when the security is delivered to the purchaser.

(2) Control of a certificated security in registered form is effective when the security is delivered to the purchaser, and:

(a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) Control of an uncertificated security is effective if:

(a) the uncertificated security is delivered to the purchaser; or

(b) the issuer has agreed that it will comply with the instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has control of a security entitlement if:

(a) the purchaser becomes the entitlement holder; or

(b) the securities intermediary has agreed that it will comply with entitlement order originated by the purchaser without further consent by the entitlement holder.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the security intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) has control even if the registered owner or the entitlement holder retains the right to:

(a) make substitutions of the uncertificated security or security entitlement;

(b) originate instructions or entitlement orders to the issuer or securities intermediary; or

(c) otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in 9-102(3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement

even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(8) (a) A secured party has control over a commodity contract if the commodity customer, the commodity intermediary, and the secured party agree that the commodity intermediary will apply any value distributed under the commodity contract as directed by the secured party without consent by the commodity customer.

(b) If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary has control as a secured party.

Sub-Part 3. Applicability of Article.

9-103. Sufficiency of Description.

(1) Except as otherwise provided in 9-103(2), a description of personal property or real estate is sufficient if it reasonably identifies what is described.

(2) A description of a deposit account is sufficient only if it describes the deposit account either by item; as all of the debtor's deposit accounts; or as an identified class of the debtor's deposit accounts.

(3) (a) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account:

(i) if it describes the collateral by

those terms;

(ii) as investment property; or

(iii) by description of the underlying security, financial asset, or commodity contract.

(b) A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

9-104. Policy and Scope of Article.

(1) Except as otherwise provided in Section 9-105 on excluded transactions, this Article applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account or chattel paper; and

(d) a consignment.

(2) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by transaction or interest to which this Article does not apply.

(NOTE) Where the tribe has a retail installment selling act or small loan act, that legislation should be carefully examined to determine what changes in those acts are needed to conform them to this Title. This Title primarily sets out rules defining rights of a secured party against persons dealing with the debtor; it does not prescribe

regulations and controls which may be necessary to curb abuses arising in the small loan business or in the financing of consumer purchases on credit. Accordingly there is no intention to repeal existing regulatory acts in those fields. [See Section 9-106 and the Note thereto.]

9-105. Transactions Excluded from Article.

(1) Except as provided in 9-105(2), this Article does not apply to:

(a) a security interest subject to any federal statute, regulation or applicable treaty, to the extent that such statute, regulation or treaty preempts tribal law and governs the rights of participating parties or third parties affected by the transaction;

(b) a landlord's lien;

(c) a lien given by statute or other rule of law for services or materials except as provided in Section 9-331;

(d) a transfer of a claim for wages, salary or other compensation of an employee;

(e) a transfer by a government or governmental subdivision or agency;

(f) a sale of accounts or chattel paper, or payment intangibles as part of a sale of the business out of which they arose;

(g) an assignment of accounts or chattel paper, or payment intangibles which is for the purpose of collection only;

(h) a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract;

(i) a transfer of a single account, or payment intangibles to an assignee in whole or partial satisfaction of a preexisting indebtedness;

(j) a transfer of an interest or claim under any insurance policy, except:

(i) a transfer by a healthcare provider of a right to payment arising out of the furnishing of healthcare goods or services; and

(ii) as provided with respect to proceeds (Section 9-313) and priorities in proceeds (Section 9-319);

(k) a right represented by a judgment (other than a judgment taken on a right to payment which was collateral);

(l) any right of set-off as provided in 9-338;

(m) a transfer in whole or in part of any claim arising out of tort; or

(2) The application of this Title is limited to the extent that provision is made within this Title for:

(a) fixtures in Section 9-332, or

(b) the creation or transfer of an interest, including a lease or rents, or lien on real estate.

9-106. Applicability of Other Statutes.

A transaction, although subject to this Title, may also be subject to the requirements found in *. In case of conflict between the provisions of this Title and any other statute, the more specific statute controls. Failure to comply with an applicable statute has only the effect the statute specifies.

Note: At * insert reference to any applicable statutes regulating small loans, retail installment sales and the like. The section is designed to make it clear that certain transactions, although subject to this Title, also must comply with other

applicable legislation.

PART 2. VALIDITY OF SECURITY AGREEMENT, ATTACHMENT OF SECURITY INTEREST, AND RIGHTS OF PARTIES TO SECURITY AGREEMENT

Sub-Part 1. Validity and Attachment.

9-201. General Validity of Security Agreement.

(1) Except as otherwise provided by this Title, a security agreement is effective according to its terms between the parties, against subsequent purchasers of the collateral and against creditors.

(2) Nothing in this Title validates any practice illegal under any statute or regulation governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject to the statute or regulation.

9-202. Title to Collateral Immaterial.

Rights, obligations and remedies under this Title apply whether title to the collateral is in the Debtor or Secured Party except as otherwise provided with respect to consignments, sales or accounts, chattel paper or payment intangibles.

9-203. Attachment and Enforceability of Security Interest; Proceeds; Support Obligations; Formal Requisites.

(1) A security interest is not enforceable against the Debtor or third parties with respect to the collateral and does not attach unless:

(a) (i) the collateral is in the possession of the Secured Party pursuant to the debtor's agreement,

(ii) the collateral is investment property or a deposit account and the Secured Party has control pursuant to the Debtor's agreement; or

(iii) the debtor has signed a security agreement which contains a description of the collateral. When the security interest covers crops growing, crops to be grown or timber to be cut the description must also include a description of the land concerned;

(b) value has been given; and

(c) the Debtor has rights in the collateral.

(2) Attachment provisions in 9-202(1) are in addition to attachment provisions on:

(a) a security interest in investment property (9-206);

(b) the requirements on new debtors (9-203(3)).

(3) If a new Debtor becomes bound as Debtor by a security agreement entered into by a predecessor in interest, the agreement satisfies the requirement of Section 9-203(1)(a) as to existing or after acquired property of the new debtor to the extent the property is described in the agreement. No other agreement is necessary to make a security interest in the property enforceable.

(4) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in Section 9-203(1) have taken place unless explicit agreement by the parties postpones the time of attaching.

(5) Unless otherwise agreed:

(a) a security agreement gives the secured party the rights to proceeds provided by Section 9-313; or

(b) attachment of a security interest in collateral is also attachment of a security interest in a support obligation with respect to the collateral;

9-204. After-Acquired Property; Future Advances.

(1) Except as provided in 9-204(2), a security agreement may create or provide for a security interest in after acquired collateral.

(2) No security interest attaches to Consumer Goods under an after-acquired property clause, except:

(a) to accessions (Section 9-333) when given as additional security; or

(b) the debtor acquires rights to the after acquired Consumer Goods within ten days after the secured party gives value.

(3) A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value, whether or not the advances or value are given "pursuant to commitment."

9-205. Use or Disposition of Collateral Without Accounting Permissible.

(1) A security interest is not invalid or fraudulent against creditors by reason of:

(a) liberty in the debtor to:

(i) use, commingle, or dispose of all or part of the collateral (including returned or repossessed goods);

(ii) collect, compromise, enforce, or otherwise deal with collateral;

(iii) accept the return of goods or

make authorized repossessions; or

(iv) use, commingle or dispose of proceeds; or

(b) the secured party failing to require the debtor to account for proceeds or replace collateral.

(2) This section does not relax the requirements of possession where perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party or by a bailee.

9-206. Security Interest Arising in Purchase or Delivery of Financial Asset.

(1) (a) A securities intermediary has a security interest in the buyer's security entitlement if:

(i) a person buys a financial asset through a securities intermediary;

(ii) in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(iii) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment, is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets

and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

Sub-Part 2. Validity and Attachment.

9-207. Rights and Duties When Collateral Is in Secured Party's Possession.

(1) If a security interest secures an obligation, or a buyer of accounts, chattel paper, or payment intangibles is entitled by agreement to charge back uncollected collateral or otherwise entitled to full or limited recourse against the debtor or against a secondary obligor, the secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of an instrument or chattel paper, reasonable care includes taking any necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed and notwithstanding any contrary provision in Section 9-602, if a security interest secures an obligation and collateral is in the secured party's possession:

(a) reasonable expenses, including the cost of any insurance and payment of taxes or other related charges incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the secured party to the extent of a deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits

(except money) received from the collateral, but money received, unless remitted to the debtor, must be applied to reduce the secured obligation;

(d) the secured party must keep the collateral identifiable but collateral of which any unit is by nature or usage of trade the equivalent of any other like unit may be commingled; and

(e) the secured party may create additional security interests in the collateral upon terms which do not impair the rights of pre-existing security interests.

(3) A secured party is liable for any loss caused by the failure to meet any obligation imposed by Section 9-207(1) or (2) but the secured party does not lose its security interest.

(4) A secured party may use or operate the collateral:

(a) for the purpose of preserving the collateral;

(b) for the purpose of preserving the collateral's value;

(c) pursuant to tribal court order; or

(d) in the manner and to the extent provided in the security agreement. A security agreement may not restrict the use or operation of a consumer good.

9-208. Request for Accounting, List of Collateral or Statement of Account.

(1) A debtor may sign a statement indicating what the debtor believes to be the total amount of unpaid indebtedness as of a specified date and send it to the secured party with a request that the statement be approved or corrected and returned to the debtor.

(2) The secured party shall comply with a request pursuant to Section 9-208(1) within two weeks after receipt by sending a written correction or approval. If the secured party fails to comply without reasonable excuse, the secured party is liable for any loss caused to the debtor for noncompliance.

(a) If the debtor has properly included in a request pursuant to Section 9-208(1), a good faith statement of the obligation or a list of the collateral or both, the secured party may claim a security interest only as shown in the statement against person's misled by the secured party's noncompliance.

(b) If the security agreement or any other record kept by the secured party identifies the collateral, a debtor may similarly request the secured party to approve or correct a list of the collateral.

(c) If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral.

(3) If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party shall disclose the name and address of any successor in interest known to the secured party and is liable for any loss caused to the debtor as a result of failure to disclose this information. A successor in interest is not subject to this section until a request is received by the successor.

(4) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$___ for each additional statement furnished.

PART 3. PERFECTION OF SECURITY INTERESTS.

Sub-Part 1. Law Governing Perfection and Priority.

9-301. Perfection and Priority of Certain Possessory and Nonpossessory Security Interests.

(1) The following rules apply to a possessory or nonpossessory security interest in collateral other than goods covered by a certificate of title described in Section 9-303, deposit accounts, investment property, and minerals and related accounts described in Section 9-306.

(2) Except as otherwise provided in this section, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the (Tribe Name).

9-302. Perfection and Priority of Agricultural Liens.

(1) Perfection of an agricultural lien on collateral derived from land found within the exterior boundaries of the _____ reservation is governed by the law of the (Tribe Name).

(2) While collateral is located in any jurisdiction, the effect of perfection or nonperfection and the priority of an agricultural lien on the collateral are governed by the law of the (Tribe Name).

9-303. Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title.

(1) This subsection applies to goods covered by a certificate of title issued under (Tribal) Law or from any other jurisdiction under which indication of a security interest on the certificate is required as a condition of perfection.

(2) Goods become covered by a certificate of title when an appropriate application for the

certificate and the applicable fee are delivered to the appropriate authority.

(3) Perfection, the effect of perfection or non-perfection, and the priority of the security interest are governed by the local law of the jurisdiction under whose certificate the goods are covered. This security interest is valid from the time the goods become covered by the certificate until the time the certificate becomes ineffective under the law of that jurisdiction or the time the goods become covered by a certificate of title from another jurisdiction.

9-304. Perfection and Priority of Security Interests in Deposit Accounts.

Perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account are governed by the law of the (Tribe Name).

9-305. Perfection and Priority of Security Interests in Investment Property.

(1) Except as otherwise provided in section 9-305(2), the following rules apply to a security interest in investment property:

(a) While a security certificate is located within (Tribe Name) jurisdiction, perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby are governed by the law of the (Tribe Name).

(b) Perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction.

(c) Perfection, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the law of the

(Tribe Name).

(d) Perfection, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the law of the (Tribe Name).

(2) The law of the _____ Tribe governs perfection of a security interest created by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary.

9-306. Perfection and Priority of Security Interest in Minerals.

Perfection, the effect of perfection or non-perfection and the priority of a security interest that is created by a debtor having an interest in minerals or the like (including oil and gas) before extraction and which attaches upon extraction, or which attaches to an account resulting from the sale of the collateral at the wellhead or minehead are governed by the law of the _____ Indian Reservation. This section does not apply to tribal resources held in trust.

9-307. Location of Debtor.

(1) A registered entity is located in the jurisdiction of its organization.

(2) Any other debtor is located at its place of business if it has only one, at its chief executive office if it has more than one place of business, and at the debtor's residence if the debtor has no place of business.

Sub-Part 2. Perfection.

9-308. When Security Interest or Agricultural Lien is Perfected; Continuity of Perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken as specified in Sections 9-309 through 9-313. If such steps are taken before the security interest attaches, it is perfected at the time it attaches.

(2) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection specified in Section 9-309 and 9-313 have been met. If the steps are taken before the agricultural lien becomes effective, it is perfected when it becomes effective.

(3) A security interest or agricultural lien originally perfected in any manner permitted under this Title and subsequently perfected in another manner permitted under this Title shall be deemed to be continuously perfected for the purpose of this Title provided there was no intermediary period when the security interest or agricultural lien was unperfected.

(4) Perfection of a security interest in an account, chattel paper, a document, an instrument, a general intangible, or a security also perfects a security interest in a support obligation for the collateral.

(5) Perfection of a security interest in a securities account also perfects a security interest in all security entitlements carried in the securities account. Perfection of a security interest in a commodity account also perfects a security interest in all commodity contracts carried in the commodity account.

(6) Notwithstanding other law to the contrary, perfection of a security interest in a right to payment or performance, other than a right to payment evidenced by chattel paper, also perfects a security interest in a lien on property securing the right.

9-309. When Filing Is Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions of This Article Do Not Apply.

(1) A financing statement must be filed to perfect all security interests and agricultural liens, except the following:

(a) a security interest in collateral in the secured parties possession under Section 9-311;

(b) a security interest perfected under Section 9-314(1), (3) or (4);

(c) a security interest in instruments certificated securities, chattel paper, or documents perfected without filing or possession under Section 9-310(4) or (5);

(d) a security interest in or agricultural lien on proceeds under Section 9-313(5);

(e) a security interest in a support obligation under Section 9-308(4);

(f) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(g) a purchase money security interest in consumer goods; but 9-309(4) applies to consumer goods that are subject to a federal statute or applicable treaty described in 9-309(3);

(h) an assignment of accounts or payment intangibles which does not alone, or in conjunction with other assignments to the same assignee, transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(i) an assignment for the benefit of all the creditors of the transferor, and subsequent

transfers by the assignee;

(j) a security interest arising in the purchase or delivery of a financial asset under Section 9-206;

(k) a security interest in investment property created by a broker or securities intermediary;

(l) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(m) a security interest in a letter of credit and proceeds of the letter of credit which is perfected without filing under Section 9-312;

(n) a security interest in property subject to a federal statute, regulation, or applicable treaty described in 9-309(3);

(o) a security interest in a deposit account which is perfected without filing under Section 9-312; and

(p) a sale of a payment intangible.

(2) If a secured party assigns a perfected security interest, no filing under this Title is required in order to continue the perfected status of the security interest against creditors and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Title is not necessary or effective to perfect a security interest in property subject to:

(a) federal statutes, regulations or applicable treaties of the United States which provides for:

(i) national or international registration;

(ii) national or international certificate of title; or

(iii) which specifies a place of filing different from that specified in this Title for filing of the security interest; or

(b) the following tribal regulations, [list any certificate of title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, and any central filing statute *.] During any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Title (Part 4) apply to a security interest in that collateral created by the person as debtor; or

Note: It is recommended that the provisions of certificate of title regulations for perfection of security interests by notation on the certificates should be amended to exclude coverage of inventory held for sale.

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition or result of perfection (Section 9-303).

(4) Compliance with the requirements prescribed by a statute, regulation, or treaty described in Section 9-309(3) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in Sections 9-311 and 9-314(3) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in Section 9-309(3) can be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral. Except as otherwise provided in Section 9-314(3), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by the statute, regulation, or treaty are governed by the statute, regulation, or treaty. In other respects the security interest is subject to this article.

9-310. Perfection of Security Interest in Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(1) A security interest in instruments, chattel paper, investment property or negotiable documents may be perfected by filing. Except as otherwise provided in Section 9-313(5) for cash proceeds:

(a) a security interest in money can be perfected only by the secured party's taking possession (Section 9-311);

(b) a security interest in a deposit account can be perfected only by control (Section 9-312); and

(c) except as otherwise provided in Section 9-308(4) for support obligations, a security interest in a letter of credit and proceeds of the letter of credit can be perfected only by control (Section 9-312).

(2) A security interest in goods in the possession of a bailee that has issued a negotiable document covering the goods is perfected by perfecting a security interest in the document. Any security interest in the goods otherwise perfected during the period is subordinate to the security interest perfected in the document.

(3) A security interest in goods in the possession of a bailee that has issued a non-negotiable document covering the goods is perfected by:

(a) issuance of a document in the name of the secured party;

(b) the bailee's receipt of notification of the secured party's interest; or

(c) filing as to the goods.

(4) A security interest in instruments is perfected without filing or the taking of possession for a period of 21 days from the time it attaches. In order for the security interest to attach the secured party must have given new value under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing if a secured party having a perfected security interest in an instrument, certified security, negotiable document or goods in possession of a bailee other than a bailee who has issued a negotiable document for those goods:

(a) makes available to the debtor the goods or documents representing the goods:

(i) for the purpose of ultimate sale or exchange; or

(ii) for the purpose of loading, unloading, storing, shipping, manufacturing, processing or otherwise dealing with the goods in a manner preliminary to their sale or exchange, but priority among conflicting security interests in the goods is subject to Section 9-322; or

(b) delivers the instrument or certified security to the debtor for the purpose of:

(i) ultimate sale or exchange; or

(ii) presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in 9-310(4) and (5) expires, perfection depends upon compliance with this article.

9-311. When Possession by Secured Party Perfects Security Interest Without Filing.

(1) Except as otherwise provided in 9-311(2),

a security interest in goods, instruments (other than certificated securities), money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in certificated securities may be perfected by the secured party's taking possession of the security certificates.

(2) A security interest in goods covered by a certificate of title issued by this _____ Indian Reservation may be perfected by the secured party's taking possession of the collateral only in the circumstances described in Section 9-314(3).

(3) This subsection applies to collateral other than goods covered by a document.

(a) A security interest is perfected by possession when the secured party takes possession, without a relation back, and continues only while the secured party retains possession, unless otherwise specified in this article.

(b) If the collateral is in the possession of a person other than the debtor, a secured party or a lessee in the ordinary course of the debtor's business takes possession when the person in possession acknowledges in writing that it holds possession for the secured party's or lessee's benefit.

(c) If a person, other than the debtor, the secured party, or a lessee in the ordinary course of the debtor's business takes possession of the collateral after having acknowledged in writing that it will hold possession of collateral for the secured party's or lessee's benefit, the secured party or lessee takes possession when the person takes possession.

(4) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(5) If a person acknowledges that it holds possession for the secured party's benefit:

(a) the acknowledgment is effective under subsection (c) even if the acknowledgment violates the rights of a debtor; and

(b) unless the person otherwise agrees or other law otherwise provides, the person owes no duties to the secured party and is not required to confirm the acknowledgment to another person.

(6) A security interest may be perfected as otherwise provided in this article before or after a period of possession by a secured party.

9-312. Perfection by Control.

(1) A security interest in investment property, a deposit account, or a letter of credit and proceeds of the letter of credit may be perfected by control of the collateral under Section 9-102 or 9-110.

(2) A security interest is perfected by control from the time the secured party obtains control without a relation back and continues only while control is retained.

(3) A security interest may be otherwise perfected as provided in this article before or after the period of control by the secured party.

9-313. Proceeds; Secured Party's Rights on Disposition of Collateral; Secured Party's Rights in Proceeds .

(1) Money, checks, deposit accounts, and the like are cash proceeds. All other proceeds are noncash proceeds.

(2) Except as otherwise provided in this article, a security interest continues in collateral notwithstanding sale, lease, license, exchange, or

other disposition thereof, and also attaches to any identifiable proceeds, unless the secured party authorized the disposition free of the security interest in the security agreement or through subsequent agreement. Other law determines whether an agricultural lien continues on collateral notwithstanding disposition or becomes effective as to proceeds.

(3) Proceeds that are commingled with other property are identifiable proceeds:

(a) if the proceeds are goods, to the extent provided by Section 9-334; and

(b) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under other law with respect to commingled property of the type involved.

(4) A security interest in or agricultural lien on proceeds is a perfected security interest or agricultural lien if the interest in or lien on the original collateral was perfected. The security interest in or agricultural lien on proceeds ceases to be a perfected interest or lien and becomes unperfected on the 21st day after the security interest attaches to the proceeds or the agricultural lien becomes effective as to the proceeds unless:

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed and, if the proceeds are acquired with cash proceeds or funds from a deposit account, the description of collateral in the financing statement indicates the type of property constituting the proceeds;

(b) the proceeds are identifiable cash proceeds; or

(c) the security interest in or agricultural

lien on the proceeds is perfected before the 21st day after the security interest attaches to the proceeds or the agricultural lien becomes effective as to the proceeds.

(5) Except as otherwise provided in 9-313(4), a security interest in or agricultural lien on proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type.

(6) If a filed financing statement covers the original collateral, a security interest in or an agricultural lien on proceeds which remains perfected under 9-313(4)(a) becomes unperfected when the effectiveness of the filed financing statement lapses under Section 9-516 or is terminated under Section 9-511, but in no event before the 21st day after the security interest attaches to the proceeds or the agricultural lien becomes effective as to the proceeds.

9-314. Perfection of Security Interest or Agricultural Lien Following Change in Applicable Law.

(1) This subsection applies to an agricultural lien and to a nonpossessory security interest in collateral other than goods covered by a certificate of title (Section 9-303), deposit accounts, investment property, and minerals and related accounts described in Section 9-306. A security interest or agricultural lien perfected under the law of the jurisdiction in which the debtor is located remains perfected until the expiration of four months after a change of the debtor's location to within the jurisdiction of the _____ Indian Reservation, or until perfection would have ceased under the law of the first jurisdiction, whichever occurs first. If it becomes perfected under the law of the _____ Indian Reservation before the end of that period, the security interest or agricultural lien continues perfected thereafter. If it does not become perfected under the law of the _____ Indian Reservation before the

end of that period, the security interest or agricultural lien becomes unperfected and is deemed never to have been perfected.

(2) This subsection applies to a possessory security interest in collateral, other than goods covered by a certificate of title (Section 9-303) and minerals described in Section 9-306. A security interest remains continuously perfected if:

(a) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(b) thereafter the collateral is brought into the jurisdiction of the _____ Indian Reservation; and

(c) upon entry into the jurisdiction of the _____ Indian Reservation the security interest is perfected under the law of the _____ Indian Reservation.

(3) This subsection applies to goods covered by a certificate of title (Section 9-303). If a security interest in goods is perfected by any method under the law of another jurisdiction and the goods become covered by a certificate of title requirement from this jurisdiction the security interest remains perfected until the earlier of the time the security interest would have become unperfected under the law of the other jurisdiction or the expiration of four months after the goods have become located within this jurisdiction. If the security is perfected under Section 9-309(4) or 9-311 before the prior perfection ceases to be effective, the security interest continues perfected thereafter. If it does not become perfected under Section 9-309(4) or Section 9-311 before the earlier of that time or the expiration of that period, the security interest becomes unperfected and is deemed never to have been perfected.

(4) This subsection applies to deposit accounts and investment property. A security interest perfected under the law of the depository

institution's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, which ever is applicable, remains perfected until the expiration of four months after a change of the depository institution's jurisdiction, or until perfection would have ceased under the law of the first jurisdiction, whichever occurs first. If it becomes perfected under the law of the _____ Indian Reservation before the end of that period, the security interest continues perfected thereafter. If it does not become perfected under the law of the _____ Indian Reservation before the end of that period, the security interest becomes unperfected and is deemed never to have been perfected.

Sub-Part 3. Priority.

9-315. Interests That Take Priority Over and Take Free of Unperfected Security Interests or Agricultural Lien.

(1) An unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under Section 9-319; and

(b) a person who becomes a lien creditor before the security interest is perfected.

(2) Except as otherwise provided in 9-315(5), a buyer of goods, instruments, documents, a security certificate, or chattel paper that is not a secured party takes free of a security interest if the buyer gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected.

(3) Except as otherwise provided in 9-315(5), a lessee of goods takes free of a security interest if the lessee receives delivery of the collateral without knowledge of the security interest and before it is perfected.

(4) A buyer of accounts, general intangibles,

or investment property other than a security certificate which is not a secured party takes free of a security interest if the buyer gives value without knowledge of the security interest and before it is perfected.

(5) If the secured party files, with respect to a purchase money security interest, before or within 20 days after the debtor receives possession of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arises between the time the security interest attaches and the time of filing.

9-316. Rights and Title of Consignee and Seller of Account or Chattel Paper With Respect to Creditors and Purchasers.

(1) Goods purchased for personal, family or household use and goods having a value of less than \$XXX which are delivered or consigned do not become the property of the deliverer or consignee unless the deliverer or consignee purchases and fully pays for the goods. A deliverer or consignee may still act as the deliverer's agent for purposes of transferring title to a buyer of these goods. Payment received by the deliverer or consignee upon selling of the goods, may be reduced by any commissions, fees or expenses expressly agreed to by the deliverer with the remaining payment amount being the property of the deliverer and not subject to any claims by the deliverer's or consignee's creditors.

(2) For purposes of determining the rights of creditors of, and purchasers of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor has rights and title to the account or chattel paper identical to those the debtor sold.

9-317. Protection of Buyers of Goods.

(1) This section does not affect a security

interest in goods in the possession of the secured party under Section 9-311.

(2) A buyer in the ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the seller, even if the security interest is perfected and the buyer knows of its existence.

(3) A buyer of consumer goods takes free of a security interest, even though perfected, if the buyer purchases the goods:

(a) without knowledge of the security interest;

(b) for value; and

(c) for the buyer's own personal, family or household purposes unless prior to the buyer's purchase the secured party has filed a financing statement covering the goods.

9-318. Lessees of Goods in Ordinary Course of Business.

A lessee of goods in ordinary course of business of the lessor takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected and the lessee knows of its existence.

9-319. Priorities Among Conflicting Security Interests and Agricultural Liens in the Same Collateral.

(1) Except as otherwise provided in this part, with respect to a security interest of a collecting bank, and with respect to a security interest of an issuer or nominated person, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(a) Conflicting security interests rank

according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, if there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(2) For the purposes of 9-319(1), a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

9-320. Future Advances.

(1) This subsection applies only to a security interest that secures an obligation. For purposes of determining the priority of a security interest under Section 9-319(2), perfection of the security interest dates from the time an advance is made if the security interest secures an advance made, other than pursuant to commitment, while the security interest is temporarily perfected under Section 9-310(4) or (5) and by no other method,

(2) This subsection applies only to a security interest that secures an obligation. A security interest is subordinate to the rights of a person that becomes a lien creditor while the security interest is perfected only to the extent that it secures advances made more than 45 days after the person becomes a lien creditor, unless the advance is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

(3) A buyer of goods, other than a buyer in ordinary course of business, takes free of a security interest to the extent that it secures advances made after the secured party acquires knowledge of the buyer's purchase, or more than 45 days after the purchase, whichever occurs first, unless the advance is made pursuant to a

commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period. This subsection does not affect a security interest in goods in the possession of the secured party under Section 9-311.

(4) A lessee of goods other than a lessee of goods in ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

9-321. Priority of Production Money Security Interests and Agricultural Liens.

(1) Except as otherwise provided in 9-321(5), if the requirements of 9-321(2) are met, a perfected production money security interest in production money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in Section 9-326, also has priority in their identifiable proceeds. A production money security interest has priority under this subsection only to the extent that the conflicting security interest secures obligations incurred more than XXX months before the production money secured party first gives new value to enable the debtor to produce the crops.

(2) A production money security interest has priority under 9-321(1) if:

(a) the production money security interest is perfected by filing when the production money secured party first gives new value to enable the debtor to produce the crops;

(b) the production money secured party

gives written notification to the holder of the conflicting security interest before the production money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production money secured party; and

(c) the notification states that the production money secured party has or expects to acquire a production money security interest in the debtor's crops and contains a description of the crops.

(3) Except as otherwise provided in 9-321(4), if more than one security interest qualifies for priority in the same collateral under 9-321(1), the security interests rank according to priority in time of filing under Section 9-319(2).

(4) If a statute provides that an agricultural lien in collateral has priority over a conflicting security interest or agricultural lien in the same collateral, the statute governs priority if the agricultural lien is perfected.

(5) To the extent that a person holds both an agricultural lien and a production money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

9-322. Priority of Purchase Money Security Interests.

(1) Except as otherwise provided in 9-322(5), a perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and, except as otherwise provided in Section 9-326, also has priority in its identifiable cash proceeds to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest

is perfected when the debtor receives possession of the inventory;

(b) the holder of the purchase money security interest gives written notice to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory;

(i) before the date of a filing made by the purchase money secured party or;

(ii) before the beginning of the 20 day period where the purchase money security interest is temporarily perfected without filing or possession under Section 9-310(5);

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory ; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing the inventory by item or type.

(2) If a purchase money security interest in inventory has priority over a conflicting security interest under 9-322(1), a security interest held by the purchase money secured party in chattel paper constituting proceeds of the inventory has priority over a conflicting security interest in the chattel paper if:

(a) the purchase money secured party takes possession of the chattel paper in good faith;

(b) in the ordinary course of the secured party's business; and

(c) without knowledge that the security interest violates the rights of the holder of the conflicting security interest.

(3) Except as otherwise provided in 9-322(5), a perfected purchase money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock and, except as otherwise provided in Section 9-326, also has priority in its identifiable proceeds and identifiable products in their unmanufactured states if:

(a) the purchase money security interest is perfected when the debtor receives possession of the livestock;

(b) the purchase money secured party gives written notification to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of livestock before the date of a the filing made by the purchase money secured party, or before the beginning of the 20 day period if the purchase money security interest is temporarily perfected without filing or possession under Section 9-310(5);

(c) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock ; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in livestock of the debtor, describing the livestock by item or type.

(4) Except as otherwise provided in 9-322(5), a purchase money security interest in collateral other than inventory or livestock has priority over a conflicting security interest in the same collateral and, except as otherwise provided in Section 9-326, also has priority in its identifiable proceeds if the purchase money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(5) If more than one security interest qualifies for priority in the same collateral under

9-322(1), (3), or (4):

(a) a security interest securing an obligation incurred as the price of the collateral has priority over a security interest securing an obligation incurred by an obligor for value given to enable the debtor to acquire rights in collateral; and

(b) in all other cases, Section 9-319(2) applies to the qualifying security interests.

9-323. Priority of Security Interests in Transferred Collateral.

(1) If a debtor acquires property subject to a perfected security interest created by another person, any security interest created by the debtor is subordinate to the security interest created by the other person, if there is no period when the prior security interest is unperfected, notwithstanding anything to the contrary in this part.

(2) If a debtor acquires property subject to an unperfected security interest created by the other person or which becomes unperfected at any time thereafter, the other sections of this subpart govern, as applicable.

9-324. Priority of Security Interests Created by New Debtor.

(1) A perfected security interest in collateral that is effective solely by a filed financing statement under Section 9-510, which a new debtor has or acquires rights is subordinate to a security interest in the same collateral that is perfected in another manner.

(2) If more than one security interest in the same collateral is subordinate under this subsection, the other rules stated in this subpart determine the priority of the subordinated security interests.

9-325. Priority of Security Interests in Investment Property.

Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) A possessory security interest in a security certificate in registered form has priority over a conflicting security interest perfected by a method other than control.

(c) Except as otherwise provided in section 9-325(d) and (e), conflicting security interests of secured parties each of whom has control rank equally.

(d) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(f) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(g) In all other cases, priority between conflicting security interests in investment property is governed by Section 9-319(2) and (3) and 9-320(1).

9-326. Priority of Security Interests in Deposit Accounts.

Priority among conflicting security interests in the same deposit account is governed by the following rules:

(a) A security interest held by a secured party that has control over the deposit account has priority over a conflicting security interest held by a secured party that does not have control.

(b) Except as otherwise provided in 9-326(c) and (d), security interests perfected by control rank equally.

(c) Except as otherwise provided in 9-326(d), a security interest held by the depository institution with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(d) A security interest perfected by control has priority over a security interest held by the depository institution with which the deposit account is maintained.

9-327. Priority of Security Interests in Letters of Credit.

Priority among conflicting security interests in the same letter of credit and proceeds of the letter of credit is governed by the following rules:

(a) A security interest held by a secured party that has control over the letter of credit and proceeds of the letter of credit has priority over a conflicting security interest held by a secured party that does not have control.

(b) Except as otherwise provided in 9-327(c), security interests perfected by control

rank equally.

(c) A security interest held by a transferee beneficiary has priority over a conflicting security interest held by another secured party.

9-328. Purchase of Chattel Paper and Instruments.

(1) A purchaser of chattel paper or an instrument has priority over a security interest in the chattel paper or instrument and, except as otherwise provided in Section 9-326, in its proceeds if the purchaser gives new value and takes possession of the chattel paper or instrument:

(a) in good faith;

(b) in the ordinary course of the purchaser's business; and

(c) without knowledge that the purchase violates the rights of the secured party.

(2) For purposes of 9-328(1), if chattel paper or an instrument indicates that it has been assigned to an identified assignee, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the assignee.

(3) A possessory security interest in an instrument has priority over a conflicting security interest perfected by another method.

9-329. Rights of Purchasers of Instruments, Documents and Securities Under Other Law.

(1) Nothing in this article limits the rights of:

(a) a holder in due course of a negotiable instrument,

(b) a holder to whom a negotiable document of title has been duly negotiated, or

(c) a protected purchaser of a security.

(2) These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided under applicable law. Filing under this article does not constitute notice of the security interest to those holders or purchasers.

9-330. Transfer of Money; Transfer of Funds From Deposit Account.

(1) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(2) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

9-331. Priority of Certain Liens Arising by Operation of Law.

(1) When a person in the ordinary course of business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

(2) A perfected security interest or an unperfected security interest is subordinate to any Tribal Lien in existence when the security interest is created.

9-332. Priority of Security Interests in

Fixtures.

(1) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this Title may be created in goods which are fixtures or may continue in goods that become fixtures, but no security interest exists in ordinary building materials incorporated into an improvement on land.

(3) This Title does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) (i) the security interest is a purchase money security interest;

(ii) the interest of the encumbrancer or owner arises before the goods become fixtures;

(iii) the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter; and

(iv) the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) (i) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record;

(ii) the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner; and

(iii) the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) (i) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods; and

(ii) before the goods become fixtures the security interest is perfected by any method permitted by this Title; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Title.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the fixture(s) as against the encumbrancer or owner.

(6) If the debtor's right terminates, the priority of the security interest continues for a period of ninety days, beginning on the date the debtor's rights terminate.

(7) Notwithstanding Section 9-332(4)(a) but otherwise subject to sections 9-332(4), (5) and (6), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that a mortgage is given to refinance a construction mortgage, the

mortgage has the same priority date as the construction mortgage.

(6) In all other instances, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(7) When the secured party has priority over all owners and encumbrances of the real estate, on default the secured party may remove the collateral from the real estate. However, the secured party must reimburse any encumbrancer or owner of the real estate who is not the debtor for any physical injury to the real estate, but not for any diminution in value caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may require the secured party give adequate security through a performance bond or otherwise prior to removal of the collateral.

9-333. Accessions.

(1) A security interest in goods which attaches before the goods are installed or affixed to other goods takes priority over the claims of all other persons to which the initial goods were installed or affixed. The attached security interest in goods prior to installation or affixation is limited to those goods installed or affixed but does not include the goods to which the initial goods were installed or affixed except as stated in section 9-333(3).

(2) A security interest which attaches to goods after they become part of a whole:

(a) is valid against all persons subsequently acquiring interests in the whole except as stated in section 9-333(3); and

(b) is invalid against any person with an interest in the whole at the time the security interest attaches to the goods, who has not in writing consented to the security interest or

disclaimed an interest in the goods as part of the whole.

(3) A security interest described in sections 9-333(1) and (2) made or contracted for without knowledge of the security interest and before the security interest is perfected do not take priority over:

(a) a subsequent purchaser for value of any interest in the whole;

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances.

(4) A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at the holder's own foreclosure sale, is a subsequent purchaser within this section.

(5) When the secured party has an interest in accessions which has priority over the claims of all persons who have interest in the whole, on default the secured party may remove the collateral from the whole. However, the secured party must reimburse any encumbrancer or owner of the whole who is not the debtor for the cost of repair of any physical injury to the whole, but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may require the secured party give adequate security through a performance bond or otherwise prior to removal of the collateral.

9-334. Priority When Goods Are Commingled or Processed.

(1) If a security interest in goods was perfected and subsequently the goods, or a part

thereof, have become part of a product or mass, the security interest continues in the product or mass if:

(a) the goods are manufactured, processed, assembled or commingled in a manner that causes their identity to be lost; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

(2) When section 9-334(1)(b) applies, no separate security interest in the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9-334.

(3) When more than one security interest attaches to the product or mass under Section 9-334(1), the security interests have equal priority and are apportioned by the ratio that the cost of the original security interests bear to the total value of the product or mass.

9-335. Priority of Security Interest in Goods Covered by a Certificate of Title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, the _____ Indian Reservation issues a certificate of title (Section 9-303) that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(a) A buyer of the goods, other than a person that is in the business of selling goods of that kind, takes free of the security interest to the extent that the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(b) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 9-309(4), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

9-336. Priority of Security Interest Perfected by Effective Financing Statement Containing Incorrect Information.

A security interest, or agricultural lien, perfected by a filed financing statement complying with Section 9-502(1) but containing information described in Section 9-515(2)(e) that is incorrect is subordinate to the rights of a purchaser of the collateral which gives value in reasonable reliance upon the incorrect information.

9-337. Priority Subject to Subordination.

Nothing in this article prevents subordination by agreement by any person entitled to priority.

9-338. Effectiveness of Right of Recoupment or Set-off Against Deposit Account.

(1) Except as otherwise provided in 9-338(3) and (4), a depository institution where a deposit account is maintained may exercise any right of recoupment and any right of set-off against a secured party that holds a security interest in the deposit account.

(2) Except as otherwise provided in 9-338(3), the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(3) A depository institutions exercising a set-off against a deposit account is ineffective against a secured party that holds a security interest in

the deposit account which is perfected by control.

(4) A depository institution shall obtain leave of court prior to the exercise of any right of set-off.

9-339. Depository Institution's Right to Dispose of Funds in Deposit Account.

Except as otherwise provided in Section 9-338(3), and unless the depository institution otherwise agrees in writing, a depository institution's rights and duties with respect to a deposit account maintained with the depository institution are not terminated, suspended, or modified by:

(a) the creation or perfection of a security interest in the deposit account; or

(b) the depository institution's knowledge of the security interest.

PART 4. RIGHTS OF THIRD PARTIES.

9-401. Alienability of Debtor's Rights: Judicial Process.

The debtor's rights in collateral may be voluntarily or involuntarily transferred by way of sale, creation of a security interest, attachment, levy or other recognized judicial process notwithstanding a provision in the security agreement prohibiting any transfer or indicating any transfer constitutes a default.

9-402. Secured Party Not Obligated on Contract of Debtor.

The existence of a security interest, agricultural lien or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

9-403. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.

(1) This section is subordinate to any other law that establishes a different rule for consumer account debtors.

(2) Except as provided in Section 9-403(3), an agreement between and account debtor and an assignor not to assert against an assignee any claim or defense the account debtor may have against the assignor is enforceable by the assignee that takes an assignment:

(a) for value;

(b) in good faith;

(c) without notice of a claim or defense to the property assigned; and

(d) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Section 9-305(1).

(3) An agreement of the kind described in Section 9-403(2) is not enforceable against a holder in due course of a negotiable instrument under Section 9-305(2).

9-404. Rights Acquired by Assignee; Defenses Against Assignee; Modification of Contract; Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Term Prohibiting Assignment Ineffective.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to 9-404(2), the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any recognized defense or claim arising from the contract; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) The claim of an account debtor may be asserted against an assignee under Section 9-404(1) only to reduce the amount owing when the action is brought.

(3) To the extent that the right to full or partial payment under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee, unless the account debtor has otherwise agreed. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(4) Subject to 9-404(5), (6) and (7), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until but not after the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of notification, the account debtor may discharge its obligation by paying the assignee.

(5) An assignee may not send a notification under Section 9-404(4) that directs an account debtor to make less than the full amount of any installment payment to the assignee, regardless of whether only a portion of the account, chattel paper, or general intangible has been assigned to that assignee, a portion has been assigned to another assignee, or the account debtor knows

that the assignment to that assignee is limited.

(6) A notification is ineffective under Section 9-404(4):

(a) if it does not reasonably identify the rights assigned;

(b) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under other law.

(7) If requested by the account debtor, the assignee must within ____ days furnish reasonable proof that the assignment has been made. Unless the assignee does so, the account debtor may discharge its obligation by paying the assignor even if the account debtor has received notification under Section 9-404(4).

(8) This subsection does not apply to the sale of a payment intangible. Except as otherwise provided under other applicable law, a term in any contract between an account debtor and an assignor is ineffective if it prohibits, restricts, or requires the account debtor's consent to assignment of an account, chattel paper, or a payment intangible.

9-405. Restrictions on Assignment of Certain General Intangibles Ineffective

(1) Section 9-405(2) applies to a security interest in a payment intangible only if the security interest arises out of a sale of the payment intangible.

(2) A term in a general intangible, including a contract, permit, license, or franchise, between an account debtor and a debtor that prohibits, restricts, or requires the account debtor's consent to the assignment or transfer of or creation, attachment, or perfection of a security interest in the general intangible, is ineffective to the extent

that:

(a) the term would impair the creation, attachment, or perfection of a security interest;

(b) the creation, attachment, or perfection of the security interest would cause a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the general intangible.

(3) A term in a statute or governmental rule or regulation that prohibits, restricts, or requires the consent of a government or governmental body or official to the assignment or creation of a security interest in a general intangible, including a contract, permit, license, or franchise, between an account debtor and a debtor is ineffective to the extent that:

(a) the term would impair the creation, attachment, or perfection of a security interest; or

(b) the creation, attachment, or perfection of the security interest would cause a default, breach, claim, defense, termination, right of termination, or remedy under the general intangible.

(4) To the extent that a term in a general intangible, statute, rule, or regulation is ineffective under Section 9-405 (3) or (4) but is effective under other law, the creation, attachment, or perfection of a security interest in the general intangible:

(a) is not enforceable against the account debtor;

(b) imposes no duties or obligations on the account debtor; and

(c) does not require the account debtor to recognize the security interest, pay or render performance to the secured party, or accept

payment or performance from the secured party.

(5) This section controls over any inconsistent provisions of the following statutes, rules, and regulations:

[List any statutes, rules, and regulations containing provisions inconsistent with this section.]

PART 5. FILING.

Sub-Part 1. Place of Filing, Contents and Effectiveness of Financing Statement.

9-501. Place of Filing.

(1) Except as otherwise provided in Section 9-501(2), if tribal law governs perfection of a security interest (Sections 9-301 through 9-307), the place to file a financing statement to perfect the security interest is:

(a) the office designated for the filing or recording of a mortgage on the real estate, if the collateral is:

(i) timber to be cut;

(ii) minerals or the like, including oil and gas;

(iii) accounts subject to Section 9-306; or

(iv) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; and

(b) the office of [.....] in all other cases, including if the goods are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) Subject to Section 9-309(3), the place to file a financing statement to perfect a security

interest in collateral, including fixtures, of a transmitting utility is the office of [.....]. This financing statement constitutes a fixture filing as to the described collateral that is or is to become fixtures.

Legislative Note: The Indian Reservation should designate the filing office where the brackets appear. The filing office may be that of a governmental official (e.g., the Tribal Secretary) or a private party that maintains the state's filing system (see Section 9-526).

9-502. Contents of Financing Statement; Mortgage as Financing Statement; Time of Filing Financing Statement.

(1) A financing statement is sufficient only if it gives the names and mailing addresses of the debtor and the secured party or a representative of the secured party and contains a statement indicating the collateral covered by the financing statement.

(2) If the financing statement covers timber to be cut or covers minerals or the like, including oil and gas, or accounts subject to Section 9-306, or if the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures, the financing statement also must show that it covers this type of collateral, recite that it is to be filed in the real estate records, contain a description of the real estate and, if the debtor does not have an interest of record in the real estate, show the name of a record owner.

(3) A real estate mortgage is effective as a financing statement filed as a fixture filing from the date of its recording only if:

(a) the mortgage indicates the goods that it covers;

(b) the goods are or will become fixtures related to the real estate described in the mortgage;

(c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(d) the mortgage is duly recorded.

(4) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

9-503. Name of Debtor and Secured Party.

(1) A financing statement sufficiently gives the name of the debtor:

(a) if the debtor is a registered entity, only if the financing statement gives the name of the debtor as shown on the public records of the debtor's jurisdiction of organization;

(b) if the debtor is a decedent's estate, only if the financing statement gives the name of the decedent and indicates that the debtor is an estate;

(c) if the debtor is a trust, only if the financing statement gives the name, if any, specified for the trust in its organic documents or, if no name is specified, gives the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors and indicates, in the debtor's name or otherwise, that the debtor is a trust; and

(d) in other cases, only if it gives the individual or organization name of the debtor.

(2) A financing statement that sufficiently gives the name of the debtor is not rendered ineffective by the absence of a trade or other name or names of partners, members, or associates.

(3) A financing statement may give the name of more than one debtor, may give, as an additional debtor, a trade or other name for the debtor, and may give the name of more than one secured party.

(4) The failure to indicate the representative capacity of a secured party or a representative of a secured party does not affect the sufficiency of a financing statement.

9-504. Indication of Collateral.

A description of the collateral, an indication of the type of collateral, or a statement to the effect that the financing statement covers all assets or all personal property is sufficient to indicate the collateral that is covered by a financing statement.

9-505. Filing and Compliance With Other Statutes and Treaties for Consignments, Leases, Bailments, and Other Transactions.

(1) A consignor, lessor, or bailor of goods or a buyer of a payment intangible may file a financing statement, or may comply with a statute or treaty described in Section 9-303, using the terms consignor, consignee, lessor, lessee, bailor, bailee, owner, registered owner, buyer, seller, or the like, instead of the terms debtor and secured party.

(2) This part applies to a financing statement and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 9-309, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. However, if it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, owner, or buyer which attaches to the collateral is perfected by

the filing or compliance.

9-506. Effect of Minor Errors.

(1) A financing statement substantially complying with the requirements of this part is effective, even if it contains minor errors that are not seriously misleading.

(2) A financing statement that fails to give the correct name of the debtor in accordance with Section 9-503(1) is seriously misleading unless a search of the records of the filing office conducted in accordance with a rule adopted pursuant to Section 9-526 under the debtor's correct name would disclose the financing statement, in which case the incorrect name does not render the financing statement seriously misleading.

9-507. Effect of Certain Changes on Effectiveness of Financing Statement.

(1) If a debtor so changes its name that a filed financing statement becomes seriously misleading:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within four months after the change.

(2) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest continues under Section 9-313(2), even if the

secured party knows of or consents to the disposition.

(3) Except as otherwise provided in Section 9-506(1) and Section 9-510, a financing statement is not rendered ineffective if, after the financing statement is filed, the information contained in the financing statement becomes inaccurate and seriously misleading.

9-508. Authorization of Financing Statement; Liability for Unauthorized Filing.

(1) A person may not file an initial financing statement or an amendment that adds collateral covered by a financing statement unless:

(a) the debtor authorizes the filing in a signed writing or in a signed record in another medium authorized in writing by the debtor; or

(b) the person holds an agricultural lien at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(2) By signing a written security agreement, a debtor authorizes the secured party to file an initial financing statement and an amendment covering the collateral described in the security agreement.

(3) A person that files an initial financing statement or an amendment that adds collateral and that claims an agricultural lien in the collateral covered by the financing statement shall send a copy of the financing statement or the amendment to the debtor not later than the 10th day after the filing. The person shall send the copy to the most recent mailing address of the debtor known to the person.

(4) A person that files an initial financing statement or an amendment in violation of Section 9-508(1) or that fails to send a copy of a financing statement or amendment to the debtor

in accordance with Section 9-508(3) is liable to the debtor for \$XXX and any loss thereby sustained by the debtor.

9-509. Amendment of Financing Statement.

Subject to Section 9-513, a secured party of record may add or release collateral covered by a financing statement or otherwise amend the information contained in a financing statement by filing an amendment that identifies the initial financing statement by the date of filing and the file number assigned pursuant to Section 9-520(a) or by another method prescribed by rule. An amendment does not extend the period of effectiveness of a financing statement. If an amendment adds collateral, it is effective as to the added collateral only from the date of filing of the amendment.

9-510. Effectiveness of Financing Statement if New Debtor Becomes Bound by Security Agreement.

(1) Except as otherwise provided in 9-510(2) and (3), a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective if the original debtor acquired rights in the collateral.

(2) If a filed financing statement that is effective under 9-510(1) is seriously misleading with respect to the name of the new debtor:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(3); and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor

becomes bound under Section 9-203(3) unless an amendment that renders the financing statement not seriously misleading is filed before the expiration of that time.

(3) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 9-507(2).

9-511. Termination Statement.

(1) A secured party of record for a financing statement may file a termination statement for the financing statement.

(2) (a) If a financing statement covers consumer goods, within one month or within 10 days after written demand by the debtor after there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value, the secured party of record shall file with the filing office a termination statement for the financing statement.

(b) In other cases, if there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value, or if a financing statement covers accounts, chattel paper, or payment intangibles that have been sold but as to which the account debtor other person obligated has discharged its obligation, the secured party of record for a financing statement, within 10 days after written demand by the debtor, shall send the debtor a termination statement for the financing statement or file the termination statement with the filing office.

(3) A secured party of record that fails to file or send a termination statement as required by this subsection is liable to the debtor for \$XXX and any loss thereby sustained by the debtor.

(4) Subject to Section 9-513, upon the filing

of a termination statement with the filing office under 9-511(2), the financing statement to which the termination statement relates becomes ineffective.

9-512. Assignment of Rights Under Financing Statement.

(1) Except as otherwise provided in Section 9-512(3), an initial financing statement may reflect an assignment of all of the secured party's rights under the financing statement with respect to some or all of the collateral by giving in the financing statement the name and mailing address of the assignee. Upon filing, the assignee named in an assignment filed under this subsection is a secured party of record for the financing statement. An assignment in an initial financing statement may state that the rights under the financing statement are being assigned only with respect to the portion of the collateral covered by the financing statement that is indicated in the assignment; otherwise, the rights under the financing statement are assigned with respect to all of the collateral covered by the financing statement.

(2) A secured party may assign all or part of the secured party's rights under a financing statement by filing in the filing office a written statement of assignment signed by the secured party, or a copy thereof, and setting forth:

(i) the name of the recorded secured party and the debtor;

(ii) the file number and the date of filing of the financing statement;

(iii) the name and address of the assignee; and

(iv) a description of the collateral assigned.

(3) An assignment of record of a security

interest in a fixture covered by a real estate mortgage that is effective as a fixture filing under Section 9-502(2) may be made only by an assignment of record of the mortgage in the manner provided by other law of the _____ Indian Reservation.

9-513. Multiple Secured Parties of Record.

(1) If there is more than one secured party of record for a financing statement, each secured party of record may file an amendment, continuation statement, or termination statement concerning its rights under the financing statement.

(2) A filing by one secured party of record does not affect the rights under the financing statement of another secured party of record.

9-514. Successor of Secured Party.

A person that succeeds to substantially all of the rights of a secured party by operation of law and becomes a secured party may act under this part without disclosing its status as a successor or may act in its own name as the disclosed successor of a secured party.

9-515. What Constitutes Filing a Record; Effectiveness of Filing.

(1) Except as otherwise provided in Section 9-515(2), presentation of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(2) Filing does not occur with respect to a record that a filing office refuses to accept because:

(a) the record is not communicated by a method or medium of communication authorized by the filing office;

(b) an amount equal to or greater than the applicable filing fee is not tendered;

(c) the filing office is unable to index the record because:

(i) in the case of an initial financing statement, the record gives no name for a debtor or the filing office is unable to read or decipher the names given; or

(ii) in other cases, the record does not identify the initial financing statement as required by this part or the filing office is unable to read or decipher the identification;

(d) the filing office is unable to determine the secured party of record because the record does not give a name for the secured party of record or the filing office is unable to read or decipher the name given;

(e) in the case of an initial financing statement, the statement does not:

(i) indicate whether the debtor is an individual or an organization; or

(ii) if the financing statement indicates that the debtor is an organization, indicate the type of organization, give a jurisdiction of organization for the debtor, or give an organizational identification number for the debtor or indicate that the debtor has none; or

(f) in the case of an assignment in an initial financing statement under Section 9-512(1) or an amendment filed under Section 9-512(2), the record does not give a name for the assignee.

(3) Except as otherwise provided in Section 9-336, a filed financing statement complying with Section 9-502(1) is effective, even if some or all of the information described in Section 9-

515(2)(e) is not given or is incorrect.

(4) A record that is presented to the filing office with tender of the filing fee but which the filing office refuses to accept pursuant to Section 9-521 for a reason other than one set forth in Section 9-515(2) is effective as a filed record except as against a purchaser of the collateral which gives value in reliance upon the absence of the record in the files.

9-516. Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement.

(1) Except as otherwise provided in Sections 9-516(3) and (4), a filed financing statement is effective for a period of five years after the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless before the lapse a continuation statement is filed pursuant to Section 9-516(2). Upon lapse, a financing statement becomes ineffective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest or agricultural lien is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(2) A continuation statement of a filed financing statement may be filed by a secured party of record within six month period before the expiration of the five-year period specified in 9-516(1).

(3) Subject to Section 9-513, upon timely filing of a continuation statement, the effectiveness of the initial financing statement is continued for five years after the last date on which the financing statement was effective, whereupon the financing statement lapses in the same manner as provided in Section 9-516(1) unless before the lapse another continuation statement is filed pursuant to this subsection.

Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(4) If a debtor is a transmitting utility and a filed financing statement so states, the financing statement is effective until a termination statement is filed.

(5) A real estate mortgage that is effective as a fixture filing under Section 9-502(2) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

9-517. Contents of Continuation Statement.

A continuation statement must identify the initial financing statement by file number and the date of filing or by another method prescribed by rule and state that it is a continuation statement or that it is filed to continue the effectiveness of the financing statement.

9-518. Effect of Indexing Errors.

(1) Except as otherwise provided in Section 9-518 (2), the failure of the filing office to index a record correctly does not affect the effectiveness of the record.

(2) A filed but improperly indexed record is ineffective against a purchaser of the collateral that gives value in reliance upon the apparent absence of the record in the files.

9-519. Claim Concerning Inaccurate or Wrongfully Filed Record; Failure to Send or File Termination Statement.

(1) If a person believes in good faith that a record indexed under the person's name with the filing office is inaccurate or was wrongfully filed, the person may file with the filing office a correction statement with respect to the record or

financing statement.

(2) If a person believes in good faith that the secured party of record for a financing statement indexed under the person's name has failed to comply with its duty to file or send to the person a termination statement for the financing statement under Section 9-511, the person may file with the filing office a termination request with respect to the financing statement.

(3) A correction statement or termination request must identify the record or the initial financing statement to which it relates by the date of filing and the file number assigned under Section 9-520(a) or by another method prescribed by rule. A correction statement must give the basis for the person's belief that a record is inaccurate or was wrongfully filed and the manner in which the record should be amended in order to cure any inaccuracy. A termination request must give the basis for the person's belief that the secured party of record for a financing statement indexed under the person's name has failed to comply with its duty to file or send to the person a termination statement for the financing statement.

(4) Upon filing, a correction statement or a termination request becomes a part of the record or financing statement to which it relates, but neither the correction statement nor the termination request otherwise affects the record or financing statement.

Sub-Part 2. Duties and Operation of Filing Office.

9-520. Numbering, Maintaining, and Indexing Records.

(1) Except as otherwise provided in Sections 9-520(2) and (4), for each record filed with the filing office, the filing office shall:

(a) assign a file number to the record;

(b) create a record that bears the file number and the date and time of filing;

(c) maintain the filed record for public inspection;

(d) index the filed record according to the name of the debtor in such a manner that each initial financing statement is interrelated to all filed records relating to it; and

(e) note in the index the file number and the date and time of filing.

(2) If a financing statement covers timber to be cut or covers minerals or the like, including oil and gas, or accounts subject to Section 9-306, or is filed as a fixture filing, the filing office shall index it under the names of the debtor, and any owner of record shown on the financing statement, as if they were the mortgagors under a mortgage of the real estate described. The filing office shall index a financing statement as if it were a mortgage to the extent that the law of the _____ Indian Reservation provides for indexing of mortgages:

(a) under the name of the mortgagee,

(b) under the name of the secured party as if the secured party were the mortgagee, or,

(c) by description.

(3) In the case of a fixture filing, or a financing statement covering timber to be cut, or covering minerals or the like, including oil and gas, or accounts subject to Section 9-306, the filing office shall index an assignment filed under Section 9-512(1) or an amendment filed under Section 9-512(2), under the name of the assignor as grantor and, to the extent that the law of the _____ Indian Reservation provides for indexing the assignment of a real estate mortgage under the name of the assignee, the filing office shall index the assignment or the amendment under the name of the assignee.

(4) The filing office shall perform the acts required by Sections 9-520(1), (2), and (3) at the time and in the manner prescribed by rule.

9-521. Acceptance and Refusal to Accept Record.

(1) A filing office may refuse to accept a record for filing only for a reason set forth in Section 9-515(2).

(2) If a filing office refuses to accept a record for filing, it shall communicate the fact of and reason for its refusal to the person that presented the record. The communication must be made in writing within two weeks after the filing office receives the record.

(3) The filing office may not refuse to accept a written Financing Statement or Addendum Form utilizing an applicable tribal form except for a reason set forth in Section 9-515(2):

(4) The filing office may not refuse to accept a written Change Form that utilizing an applicable tribal form except for a reason set forth in Section 9-515(2):

9-522. Lapsed Financing Statements.

(1) The filing office may cause the files to reflect the fact that a financing statement has lapsed under Section 9-516(1) or has become ineffective under Section 9-511.

(2) Except to the extent that a statute governing disposition of public records provides otherwise, immediately upon lapse the filing office may destroy any written record evidencing the financing statement. If the filing office destroys a written record evidencing a financing statement, it shall maintain another record of the financing statement which is recoverable by using the file number of the destroyed record.

9-523. Information From Filing Office.

(1) If a person filing a written record furnishes a copy to the filing office, the filing office upon request shall note upon the copy the file number and date and time of the filing of the original and deliver or send the copy to the person.

(2) The filing office shall communicate the following information to any person who requests it:

(a) whether there is on file on the date and time specified by the requesting party any financing statement that designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request, and has neither lapsed under Section 9-516(1) nor become ineffective under Section 9-511;

(b) the date and time of filing of each financing statement; and

(c) the information contained in each financing statement.

(3) In complying with its duty under Section 9-523(2), the filing office may communicate the information in any medium. However, if requested, the filing office shall communicate the information by issuing a written certificate.

9-524. Assignment of Functions to Third Party.

The Tribe may contract with a third party to perform some or all of the functions of a filing office under this part, other than the adoption of rules under Section 9-526. A contract under this section is subject to [insert reference to any applicable statute that regulates government contracting and procurement].

9-525. Fees.

(1) The fee for filing and indexing a record under this part is \$ _____ if the record is communicated in writing on a standard form as set forth in Section 9-521. The fee for filing a written record in a form other than as set forth in Section 9-521, or if the record is communicated by another medium authorized by this Title is \$ _____. The fee for each additional name more than one required to be indexed is \$ _____ if provided on a standard form or \$ _____ if communicated on a substitute form or alternate authorized medium.

(2) The fee for responding to a request for information from the filing office, including marking a written copy to show the time and place of filing under provided under Section 9-523 or issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is \$ ____ if the request is communicated in writing and \$ ____ if the request is communicated by another medium authorized by this Title.

9-526. Administrative Rules.

The [insert appropriate official or governmental agency] shall adopt rules to carry out the provisions of this article. The rules must be adopted in accordance with the [insert any applicable state administrative procedure act] and consistent with this article.

PART 6. DEFAULT.

Sub-Part 1. Default and Enforcement of Security Interest.

9-601. Default and Enforcement of Security Interest.

(1) When a debtor is in default under a security agreement:

(a) a secured party has the rights and remedies:

(i) provided in this Title;

(ii) provided in the security agreement so long as they comply with recognized laws; and

(iii) limited by 9-501(3)

(b) The secured party may reduce the claim to judgment, foreclose or otherwise enforce the security interest by legally available procedure.

(c) If the collateral is documents, the secured party may proceed either as to the documents or as to the goods covered thereby.

(d) A secured party in possession has the rights, remedies and duties provided in Section 9-207.

(e) The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies:

(a) as provided in this Title;

(b) as provided in the security agreement so long as they comply with recognized law; and

(c) as provided in Section 9-207.

(3) When a secured party has reduced the claim to judgment the lien of any levy which may be made upon the collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Title.

9-602. Waiver and Variance of Rights and Duties.

(1) To the extent that they give rights to a debtor or an obligor and impose duties on a secured party, the rules stated in the sections referred to below may not be waived or varied by a debtor or by a consumer obligor, except as specifically provided in Section 9-622:

(a) Section 1-106, which deals with the territorial application of this title;

(b) Sections 9-609, 9-610, and 9-612, which deal with disposition of collateral;

(c) Sections 9-606 and 9-613 insofar as they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(d) Sections 9-606, 9-607, and 9-613 insofar as they require accounting for or payment of surplus proceeds of collateral;

(e) Sections 9-617, 9-618, or 9-619, which deal with acceptance of collateral in satisfaction of obligation;

(f) Section 9-620, which deals with redemption of collateral;

(g) Section 9-621, which deals with reinstatement of obligations;

(i) Sections 9-623, 9-624, and 9-627, which deal with the secured party's liability for failure to comply with this article;

(j) Section 9-404(6)(c), which deals with an account debtor's right to ignore certain notifications; and

(k) Section 9-209, which deals with requests for an accounting, list of collateral, and statement of account.

(l) An obligor other than a consumer obligor may waive or vary the rules referred to in Section 9-602(1) to the extent and in the manner provided by other law.

9-603. Agreement on Standards Concerning Rights and Duties.

The parties may determine by agreement the standards by which the fulfillment of the debtor's rights, obligor's rights and secured party's duties are to be measured provided the standards are not unreasonable.

9-604. Procedure if Security Agreement Covers Real Property of Fixtures.

(1) If a security agreement covers both real and personal property, a secured party may proceed:

(a) under this part as to the personal property without prejudicing any rights and remedies with respect to the real property; or

(b) as to both the real and the personal property in accordance with the rights and remedies with respect to the real property, in which case the other provisions of this part do not apply.

(2) If a security agreement covers goods that are or become fixtures, a secured party, subject to Section 9-604(3), may proceed under this part or in accordance with the rights and remedies with respect to real property, in which case the other provisions of this part do not apply.

(3) If a secured party with a security interest in fixtures has priority over all owners and encumbrancers of the real estate, the secured party may, on default, subject to the other provisions of this part, remove the collateral from the real estate. The secured party shall reimburse any encumbrancer or owner of the real estate that is not the debtor and that has not

otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of the obligation to reimburse.

9-605. Time of Default for Agricultural Lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the earlier of the time provided by agreement of the parties and the time at which the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

9-606. Collection Rights of Secured Party.

(1) If so agreed in the security agreement and in any event upon default the secured party may by leave of the court:

(a) notify an account debtor or the obligor on an instrument to make payment to the secured party whether or not the assignor was making collections on the collateral; and

(b) take control of any proceeds to which the secured party is entitled under 9-313.

(2) (a) A secured party who by agreement is entitled to charge back uncollected collateral, or is entitled to full or limited recourse against the debtor, and who undertakes to collect from the account debtors or obligors, must proceed in a commercially reasonable manner and must obtain leave of the tribal court when required.

(b) The secured party may deduct reasonable expenses of realization from the collections including reasonable attorney's fees and legal costs incurred by the secured party.

(c) If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides or a recognized court order so allows.

9-607. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus.

(1) If a security interest or agricultural lien secures payment or performance of an obligation the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds (Section 9-313) of collection or enforcement under this section in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(iii) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives a written notification of demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under Section 9-607(1)(a)(iii).

(c) A secured party need not apply or pay over for application the noncash proceeds (Section 9-313) of collection and enforcement under this section. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for any surplus notwithstanding any agreement to the contrary, and, unless otherwise agreed, the obligor is liable for any deficiency. Recovery of a deficiency under this subsection is subject to Section 9-624.

(2) If the underlying transaction is a sale of accounts, chattel paper, or payment intangibles, the debtor is entitled to any surplus, and the obligor is liable for any deficiency, only if its agreement so provides. Recovery of a deficiency under this subsection is subject to Section 9-624.

9-608. Secured Party's Right to Take Possession After Default.

(1) Unless otherwise agreed, a secured party has on default the right to take possession of the collateral. In taking possession a secured party must either obtain the consent of the debtor when the default occurs or obtain a judicial order of repossession. The secured party may ask that the debtor be required to assemble the collateral at a reasonably convenient location for both parties and make it available to the secured party.

(2) If the debtor consents at the time of default or the secured party obtains a judicial order of foreclosure, the secured party may take possession of the collateral and without removal

may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 9-609.

9-609. Disposition of Collateral After Default.

(1) After default a secured party may sell, lease or otherwise dispose of any or all of the collateral in the then existing condition at the time of default or following any commercially reasonable preparation or processing of the collateral for disposal. Any sale of goods is subject to applicable law. The proceeds of disposition shall be applied in the following order:

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must furnish reasonable proof of the subordinate interest, and unless so provided, the secured party need not comply with the subordinate interest's demand.

(2) (a) Disposition of the collateral may be by public or private proceedings and by way of one or more contracts.

(b) Sale or other disposition:

(i) may be as a unit or in parcels;

(ii) at any time and place;

(iii) on any terms; and

(iv) must be commercially reasonable.

(c) The secured party may buy the collateral at any public sale. If the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the secured party may buy the collateral at private sale for a commercially reasonable price.

9-610. Persons Entitled to Notification Before Disposition of Collateral.

(1) The notification date is the earlier of the date on which a secured party sends to the debtor and any secondary obligor written notification of a disposition and the date on which the debtor and any secondary obligor waive the right to notification.

(2) A secured party shall send to a debtor and any secondary obligor reasonable written notification of disposition under Section 9-612, unless collateral is perishable or threatens to rapidly decline in value or is of a type customarily sold on a recognized market. In the case of consumer goods, another notification need not be sent. In other cases a secured party shall send written notification of disposition to:

(a) any other person from whom the secured party has received, before the notification date, written notification of a claim of an interest in the collateral;

(b) any other secured party that, [XX] days before the notification date, held a security interest or agricultural lien in the collateral perfected by the filing of a financing statement that identified the collateral, was indexed under the debtor's

name as of that date, and was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date (Sections 9-301 through 9-307 and 9-501); and

(c) any other secured party that, [XX] days before the notification date, held a security interest in the collateral perfected by compliance with a statute or treaty described in Section 9-309.

(3) A secured party complies with the notification requirement specified in Section 9-610(2)(b) if:

(a) not later than [XX] days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Section 9-610(2)(b); and

(b) before the notification date, either the secured party did not receive a response to the request for information or the secured party received a response to the request for information and the secured party sent written notification to each secured party named in that response and whose financing statement covered the collateral.

9-611. Timeliness of Notification Before Disposition of Collateral.

(1) Notification of a disposition after default is sent within a reasonable time before disposition if sent:

(a) in a consumer secured transaction, 21 days or more before the earliest time of disposition set forth in the notification; or

(b) in other transactions, 10 days or more before the earliest time of disposition set forth in the notification.

(2) Notification that does not meet the applicable time requirements of Section 9-611(1) is presumed unreasonable. Rebuttal of this presumption is a question of fact.

9-612. Contents and Form of Notification Prior to Disposition of Collateral.

(1) Except in a consumer secured transaction, the following rules apply:

(a) Unless otherwise agreed, the contents of a notification of disposition are sufficient if the notification:

(i) describes the debtor and the secured party;

(ii) describes the collateral that is the subject of the intended disposition;

(iii) states the method of intended disposition;

(iv) states that the debtor [or secondary obligor] is entitled to an accounting of the unpaid indebtedness (Section 9-209) and states the charge, if any for an accounting; and

(v) states the time and place of a public sale or the time after which any other disposition is to be made, whether or not the notification contains additional information.

(b) Whether a notification that lacks any of the information set forth in Section 9-612(1)(a) is nevertheless sufficient is a question of fact in each case.

(c) A particular phrasing of the notification is not required. A notification substantially complying with the requirements of this subsection is sufficient, even if it contains minor errors that are not seriously misleading.

(d) Notifications utilizing applicable tribal forms are presumed to provide sufficient notice.

(2) In a consumer secured transaction, the following rules apply:

(a) A notification of disposition must contain the following information:

(i) the information specified in Section 9-613(1)(a);

(ii) a description of any liability for a deficiency of the person to which the notification is sent;

(iii) the amount that must be paid to the secured party to redeem the obligation secured under Section 9-620;

(iv) the amount that must be paid to the secured party to reinstate the obligation secured under Section 9-621; and

(v) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(b) A particular phrasing of the notification is not required. A notification substantially complying with the requirements of this subsection is sufficient, even if it contains minor errors that are not seriously misleading.

(c) Notifications utilizing applicable tribal forms are presumed to provide sufficient notice.

9-613. Application of Proceeds of Disposition; Liability for Deficiency and Rights to Surplus.

(1) A secured party shall apply or pay over for application the cash proceeds (Section 9-313) of disposition in the following order to:

(a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(b) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(c) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral if the secured party receives a written notification of demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under Section 9-613(1)(a).

(3) A secured party need not apply or pay over for application noncash proceeds (Section 9-313) of disposition under this section. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, the secured party shall account to and pay a debtor for any surplus, and, unless otherwise agreed, the obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, or payment intangibles, the debtor is entitled to any surplus, and the obligor is liable for any deficiency, only if agreement so provides. Recovery of any

deficiency under this subsection is subject to Section 9-624.

9-614. Rights of Transferee of Collateral.

(1) When collateral is disposed of by a secured party after default to a purchaser for value, the disposition:

(a) transfers all of the debtor's rights in the collateral;

(b) discharges the security interest under which the disposition is made; and

(c) discharges any security interest or lien subordinate to which the disposition is made.

(2) The purchaser at disposal takes free of all rights and interests of the debtor, secured party or subordinate interests even though the secured party fails to comply with the requirements of this Section or of any judicial proceedings;

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if the purchaser does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

9-615. Rights and Duties of Certain Persons Liable to Secured Party.

(1) A person that is liable to a secured party under a guaranty, indorsement, repurchase agreement, or the like acquires the rights and assumes the duties of the secured party if the person:

(a) receives an assignment of a secured obligation from the secured party;

(b) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(c) is subrogated to the rights of a secured party.

(2) An assignment, transfer, or subrogation described Section 615(1) is not a disposition of collateral under this article and does not relieve the secured party of its duties under this article.

9-616. Transfer of Record or Legal Title.

(1) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office must accept the transfer statement, promptly amend its records to reflect the transfer, and, if applicable, issue a new appropriate certificate of title in the name of transferee.

(2) A transfer of the record or legal title to collateral to a secured party is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

9-617. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral.

(1) A secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(a) the debtor consents to the acceptance under 9-617(3);

(b) the secured party does not receive, within the time set forth in Section 9-617(4), a written notification of objection to the proposal from a person to whom the secured party was required to send a proposal under Section 9-618, or from any other person holding an interest in the collateral subordinate to the security interest that is the subject of the proposal; and

(c) in a consumer secured transaction in which collateral is of a type in which a security interest can be perfected by possession under Section 9-311, the collateral is in the possession of the secured party when the debtor consents to the acceptance.

(2) A purported or apparent acceptance of collateral under this section is ineffective unless the secured party consents to the acceptance in a signed writing or sends written notification of a proposal to the debtor and the conditions of Section 9-617(1) are met.

(3) For purposes of this section:

(a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor so agrees in a writing signed after default; and

(b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor so agrees in a writing signed after default or the secured party:

(i) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(iii) does not receive a written

notification of objection from the debtor within 20 days after the proposal is sent.

(4) To be effective under Section 9-617(1)(b), a notification of objection must be received by the secured party:

(a) in the case of a person to whom the proposal has been sent pursuant to Section 9-618, within 20 days after notification is sent to that person; and

(b) in other cases, within 20 days after the last notification is sent pursuant to 9-618 or, if a notification is not sent, before the debtor consents to the acceptance under Section 9-617(3).

(5) A secured party that has lawfully taken possession of collateral shall dispose of the collateral pursuant to Section 9-609 within 90 days after taking possession or within any extended period to which the secured party, the debtor and all secondary obligors have agreed in writing after default if:

(a) 60 percent of the cash price has been paid in the case of a purchase money security interest in consumer goods; or

(b) 60 percent of the principal amount of has been paid in the case of another security interest in consumer goods

(6) In a consumer secured transaction, a secured party may accept collateral only in full satisfaction, and not in partial satisfaction, of the obligation it secures.

9-618. Notification of Proposal to Accept Collateral.

(1) Except in a consumer secured transaction, a secured party that wishes to accept collateral in full or partial satisfaction of the obligation it secures shall send written notification of its proposal also to:

(a) any secondary obligor;

(b) any person from whom the secured party has received, before the debtor consented to the acceptance, written notification of a claim of an interest in the collateral;

(c) any other secured party or lienholder that, [XX] days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected or evidenced by the filing of a financing statement that identified the collateral, was indexed under the debtor's name as of that date, and was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date (Sections 9-301 through 9-307 and 9-501); and

(d) any other secured party or lienholder that, [21] days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected or evidenced by compliance with a statute or treaty described in Section 9-309(3).

(2) In a consumer secured transaction, a secured party that wishes to accept collateral in satisfaction of the obligation it secures shall send written notification of its proposal to:

(a) any person from whom the secured party has received, before the debtor consented to the acceptance, written notification of a claim of an interest in the collateral; and

(b) any secondary obligor to the security agreement.

9-619. Effect of Acceptance of Collateral.

(1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(a) discharges the obligation to the extent consented to by the debtor;

(b) transfers to the secured party all of a debtor's rights in the collateral;

(c) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other lien; and

(d) terminates any other subordinate interest.

(2) A subordinate interest is discharged or terminated under 9-619(1) whether or not the secured party is required to send or does send notification to the holder thereof. However, any person to whom the secured party was required to send, but did not send, notification has the remedy provided by Section 9-623(2).

9-620. Rights to Redeem Collateral.

At any time before a secured party has collected collateral under Section 9-606, disposed of collateral or entered into a contract for its disposition under Section 9-609, or accepted collateral in full or partial satisfaction of the obligation it secures under Section 9-617, the debtor, any secondary obligor, or any other secured party or lienholder may redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the reasonable expenses and attorney's fees of the type described in Section 9-613(1)(a).

9-621. Reinstatement of Obligation Secured Without Acceleration.

(1) If 60 percent of the cash price has been paid in the case of a purchase money security interest in consumer goods or 60 percent of the principal amount of the obligation secured has been paid in the case of another consumer secured transaction, a debtor or a secondary

obligor that is a consumer obligor may cure a default consisting only of the failure to make a required payment and may reinstate the secured obligation without acceleration by tendering the unpaid amount of the secured obligation due at the time of tender, without acceleration, including charges for delinquency, default, or deferral, and reasonable expenses and attorney's fees of the type described in Section 9-613(1)(a).

(2) A tender of payment under Section 9-621(1) is ineffective to cure a default or reinstate a secured obligation unless made before the later of:

(a) 21 days after the secured party sends a notification of disposition under Section 9-610(2) to the debtor and any consumer obligor who is a secondary obligor; and

(b) the time the secured party disposes of collateral or enters into a contract for its disposition under Section 9-609 or accepts collateral in full satisfaction of the obligation it secures under Section 9-617.

(3) A tender of payment under Section 9-621(1) restores to the debtor and a consumer obligor who is a secondary obligor their respective rights as if the default had not occurred and all payments had been made when scheduled, including the debtor's right, if any, to possess the collateral. Promptly upon the tender, the secured party shall take all steps necessary to cause any judicial process affecting the collateral to be vacated and any pending action based on the default to be dismissed.

(4) A secured obligation may be reinstated under Section 9-621(1) only once, unless the parties have agreed otherwise.

(5) The debtor's rights under this subsection may not be waived by agreement.

9-622. Waiver of Agreement by Debtor or Consumer Obligor.

(1) Subject to Section 9-622(3), a debtor or a consumer obligor may waive the right to notification of disposition of collateral under Section 9-610 or the right to redeem the collateral under Section 9-620 only by signing a statement to that effect after default.

(2) Subject to 9-622(3), a consumer obligor may waive the obligor's rights and the secured party's duties under Section 9-618 or 9-619 only by signing a statement to that effect after default.

(3) In a consumer secured transaction, a statement signed by the debtor or a consumer obligor is ineffective under Section 9-622(1) or (2) unless the secured party establishes by clear and affirmative evidence that the debtor or consumer obligor expressly agreed to its terms.

Sub-Part 2. Noncompliance With This Article.

9-623. Remedies for Secured Party's Failure to Comply With This Article.

(1) If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) A secured party is liable for damages in the amount of any loss caused by a failure to comply with this article. Except as otherwise provided in Section 9-626, a person that, at the time of the failure, was a debtor, a secondary obligor, or held a security interest in or other lien on the collateral has a right to recover damages for its loss under this subsection.

(3) Except as otherwise provided in Section 9-626, in a consumer secured transaction, a person that was a debtor at the time a secured party failed to comply with this part has a right to recover from the noncomplying secured party an amount equal to the interest or finance charges plus 10 percent of the principal amount of the

obligation, less the sum of any amount by which any consumer obligor's personal liability for a deficiency is eliminated or reduced under Section 9-624 and any amount for which the secured party is liable under Section 9-623(2).

(4) If the secured party fails to dispose of the collateral within 90 days after legally taking possession, the debtor may recover in conversion or under Section 9-624 on the secured party's liability.

9-624. Action in Which Deficiency or Surplus is at Issue.

In an action in which the amount of a deficiency or surplus is in issue the following rules apply:

(a) A secured party need not establish compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue, in which case the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with the applicable provisions of this part.

(b) Except as otherwise provided in Section 9-626, if a secured party fails to meet the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance the following rules apply:

(i) in a consumer secured transaction for which no other collateral remains to secure the obligation, neither the debtor nor a secondary obligor is liable for a deficiency;

(ii) in other cases, the liability of a

debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of the actual proceeds of the collection, enforcement, disposition, or acceptance or the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance. However, the amount that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party meets the burden of establishing that the amount is less than that sum.

(iii) in a consumer secured transaction, any liability under Section 9-624(b)(ii) is not a personal liability of a consumer obligor but may be satisfied only by enforcing a security interest or other consensual lien against property securing the obligation.

9-625. Determination of Whether Conduct Was Commercially Unreasonable.

(1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) It is a rebuttable presumption that disposition of collateral is made in a commercially reasonable manner if the disposition is made;

(a) in the usual manner on any recognized market therefor;

(b) at the price current in any recognized market at the time of the disposition; or

(c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(3) A disposition which has been approved in any judicial proceeding and performed in accordance with such an order shall conclusively be deemed commercially reasonable.

9-626. Nonliability of Secured Party in Certain Circumstances; Liability of Secondary Obligor.

(1) Unless a secured party knows that a person is a debtor or a secondary obligor, knows the identity of the person, knows how to communicate with the person and has made a good faith effort to determine if there are or locate additional debtors or secondary obligors:

(a) the secured party is not liable to the person or to a secured party or lienholder that has filed a financing statement against the debtor for failure to comply with this article; and

(b) the secured party's failure to comply with this article does not affect the liability of the debtor or secondary obligor for a deficiency.

(2) A secured party is not liable to any person and a person's liability for a deficiency is not affected because of any act or omission, other than the failure to send a notification required by Section 9-610(2)(b), that occurs before the secured party knows that the person is a debtor or a secondary obligor or knows that the person has a security interest or other lien in the collateral.

(3) A secured party is not liable to any person and a person's liability for a deficiency is

not affected because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer secured transaction or that goods are not consumer goods if the secured party's belief is based on its reasonable reliance on a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held, or an obligor's representation concerning the purpose for which a secured obligation was incurred.

9-627. Attorney's Fees in Consumer Secured Transactions.

If the secured party's compliance with this article is placed in issue in an action with respect to a consumer secured transaction, the following rules apply:

(a) If the secured party would have been entitled to attorney's fees as the prevailing party, the court shall award to a consumer debtor or consumer obligor prevailing on the issue the costs of the action and reasonable attorney's fees.

(b) In other cases, the court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.

(c) In determining the attorney's fees, the amount of the recovery on behalf of the prevailing consumer debtor or consumer obligor is not a controlling factor.

PART 7. JUDICIAL PROCEDURE.

9-701. One Action to Foreclose Security Interest

(1) There can be one action in the Tribal Court to recover any debt or enforce or foreclose any right secured by a security interest on non-trust property situated or located on the Reservation which action must be in accordance

with the procedures outlined herein.

(2) Notwithstanding the provisions above, if the debt for which the encumbrance is held is not all due, but is payable in installments, whether such debt is evidenced by one or more principal notes or otherwise, such encumbrance, installment(s) due or other charges which are to be paid by the mortgagor may be foreclosed, at the election of the encumbrance holder. The Court may by its judgment direct the sales of the encumbered property or of the equity of the defendants therein or so much thereof as may be necessary to satisfy the amount due. Such encumbrance shall otherwise remain valid and the holder thereof shall have the right to foreclose on the balance or any part thereof.

9-702. Action to Foreclose Interest in Personal Property.

(1) An action to foreclose a security interest in non-trust personal property when the debtor is in default of a security agreement shall be commenced in Tribal Court.

(2) The creditor must file a complaint for repossession and in said complaint, the creditor must include a concise statement for the creditor's claim against the debtor. The debtor may file an Answer to the creditor's complaint at any time prior to the hearing. At the hearing both creditor and debtor may present documentary evidence and witness to support their positions in the debt dispute. At the hearing, if the judge determines that repossession is in fact justified, the tribal judge shall issue an order authorizing the creditor to repossess the personal property involved. Any such order shall direct that a creditor may repossess the property only when accompanied by a tribal police officer.

(3) The Tribal Court shall direct the sale of the encumbered property, or so much thereof as is necessary, and direct the proceeds of the sale to the payment of the costs of court, the expenses

of such sale, and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court shall direct entry of a judgment for such balance against the defendant or defendants.

(4) Sale of property under the Court's judgment shall be conducted in:

(a) a commercially reasonable manner if:

(i) the court does not issue instructions for the sale of the property; or

(ii) there is no tribal statute or regulation governing the sale of property:

(b) in accordance with any judicial decree if there is no governing tribal statute or regulation governing the sale of the property.

(c) in all other situations, in accordance with applicable tribal statute or governing regulation.

9-703. Right of Attachment.

(1) At the time of the issuance of a summons and complaint in a civil action, or at any time prior to final judgment, a creditor may file with the clerk of the tribal court a request for a pre-judgment Order of Attachment. All requests for pre-judgment Order of Attachment shall be accompanied by an affidavit of the creditor which shall contain the following facts:

(a) that a debt is owed to the creditor by a debtor and the nature and specific amount of the debt;

(b) that the personal property being attached, which must be specifically identified as non-trust personal property

belonging to the debtor; and

(c) that the creditor has reasonable cause to believe that the specific personal property sought to be attached may be lost, damaged, vandalized or removed off the reservation prior to payment of a final judgment and such loss, damage, vandalism or removal of the property would jeopardize the ability of the creditor to collect on the judgment that may later be obtained.

(2) If the tribal judge is satisfied after reviewing the complaint and affidavit, the judge may issue an Order of Attachment of the designated personal property. The tribal police shall be given the Order of Attachment and the police shall seize any property identified by the order. Said property shall be kept in storage under the control of the tribal police. Said personal property shall be held by the police pending any further order of the tribal court.

(3) An Order of Attachment shall not be issued until the creditor has filed with the clerk a surety bond or cash bond in the sum of at least \$XXX. Said bond shall be necessary in the event that the order of attachment was wrongfully issued and the debtor was damaged, or in the event the debtor prevails when final judgment is rendered.

(4) the debtor shall be served with the Order of Attachment at the time the tribal police seize the personal property of the debtor. If the debtor is not available or present at the time the personal property is seized, said Order of Attachment shall be posted in a conspicuous place on the door of the debtor's house, mobile home or residence and a copy mailed to the debtor's last known address. The service shall be documented for court records.

(5) At any time following the issuance of an Order of Attachment, the debtor shall be entitled to challenge the validity of the issuance of that writ. The debtor may contest the Writ of Attachment by filing a Response to Writ of

Attachment. At the time that the Response is filed with the clerk of the tribal court, the court shall set a hearing date and notice of said hearing shall be served on the creditor at least five days before that hearing. At the hearing the debtor must establish by a preponderance of the evidence that:

(a) (i) the specific personal property sought to be attached would not be likely to be lost, damaged, vandalized or removed off the reservation prior to final judgment; or

(ii) that said loss, damage, vandalism or removal of property would not result in hindering the ability of the creditor to collect on a judgment if one should subsequently be obtained;

(b) that no debt is owed to the creditor; or

(c) that the property sought to be attached is exempt under Section VII or is trust property.

(6) If the court determines that the pre-judgment writ of attachment was wrongfully issued, the court may impose a fine up to \$XXX and order payment of the other party's attorney fees and costs.

9-704. Conduct of Sale.

1 All sales of property under decrees of repossession and orders for sale conducted by the Tribal police must be made at auction, conducted at the Tribal Courthouse, to the highest bidder, between the hours of 9:00 a.m. and 5:00 p.m. on any business day.

(2) Once sufficient property has been sold to satisfy the judgment plus the costs of court and of the sale, no more property shall be sold.

(3) The person conducting the sale may not

be a purchaser or be interested in any purchase at such sale.

(4) If the property being sold consists of several lots or parcels, they may be sold separately. The judgment debtor, if present at the sale, may direct the order in which the property shall be sold when such property consists of several known lots or parcels. If a third persons claims an interest in part of the property to be sold, that party may require that such part be sold separately.

(5) If a purchaser refuses to pay the amount bid for property sold to the bidder at sale, the officer conducting the sale may again sell the property to the highest bidder and if any less be occasioned thereby, the officer may recover the amount of such loss, plus costs, from the bidder so refusing, in the Tribal Court. When a purchaser refuses to pay, the officer may, in the officer's discession, thereafter reject any subsequent bid of such person.

9-705. Return on Sale

(1) The Tribal police officer conducting the sale shall make a return thereon to the Tribal Court reciting the details of the sale including the following:

- (a) The name and address of the highest bidder;
- (b) the successful bid price;
- (c) the date and time of sale;
- (d) the name of the officer conducting the sale;
- (e) any other relevant information.

(2) A certified copy of such return together with a certified copy of the Court's order directing the sale shall be filed by the purchaser in the tribal filing records under the name of the

original debtor.

[Part 7 should be reviewed to ensure the provisions of this part comply with existing tribal code. If there is an inconsistency between the provisions of this part and of existing tribal code, the conflicting provision should be brought into compliance.]

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18. Rules of Civil Procedure, Cheyenne River Sioux Tribe, 1993.

CHAPTER 26.3 UNIFORM COMMERCIAL CODE

TO: Jim Staley
FROM: Marvin M. Wolff
SUBJECT: Uniform Commercial Codes
DATE: April 26, 1985

''
12-3-85
by motion

The use of the Uniform Commercial Code in its present or modified form has been needed for a greater degree of uniformity between the laws regulating commerce on the reservation and those off the reservation and to promote economic development on the reservation.

The Uniform Commercial Code has been adopted by most of the states in the United States and included among them in the State of Washington. It appears in the 1983 Revised Code of Washington in Volume 6, Title 62A.

The purpose of the code was the establishment of standards for conduct and practices for those parties engaged in commercial transactions, and to simplify and clarify laws governing commercial practices.

It includes the eleven articles in the 1972 Code:

- Article 1. General Provisions
2. Sales
3. Commercial Paper
4. Bank Deposits and Collections
5. Letters of Credit
6. Bulk Transfers
7. Warehouse Receipts, Bills of Lading and Other Documents of Title
8. Investment Securities
9. Secured Transactions; Sales of Accounts and Chattel Paper
10. Effective Date and Repealer
11. Effective Date and Transition Provisions

The Uniform Commercial Code does not apply:

- a. To the sale of realty nor to security interests in realty (except fixtures).
- b. To the formation, performance, and enforcement of insurance contracts.
- c. To suretyship transactions (except where the surety is a party to a negotiable instrument).
- d. To bankruptcy.
- e. To legal tender definitions

The Code, if adopted by the Lummi Tribe, would be in addition to:

- a. The Lummi Treaties of 1855 and others
- b. Lummi Constitution and by-Laws
- c. Lummi Intertribal Agreements
- d. Lummi Code of Laws
- e. Lummi Indian Business Council resolutions and ordinances.

All of the above include civil and criminal law but not the body of common law contained in the unwritten Lummi tribal practices. That portion of tribal common law related to commercial practices would be affected by the adoption of the Uniform Commercial Code.

The Code makes reference to the main body of law not contained in the Code but which supplements the Code and is made part of it.

Sect. 1 - 103 of the Code states:

"Unless displayed by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

Adoption of the Code by the Lummi Tribe would therefore also embrace the principles of law and equity in use in Washington and the other states. This is generally consistent with the present Lummi Code of Law, Title 3, 3.4.03 applicable Law, which states "In all civil cases the Lummi Reservation Court shall apply any laws of the United States that may be applicable, any authorized regulations of the Interior Department, and any laws, resolutions, ordinances, customs or codes of the tribes not prohibited by such Federal laws.

The Lummi Code of Law also states in Title 3, Chapter 3.4.05, "Other Law" that "As to any matters which are not covered by the traditional customs and usages of the Tribe, or by-laws, codes, ordinances, and resolutions of the Business Council, or by applicable federal laws and regulations, the Reservation Court may be guided by common law as developed by state and federal courts."

It appears that there is no physical obstacle to the adoption of the Uniform Commercial Code, as modified, by the Lummi Tribe. Specific sections of the Code should be modified prior to its adoption in order to provide improved protection for the members of the Lummi Tribe.

A preamble should be added to the Code which reads as follows:

"It is generally recognized that the Indians of the Reser-

vation have, beyond the memory of man, used the uplands, tidelands, wetlands, and waters within and adjacent to the reservation freely, continuously, and uninterruptedly for the purposes of fishing and the taking of shellfish for the taking of driftwood, for firewood, for recreation purposes, commerce, and other purposes. Such uses are a result of the ownership of the uplands, tidelands, wetlands and waters, and the rights established on any other uplands, tidelands, wetlands and water, by custom, tradition, practice and long and continuous use, and in no way shall be abridged by the adoption of the Uniform Commercial Code."

It is my recommendation that the "Uniform Commercial Code" as amended be used for commercial transactions between Indians and non-Indians. In addition it is my strong suggestion that the Tribe adopt the "Deceptive Business Practice and Consumer Sales Code."

I would also recommend that a Lummi Department of commerce be established by the Lummi Indian Business Council and that this Department of Commerce use it's inherent powers to grant corporate status to qualified Lummi business applicants and that the Lummi Department of Commerce adopt for use the "Tribal Close Corporation Code" for "Close Corporations" and an amended version of the Washington State For-profit Corporation Code for other corporations.

The Lummi Department of Commerce would have the responsibility for the implementation and enforcement of the "Uniform Commercial Code," "Deceptive Business Practice and Consumer Sales Code" and the "Tribal Close Corporation Code." In addition it would have the right to investigate complaints and make recommendations to the Tribal Court.

Since the traditional practices as they relate to Indian and specifically Lummi commercial transactions are still taking place, then perhaps those practices solely between Indians should take place as before, and the Uniform Commercial Code (as amended) apply only to transactions between Indians and non-Indians; whether on or off the reservation.

Title 62A.1-105 should be modified in part to read as follows:

"(1) Except as provided hereafter in this section, when a transaction between Indians and non-Indians bears a reasonable relation to the State of Washington and also to another state, nation, or tribe the parties may agree that the law either of the State of Washington or of such other state, nation, or tribe shall govern their rights and duties. Failing such agreement this Title applies to transactions between Indians and non-Indians bearing an appropriate relation to the State of Washington."

The following should be added:

62A.2-108 Lummi Goods

In order to prevent confusion in the minds of consumers with regard to the source of Lummi goods, Lummi leased goods, or Lummi services, no goods, leased goods, or services which in any way resemble Lummi goods, Lummi leased goods, or Lummi services may be sold on the Lummi Reservation without prior written approval of the Lummi Indian Business Council. Goods, leased goods, or services, crafted, manufactured, or provided on or off the Lummi Reservation may not be represented in any way as being of Lummi origin without the prior written approval of the Lummi Indian Business Council and must bear the official mark issued by the Lummi Indian Business Council.

Title 62A-1-201(28) should read as follows:

"(28) "Organization" includes a corporation, government or governmental subdivision or agency, tribal business council, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity."

Title 62A.1-201(9) should be modified by adding (9A) as follows:

"(9A) Buyer who is an Indian is defined in Article 2, SALES, Part 3 Title 62A-2-313 (2) (Modified).

Title 62A-1-201(35) should be modified as follows:

"(34) "Representative" includes an agent or officer of a corporation, association, or organization, and a trustee, executor or administrator of an estate or any other person empowered to act for another.

Title 62A-2-103(a) should read as follows:

"(a) "Buyer" means a person who buys or contracts to buy goods. See 62A.2-313 for Indian Buyer."

62A.2-313 (1), (a),(b) and (c) should be revised as follows:

2-313 Express Warranties by Affirmation, Promise, Description, Sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods, lease of goods, or offer of service, and becomes part of the basis of the bargain creates an express warranty that the goods, leased goods, or services, shall conform to the affirmation or promise.

(b) Any description of the goods, lease of goods, or offer of services, which is made part of the basis of the

bargain creates an express warranty that the goods, leased goods, or services, shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods, leased goods, or services, shall conform to the sample or model.

(2) It is not necessary to the creating of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty.

62A.2-313

A buyer with the knowledge and skills of the particular buyer would rely on the representations if made by a seller with the particular seller's knowledge and skills. An Indian buyer with the little education and with limited command of English might treat as a statement of fact a claim by a seller that an average consumer would not. Therefore, the seller's opinion or commendation of the goods, leased goods, or services, creates a warranty.

Add to 62A.2-316 - "A Contract in which the buyer waives his right to assert the implied warranty of merchantability against the seller or assignee is considered defection and therefore void.

Title 62A.2-515 should be modified by adding paragraph (c) as follows:

(c) In no case will an inspection or survey take place, as described in paragraphs (a) and (b) above, in the residence of a buyer without the prior consent of that buyer.

Article 2, Sales, Part 3

Title 62A-3-313 (2) (Modified) should be amended to include a definition on "Indian Buyer". Perhaps one definition of an Indian might be "A person who is a properly enrolled member of a Federally recognized tribe.

I met for about one hour with Dan Raas on April 25, 1985. We discussed the U.C.C. and its ramifications and reviewed briefly the work I had done to date. Later that day I gave his partner copies of the following:

1. Revised Code of Washington, 1983, Vol.6, Title 62A, Uniform Commercial Code.
2. Copy of memo of April 17, 1985 from me to you.

3. Copy of Commercial Code Amendments developed by Daniel Press of Washington, D.C. for Article IX. The changes are the following:

- a. 62A-9-104C
- b. 62A-9-203(1)(a)
- c. 62A-9-206(1)
- d. 62A-9-208(2)
- e. 62A-9-302(1)(d)
- f. 62A-9-302(1)(e)
- g. 62A-9-302(1)(f)
- h. 62A-9-302(3)(b)
- i. 62A-9-306(3)(b)
- j. 62A-9-306(4)(d)(i)
- k. 62A-9-307(3)
- l. 62A-9-310
- m. 62A-9-313(4)(a)
- n. 62A-9-401(1)(a)
- o. 62A-9-401(1)(b)
- p. 62A-9-401(1)(c)
- q. 62A-9-401(3)
- r. 62A-9-401(6)
- s. 62A-9-402(1)
- t. 62A-9-402(e)
- u. 62A-9-402(4)
- v. 62A-9-403(3)
- w. 62A-9-403(4)
- x. 62A-9-403(5)
- y. 62A-9-404(1)
- z. 62A-9-404(2)
- aa. 62A-9-404(3)
- bb. 62A-9-405(1)
- cc. 62A-9-405(2)
- dd. 62A-9-406
- ee. 62A-9-407(2)
- ff. 62A-9-408
- gg. 62A-9-501(1)
- hh. 62A-9-504(3)
- ii. 62A-9-505(2)

4. A copy of the "Deceptive Business Practice and Consumer Sale Code" (D.S. Press).

5. A copy of the "Tribal Close Corporation Code" (D.S. Press).

Copies of the "legal Structures for Indian Business development on Reservations" by Daniel S. Press, Attorney, Washington D.C., 1983 and "The Limited Adoption of the Uniform Commercial Code by Indian Tribes" for NADSAT by W. Boyd, J.M. Little, and R.M. Martinez, 1981, should be provided to them.

The remaining steps, as can be seen from the attached methodology, begin with step 8 to incorporate the changes recommended by the tribal attorneys and then into the tribal

review and approval process.

I have attached a partial list of references which should be of value during the review period. I will keep a sharp eye on the progress in order to meet the May 30, 1985 anticipated date.

UNIFORM COMMERCIAL CODE METHODOLOGY

1. Obtain references.
2. Review reference materials.
3. Conduct interviews.
4. Analyze information.
5. Prepare written proposed changes.
6. Send copy to NADSAT, Boyd, Little and Martinez for comment.
7. Review proposed changes with Dan raas.
8. Revise proposed changes if required.
9. Submit modified U.C.C. to Chairman.
10. Submit modified U.C.C. to Lummi Indian Business Council.
11. Submit modified U.C.C. to General Council.
12. Publish notices of adoption of U.C.C.
13. Distribute U.C.C. (Mod.) copies to all Tribal activities.

References:

1. Lummi Treaties (1855)
2. Lummi Constitution & By-Laws 1948 (1978)
3. Lummi Intertribal Agreements
4. The History of Lummi Fishing Rights, Ann-Nugent 1929
5. History of Lummi Legal Action Against the u.S.-A.N. 1980
6. Lummi Elders Speak 1981
7. The Limited Adoption of the Uniform Commercial Code by Indian Tribes NADSAT - 1981
8. Legal Structures for Indian Business Development on Reservations - 1983.
9. Lummi Reservation Court- General Rules.
10. Uniform Commercial Code - Second Ed. JJ White, R.S. Summers
11. Interview with Judge Sam Finkbonner - 3/14/85
12. Interview with Patricia A. Rosario, Court Clerk - 3/14/85
13. Interview with Rebel Wallace-Harjo, Tribal Prosecutor- 3/14/85.
14. Interview with Joe Washington, Elder 3/14/85 & 4/10/85
15. Interview with Bill James, Heritage Facilitator, 3/25/85
16. Lummi Code of Laws - Title 1 through title 34 and Title C-1 (proposed).
17. Tribal Resolution (LIBC) - S-13 - Adopting Lummi Code of Laws of Oct. 7, 1974.
18. Revised Code of Washington volume 6 Title 62A.
19. Interview with Florence Kinley, March 27, 1985.

cc: W. Jones
F. Lane
J. Staley
C. Reichhardt

Part Eight

Tribal Corporations Codes

Introduction

A tribal government has many preliminary concerns to address prior to the creation of a corporations code. The threshold issue is a political/philosophical question that the tribal council must decide prior to reviewing the technical questions associated with the enactment of a code. Tribal governments particularly must consider their tribal sovereignty. Clearly, each tribe has the inherent legal authority to enact a corporations code. It is not a question of whether a tribe has the power to enact a code. It is clear at this time in the history of the tribes that tribes have the inherent power to enact corporations codes. Instead, what must be considered is whether a tribe wishes to enact a corporations code. It is each tribal community's view of itself that must be reconciled with the notion of enactment of a corporations code. Clearly enacting a corporations code is a political statement that a tribe is choosing to develop in a parallel fashion to the states. In making such a decision a tribal government must make sure that their nations view of their individual sovereignty is consistent with the enactment of a corporations code.

Many tribes are struggling to define their political identity in relationship to non-tribal governing units and do not wish to mirror those entities. Yet, as they evolve as governments the tribes are finding that in dealing government to government or in dealing with economic enterprises some common language or currency is required. This is particularly true when the tribes are seeking to forge economic liaisons with non-tribal entities. The tribes are increasingly seeking capital infusions/joint ventures and to do so must relate to non-tribal entities. In addition, tribal community members are seeking to establish increasingly sophisticated internal economic enterprises that do not resemble their traditional economic relationships so that the tribes are looking beyond their historically sanctioned units of economic organization.

If a tribe is ready and willing to make the decision to accept non-traditional economic organizational structures then the tribe needs to look at the alternatives available. Prior to making such a decision each tribe should review what traditional economic units were available for internal economic activity and for extra tribal economic activity, e.g., that activity carried on with other tribes or non-tribal entities. This will give the tribal government a historical backdrop to consider when deciding whether to enact a tribal corporations code, that is if the tribe has historically had economic structures the tribe may be able to adapt those structures to current economic needs or use them to adopt modified corporate structures which will be acceptable to tribal and non-tribal entities.

It is perfectly acceptable to decide that a tribe is not going to adopt a tribal corporations code. And in so doing the tribe may decide it wishes to economically isolate itself or that it wishes not to sanction any economic entity that is not rooted in the commercial history of the enacting tribe. The key is to act in all matters in a manner that is consistent with the overall general plan of each tribe. Each tribe should have developed a philosophical general plan as to how the tribe wishes to pursue its sovereignty in relationship to the economic well being of the tribal members.

It is essential in governing to act in a consistent fashion, within a plan that is accepted by the general membership.

If a general economic plan is in place then it is possible to devise plans that evolve toward that goal in a progressive fashion. The economic goals may or may not include a corporations code. This article is designed to aid those tribes who are seeking to move toward a corporations code without implying that it is the only recommended economic model for a tribe. This article presumes that a tribe considering a corporations code has already made the decision pursuant to their general plan that economic growth for their individual tribe would be enhanced by adopting a corporate model.

Working Definitions Essential Prior to the Drafting of a Code

Having made a decision that a corporate structure is desirable then each tribe must examine the varieties of corporations available and determine which of these corporations would fit into their current needs. In so doing the tribe should consider current needs and probable growth during reasonable increments, for economic purposes ten years is a reasonable projected planning period. A code does not have to have every conceivable corporate alternative but should actually be designed to fit each tribe's general economic plan. For purposes of discussion this section of the article will review and define the different corporations available to a tribe. It is important to note that these definitions are designed to work in a tribal and non-tribal context.

One of the areas where a tribe may have some ability to adapt as opposed to adopt a corporations code is in the definitions. It is possible to evolve definitions from those traditionally used in non-tribal codes, to ones used in tribal codes which may incorporate tribal concepts. In so doing the codes may be more acceptable to tribal people and not lose their acceptability in the non-tribal context. The last section of the article will contain tribal codes enacted by three different tribes. The reader may consider these as working models. They should not be duplicated, as each tribe should design their own codes. However, it is often helpful as a point of reference to view what other tribes have done. The annotations in those codes are the work products of this writer and should not be viewed as the work of those tribes. The annotations are designed to assist a drafter of a code in considerations for creation of a corporations code where a code is not in existence.

A CORPORATION is a legal entity created pursuant to the laws of a sovereign that is normally composed of a number of persons and exists separately from those persons, whether or not the persons remain members of the corporation. It is normally created for business purposes and as an entity has distinct and inherent powers and liabilities conferred by the sovereign under which it has been created.

There are several features of a corporation that distinguish it from other business entities and which influence those seeking to establish a business to chose this form as opposed to partnerships or other forms. A summary of those features include:

1. **Limited Liability.** This is generally the feature that is the basis for the most compelling rationale for the establishment of a corporation. A corporation protects the property and resources of each individual shareholder. The shareholders are not personally liable for the business debts of the corporation, the only risk to the shareholder is that amount of capital or resources the shareholder has invested. All other personal property of the shareholder is sheltered from creditors. However, one of the things a tribe may wish to do to protect people dealing with corporations is require that corporations have liability insurance so that if someone is injured by the corporation the injured party can at least make a financial recovery. This is particularly true for non-profit corporations that generally have fewer assets.

2. **Federal Income Taxation.** Corporations are typically separate tax entities. They have their own tax rates, and the profits given out to shareholders are generally taxable to the shareholders. This point should be of interest to tribes looking for tax revenues, every traditional taxation point should be examined as a revenue source for a tribe.
3. **Centralized Management.** Management is by a team as opposed to every person who has a financial interest managing the firm. Decision-making is vested in the directors and officers of the corporation, the members of this management team may or may not be shareholders of the corporation. This is particularly important where the number of owners is unwieldy or where the owners decide that management should be delegated to a team of business professionals who are not owners.
4. **Continuity of Existence.** Most corporations are formed to exist into perpetuity. This makes the business structure far more stable than other types of business organizations. For instances the death or withdrawal of a shareholder does not end a corporation's existence, and no shareholder has the power to compel or force a dissolution. Corporations are designed to outlive the individuals who form them and can survive a shareholder losing interest in the underlying business objectives of the corporation. The corporation continues by replacing shareholders, or capital contributors.
5. **Interests are Easily Transferred.** Unless the corporation has restricted by contract the transferability of shares, the shares of a corporation may be freely sold, assigned or otherwise disposed of by a shareholder owner. The person who succeeds to the ownership of the shares automatically becomes a shareholder in the corporation with whatever rights all shareholders have by virtue of that status.

Types of Corporations:

Closed: This is a corporation where the directors and officers of the corporation are able to fill all vacancies in their ranks by their own votes. That is, there does not have to be a vote of all shareholders or members. This type of corporation is generally smaller and is often used by families who wish to establish a corporate identity to run a family business and shield the personal assets of the individual family members.

This type of corporate structure is restricted so that a member of the corporation can not sell their shares in the open market e.g., stock markets, all or most of the shareholders actually will participate in the management of the corporation, and the transferability of ownership shares is restricted by the corporation.

Open: This is a corporation where the directors and officers of the corporation are elected by the shareholders or members of the corporation. Importantly, these corporations are considered those who have shares that are traded on the securities exchanges, or shares for which there are regular published price quotations, and also those who because of the number of shareholders of record or the size of their assets are subject to special regulation pursuant to the Federal Securities and Exchange Act of 1934. Additionally some corporations that have made a registered public distribution of securities are governed by The Federal Securities Act of 1933 and state statutes that have special requirements for these distributions.

Public Service Corporations: These are highly specialized organizations and should generally be established for those purposes which would serve the general public of the reservation, for instance water, electric or gas companies. They should also be fully regulated so that the general public good is served by the corporation. These corporations are designed to serve a public need

and must be regulated to insure that the services are delivered to the community. A failure of this type of corporation would result in the loss of an important service which would have the potential to effect the entire reservation so the business practices of such a corporation would require more monitoring than other types of corporations.

Municipal Corporations: This is a public corporation, and would be created by the tribe for political purposes, it would encompass residents of a certain geographical area and would allow them to conduct themselves as a civil government. This could be used on reservations that had districting to give the residents local control and would be done pursuant to a charter from the central government or in this instance the tribal council. Normally, the municipal corporation is subservient to a central government with the powers of the municipal corporation being delegated by the central government.

A For-Profit Or Business Corporation: This is a corporation which has as its purpose the transaction of business for the stated purpose of earning a profit for the members of the corporation. Usually, a corporation has one primary business function, e.g., timber harvesting, farming, ranching, manufacturing, gambling, banking, etc. A person may belong to more than one corporation. And it is not uncommon for a corporation to create a second corporation, called a subsidiary. The creating corporation is known as the parent corporation and the parent corporation owns at a minimum a majority of the shares of the subsidiary. This is to insure that the parent corporation has control of the subsidiary corporation. This usually happens when members of the parent corporation have overlapping interests. An example would be a parent corporation that drew up harvesting plans for timber, and a member of the parent corporation also owned some trucks and wanted to have a corporation own the logging trucks, so a subsidiary company is established for the purpose of owning the logging trucks.

A Non-Profit Business Corporation: This is a corporation that does not exist for the purpose of paying dividends or profits to shareholder/members. Generally speaking non-profit corporations do not exist for the purpose of making money, rather they have a primary purpose that is non-monetary. State sanctioned non-profit purposes include religious, charitable, educational, or social services. Examples of non-profits in a tribal setting would generally be found in the human services areas and could include any of the following: substance abuse treatment programs, case management service providers, CASA programs, counseling programs.

One of the principle factors that often influences founders of non-profit organizations to select corporate status is that foundations and individuals seeking to make donations which are tax deductible, must make those deductions to non-profit organizations. Part of forming as a non-profit is the qualification by the corporation pursuant to the Internal Revenue Service as a non-profit that allows this deduction to take place. (These corporations are often known as 501(c) (3) corporations.)

Ancillary Considerations

The foregoing discussion illustrates that the creation of corporations is only one segment of the picture. If the corporation wishes to function in any external fashion whether it be for the purpose of securing funding, or the development of projects off reservation, or encouraging off reservation participants to enter into a reservation business relationship these corporations would necessarily have to interface with existing state and federal requirements. Tribes seeking to develop corporations codes must create entities which look like the corporations described above so that these corporations can realize the full benefits and protections of the status conferred by creating a corporation. In addition, the tribal community and others who will be involved with the corporations need to have the protections offered by the non-tribal entities who

regulate corporations. So even if a tribe seeks to have its own corporations code it is clear that developing such a code is opening the door to further involvement/entanglement with non-tribal governments. It is clear even from this brief discussion that tribally established corporations must, to be successful, if utilizing non-reservation resources comply with many state and federal regulations. Part of complying with those regulations will result in the establishment of corporations that mirror to a great extent the corporations allowed by the state governments.

A tribe in establishing a corporations code must additionally realize that creating a code requires the ability to enforce compliance with the code. This means the tribe must have the internal management capacity necessary to create a system that includes monitoring, investigating and enforcement capabilities. The tribe must be cognizant of the fact that by creating a corporations code they will be allowing for the establishment of entities about which the general reservation and non-reservation public have certain expectations. Furthermore, federal and state laws have combined with a body of case law amassed over decades to enforce those expectations. Any council adopting a corporations code should then consider how they wish a tribal court to develop a body of law for the enforcement of that code and give that guidance in the language which establishes the code. If that guidance is not given to the court, the judicial officer who is deciding a dispute will also decide what resources they may look to for principles of interpretation.

Creating any code without these functions in place can result in a loss of faith in the institutions created and undermine the development sought to be enhanced by allowing for corporations. If a tribe is unable to have the supportive structure in place an option is to allow for corporations created pursuant to state law to operate on reservation with the enforcement pursuant to state laws. Note, this does not mean that a corporation could not be held accountable in tribal court for corporate activities, it is suggesting that the function of enforcing corporate compliance with corporate establishment statutes be left to the states if the tribe is not ready to assume that responsibility.

Other alternatives include developing a code for a reservation on an as needed basis. That would mean allowing for the gradual development of a code as the business requirements of the reservation develop. A tribal council could consistent with the general economic plan for a reservation legislate different corporations into the tribal code as the tribal business community required and the tribal governmental structure could support. The tribal business community must have evolved to the place where members of that community feel comfortable with the considerable requirements of establishing and maintaining a corporation. Depending on the complexity of the business venture the formation documents can require considerable legal knowledge. If this is true the tribe must have in the local community the legal knowledge to meet such requirements or understand they will be relying on non-tribal resources. If the documents are complex the tribe must have at its disposal legal resources adequate to review the documents and insure that corporations chartered or established by the tribe are complying with the tribal code. In addition to the incorporation formalities at a minimum corporations must keep minutes; annual reports must be filed; separate tax returns must be filed; establish a registered office and a registered agent.

A further important consideration is the additional requirements placed on corporations and the parallel structures the tribe may wish to impose on a corporation. Specifically, the fees for incorporation and any imposition of a taxing structure that would be in addition to or instead of a tax structure that the state or federal government may seek to impose. If the taxation structure or division of the taxation scheme has not been agreed upon previously by the state and/or federal government there maybe the added cost of litigation to clarify the taxation authority of the various governmental entities.

Formation Requirements of Tribal Corporations

Each tribe may establish their own corporations code. However, in so doing there are standardized requirements which should be included in every code. Initially the code must establish what specific office in the tribal government will accept the filing of the documents establishing a corporation, who will collect the filing fees, and who will review the documents prior to authorizing or approving the corporation as a tribal business entity. This would include a description of how a corporation would be deemed formed, i.e., whether a certificate would be issued or some other form of recognition.

Those people who meet to form a corporation are generally called incorporators; the tribe should determine what requirements they want to have for incorporators. For example, they may want to have an age requirement, a residency requirement (or require that a certain number of incorporators are residents), the number of incorporators required for each type of corporation, and whether or not they intend to allow corporations or partnerships to qualify as incorporators in addition to people who are the usual incorporators.

The incorporators are responsible for creating the documents required for incorporation. The corporation code requirements are not the only requirements of incorporation as noted above, but this article is limited to discussing those requirements. A tribe must be very careful to insure that parallel documents are in place before actually allowing a corporation to transact business. A tribe must decide on whether or not it will provide technical assistance to tribal members wishing to establish corporations to insure that tribal chartered corporations are functional business entities. The primary creation document is generally called the Articles of Incorporations, and should include at a minimum the following information:

1. The name of the corporation, (most codes require that the term corporation, incorporated, or company or an abbreviation of one of those terms appear in the name, and the tribal office in charge of corporations should keep a list of corporate names to insure that names are neither reused or too similar to existing corporate names so that the community would confuse two separate companies);
2. The length of time the corporation may exist, which may be forever;
3. The purposes of the corporation, and each tribe must decide how specific and inclusive a purpose statement is required, many states now allow for the purpose to be set forth as "or any lawful business purpose;"
4. The number of shares authorized to be issued, including information about the types, rights and preferences of the shares;
5. The address of its registered office and the name of its registered agent at that office; Note: each tribe should require this to office and agent to be located within the boundaries of the reservation. In addition, the tribes should require the incorporators to agree to the jurisdiction of the tribal court for any legal disputes arising that would involve the corporation. Tribes should consider requiring all corporations intending to do business on the reservation to comply with these requirements.
6. The number of directors and the names and addresses of the members of the initial board of directors; and
7. The names and addresses of each incorporator.

The incorporators, having prepared the articles of incorporation, must then draft the bylaws or the rules of how the corporation must run. Generally the bylaws are filed with the articles of incorporation. When the bylaws are complete, the following generally must occur:

1. Call the first board of directors meeting, prepare the minutes of the meeting;

2. Obtain a corporate seal if the tribe is going to allow for seals, and establish a minute book for the corporation;
3. Obtain blank certificates for the shares of stock, arrange for their printing or typing, and ensure that they are properly issued;
4. Arrange for the opening of the corporate bank account;
5. Prepare the necessary documents for the calling of a meeting of the shareholders;
6. Prepare employment contracts, voting trusts, pooling agreements, share transfer restrictions, and other special arrangements which are to be entered with respect to the corporation and its shares;
7. Obtain taxpayer and employer identification numbers from the Internal Revenue Service and from the appropriate state agencies; and
8. Meet all the formal requirements of registration of shares if they are to trade in the market place.

Incorporators can comply with these requirements if the venture is not complicated or if they are incorporating a relatively simple entity e.g., a non-profit corporation. However, if the venture is complicated or the goals are trading on any share markets, incorporators must have specialized knowledge and technical skills to comply with these requirements. Often lawyers who specialize in corporate law are retained to insure that these requirements are met. Lawyers who have received general training but who have no experience beyond law school should not be utilized to establish complex corporations.

What follows are three tribal codes. These codes were chosen to illustrate the different but similar approaches to drafting corporations' codes and to give a code drafter a definite starting point. The codes are from Hoopa, Cherokee, and Navajo.

Summary of Codes Selected as Models

The codes selected as models demonstrate three different approaches to drafting. They were purposely selected to illustrate the choices a tribe would have in designing a code to fit their reservation. The codes do not for the most part incorporate any pre-existing tribal business models. Rather, each is a variation of the traditional corporate codes utilized by non-tribal governments. Each of the selected models can be adapted for use by a tribe seeking to adopt a first time corporations code. This summary will briefly discuss the differences among the codes.

Best Practices

Corporations Codes

Navajo Code

The Navajo Nation has a comprehensive all-inclusive code that is representative of a complex tribal business community. The portions of the code used as examples herein are not the entire code and are used to demonstrate the types of entities referred to in this article. The Navajo Nation Corporation Code is found in Title 5, Commerce and Trade and is the 19th Chapter of that title. Chapter 19 includes provisions that address three types of corporations, organizationally they are combined in this section and as such this is different than the approach utilized by Hoopa which separates out types of corporations into separate titles.

This Code has as its first subchapter a section titled General Corporations Law and is equivalent to the sections in Cherokee and Hoopa that cover for profit corporations and can be compared to those sections by any drafter seeking examples of for profit corporations code language. These for profit sections differ slightly but clearly are meant to address for profit organizations, and the different styles can be reviewed by each tribe interested in such a statute and adapted for individual needs and preferences.

The second subchapter is titled for Close Corporations. This section was specifically included as an example of Close Corporation statutory language. Close corporations are the most likely form of corporations to be utilized in a tribal context. They are the smaller for profit corporations and are described in the above article.

The third subchapter is for non-profit corporations. This section was included so that drafters could have a second model to review in preparation for the drafting of a non-profit code.

**Best Practices
Corporations Codes
Code #1: Navajo Nation Corporation Code**

T.5 prec. § 3100

COMMERCE AND TRADE

Ch. 19

Chapter 19. Navajo Nation Corporation Code

Subchapter 1. General Corporation Law

SECTION

3100. Policy and purpose

Article 1. Title; Definitions; Purposes

- 3101. Short title
- 3102. Definitions
- 3103. Authorized purposes for organization of corporation
- 3104. General powers
- 3105. Corporate name

Article 2. Organic Documents

- 3106. Incorporators
- 3107. Contents of articles of incorporation
- 3108. Effect of issuance of certificate of incorporation
- 3109. Bylaws

Article 3. Stock and Stockholders

- 3110. Power to issue shares
- 3111. Subscriptions, considerations, payment for shares, and determination of amount of stated capital
- 3112. Transfer of stock
- 3113. Denial or restriction of voting rights
- 3114. Expenses of organization, reorganization, and financing
- 3115. Stock certificates; representation of shares; signers; restrictions or limitations on transferability; contents
- 3116. Liability of subscribers and shareholders
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HISTORY

[Subchapter 2 redesignated] Common or Contract Carriers previously codified as Chapter 19, §§3201-3203 has been redesignated to Title 5, Chapter 3, Subchapter 3, §§411-413.

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HISTORY

[Subchapter 4 redesignated] Signs, Billboards, and Advertising Devices previously codified as Chapter 21, §§3401-3412 has been redesignated to Title 5, Chapter 3, Subchapter 3, §§421-432.

CJY-2-86, January 30, 1986.

Note. Issuance of Chapter. CMY-38-69, May 22, 1969, Northern Arizona Livestock Association, Inc.

ANNOTATIONS

See annotations under Licenses and Permits, and under Taxation in digest.

Subchapter 1. General Corporation Law

§ 3100. Policy and purpose

The Navajo Nation Corporation Code is hereby enacted:

A. The purpose of this Code is to permit the formation of various corporate entities and require registration of foreign corporations; and to regulate such entities so as to promote economic growth and further the exercise of tribal sovereignty in the governance of its territory and citizens.

B. This code is based upon the American Bar Association's Model Business Corporation Act, the Model Close Corporation Act and the Model code, and the various agricultural cooperative acts of several states. The interpretation of this Code shall be based on Navajo Nation Court interpretation and such interpretation shall give the utmost respect in deciding the meaning and purpose of this Code to the unique traditions and customs of the Navajo People. General decisional law interpreting similar provisions of the above Model Acts and state agricultural cooperative acts may be used as guidance.

C. Unless otherwise expressly provided by law, the sovereign immunity of the Navajo Nation shall not extend to corporate entities organized under this Code, nor shall such entities be considered a subdivision, entity or enterprise of the Navajo Nation, nor shall the Navajo Nation be liable for the debts or obligations of any kind of such entities.

D. The provisions of this Code shall be fully implemented within 180 days of the date of its adoption by the Navajo Nation Council; provided however, the issuance of certificates of incorporation shall be issued on the date of adoption. The Division of Economic Development through its Business Regulatory Department shall administer the provisions of this Code. The Division of Economic Development is directed

to prepare an appropriate supplemental budget for carrying out its responsibilities under this Code.

HISTORY

CJA-2-86, January 30, 1986.

Article 1. Title; Definitions; Purposes

§ 3101. Short title

This chapter shall be known and may be cited as the "Navajo Nation Corporation Act."

HISTORY

CJA-2-86, January 30, 1986.

§ 3102. Definitions

A. "Articles of Incorporation" include the original articles of incorporation, articles of merger or consolidation and all amendments thereto.

B. "Attorney General" means the Attorney General of the Navajo Nation.

C. "Authorized shares" means the aggregate number of shares, whether with or without par value, which the corporation is authorized to issue.

D. "Capital surplus" means the entire surplus of a corporation other than its earned surplus.

E. "Corporation" or "domestic corporation" means a for profit or non-profit corporation subject to the provisions of this chapter, except a foreign corporation.

F. "Court", except where otherwise specified, means the Navajo Nation District Court having jurisdiction over civil actions.

G. "Department" means the Department of Commerce within the Division of Economic Development or its designated successor.

H. "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital, and capital surplus to the extent such distribution and transfers are made out of earned surplus. Earned surplus shall also include any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

I. "Foreign corporation" means a corporation for profit or not for profit organized under laws other than the laws of the Navajo Nation.

J. "Incorporator" means a signer of the original articles of incorporation.

K. "Insolvent" means that the total liabilities of the corporation exceed a fair valuation of its total assets.

L. "Navajo Indian Country" has the same meaning as in 7 NNC §254.

M. "Non-profit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors or officers, except this chapter shall not be construed as prohibiting the payment of reasonable compensation for services rendered or a distribution upon dissolution or liquidation as permitted by Subchapter 2.

N. "Person" means both natural persons, either Navajo or non-Navajo, and foreign and domestic corporations and tribal governments and their political subdivisions.

O. "Registered office" means that office maintained by the corporation within Navajo Indian Country, the address of which is on file with the Department.

P. "Shareholder" means one who is a holder of record of shares in a corporation.

Q. "Shares" are the units into which the shareholders' right to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided.

R. "Stated capital" means, at any particular time, the sum of:

1. The par value of all shares of the corporation having a par value that have been issued;

2. The amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and

3. Such amounts not included in subdivisions 1 and 2 of this Paragraph as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as has been effected in a manner permitted by law.

4. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a for profit foreign corporation shall be determined on the same basis and in the same manner as stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by this chapter.

S. "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

T. "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares but not "outstanding" shares.

HISTORY

CJA-2-86, January 30, 1986.

§ 3103. Authorized purposes for organization of corporation

Corporations for profit may be organized under this chapter for any lawful purpose or purposes.

HISTORY

CJA-2-86, January 30, 1986.

§ 3104. General powers

A. Each corporation shall have the power:

1. To have perpetual succession of its corporate name unless a limited period of duration is stated in its articles of incorporation;
2. To sue and be sued, complain and defend, in its corporate name;
3. To have a corporate seal, which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced, provided however corporate seals shall not duplicate or closely resemble the seals of the Navajo Nation or its entities;
4. To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, including shares or other interests in, or obligations of, other domestic or foreign corporations, non-profit corporations, associations, partnerships, limited partnerships, or individuals or governmental units or bodies, wherever situated;
5. To redeem, acquire, cancel reacquired shares, reacquire and restore to the status of authorized but unissued, shares of stock issued by the corporation, but subsequently acquired by the corporation;
6. To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
7. To lend money to, and otherwise assist, its employees;

8. To make contracts including contracts of guaranty, suretyship and indemnification and incur liabilities; to borrow money; to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property or income, except for property or income held in trust subject to legal restrictions on hypothecation;

9. To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned;

10. To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter outside of Navajo Indian Country and to exercise in any reservation, state, territory, district, or possession of the United States, or in any foreign country the powers granted by this chapter subject to the laws of such jurisdictions;

11. To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation;

12. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the Nation, for the administration and regulation of the affairs of the corporation;

13. To make contributions to charitable organizations;

14. To cease its corporate activities and surrender its corporate franchise; and

15. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.

B. Corporations organized under this chapter shall not have the power to engage in banking business.

HISTORY

CJA-2-86, January 30, 1986.

§ 3105. Corporate name

A. The corporate name of a domestic corporation:

1. Shall contain the word "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words;

2. Shall not include the words "trust" or "trust company", separately or in combination to indicate or convey the idea that the corporation is engaged in trust business unless such corporation is to be and becomes actively and substantially engaged in trust business or such corporation is a holding company holding substantial interest in companies actively and substantially engaged in trust business;

3. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

4. Shall not be the same as, or deceptively similar to, the name of any other entity organized or registered under this Code; and

5. Shall not contain the words "Navajo Nation" or "Navajo Tribe", nor in anyway imply that it is associated with the Navajo Nation government or a Navajo Nation entity, unless the Navajo Nation is a majority stockholder.

HISTORY

CJA-2-86, January 30, 1986.

Article 2. Organic Documents

§ 3106. Incorporators

One or more persons may act as incorporators of a corporation by signing and filing in duplicate with the Department articles of incorporation. Upon filing of the articles of incorporation and compliance with applicable regulations, the Department shall issue a certificate of incorporation.

HISTORY

CJA-2-86, January 30, 1986.

Note. The "Department", as referred to in this subchapter, is the Business Regulatory Department within the Division of Economic Development.

§ 3107. Contents of articles of incorporation

A. The articles of incorporation shall set forth:

1. The name of the corporation;

2. The period of duration, which may be perpetual;

3. The purpose or purposes for which the cooperation is organized;

4. A brief statement of the character of the business which the corporation initially intends to conduct;

5. The class and aggregate number of shares which the corporation shall have the authority to issue and the par value of each of said shares, or a statement that all of said shares are without par value;

6. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation;

7. The address, including street and number, if any, of its principal office, and the name of its initial registered agent at such address;

8. The number of directors constituting the initial board of directors and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first annual meeting of shareholders; or until their successors are elected and qualified. The minimum number of directors constituting the initial board shall be one (1);

9. The name and address, including street and number, if any, of each incorporator; and

10. A provision stating that the corporation will agree to abide by all criminal, civil and regulatory laws of the Navajo Nation.

B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

C. The articles of incorporation may provide for arbitration of any deadlock or dispute involving the internal affairs of the corporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3108. Effect of issuance of certificate of incorporation

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the Navajo Nation in a proceeding to cancel or revoke the certificate of incorporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3109. Bylaws

The power to make, alter, amend, or repeal the bylaws of the corporation shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law, or the articles of incorporation.

HISTORY

CJA-2-86, January 30, 1986.

*Article 3. Stock and Stockholders***§ 3110. Power to issue shares**

Each corporation shall have the power to create and issue the number of shares in its articles of incorporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3111. Subscriptions, considerations, payment for shares, and determination of amount of stated capital

Subscriptions, consideration, payment for shares and determination of amount of stated capital, shall be governed consistent with the provisions of the Model Business Corporation Act (as revised and approved as of January 1, 1986, by the American Bar Association Committee on Corporate Laws).

HISTORY

CJA-2-86, January 30, 1986.

§ 3112. Transfer of stock

Stock shall be freely alienable except to the extent restricted by the articles of incorporation or bylaws, and except that this section shall not be construed to restrict the operations of applicable blue sky or securities laws. No public offering of a security may be made without proof to the Department of compliance with such applicable blue sky or securities laws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3113. Denial or restriction of voting rights

A corporation may deny or restrict the voting rights of any of its stock, in its articles of incorporation, so long as it does not restrict or deny voting class shareholders' right to cumulative voting and preemptive right to acquire additional shares of the corporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3114. Expenses of organization, reorganization, and financing

The reasonable charges and expenses of organization or reorganization of a corporation may be paid out of the consideration received by the corporation in payment for its shares without thereby rendering such shares not fully paid.

HISTORY

CJA-2-86, January 30, 1986.

§ 3115. Stock certificates; representation of shares; signers; restrictions or limitations on transferability; contents

A. The shares of a corporation shall be represented by certificates signed by the president. In case any officer who has signed such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if such officer had not ceased to hold such office at the date of its issue.

B. Every certificate representing shares, the transferability of which is restricted or limited, shall set forth a summary statement of any such restriction or limitation upon the transferability of such shares, on its face, and shall set forth on the back thereof a full statement of any such restriction or limitation upon the transferability of such shares, or shall state that the corporation will furnish to any shareholder upon request and without charge such statement.

C. Each certificate representing shares shall also state:

1. That the corporation is organized under the laws of the Navajo Nation;
2. The name of the person to whom issued;
3. The number and class of shares which such certificate represents; and
4. The par value of each share represented by such certificate, or a statement that the shares are without par value.

D. No certificate shall be issued for any share until such share is fully paid.

HISTORY

CJA-2-86, January 30, 1986.

§ 3116. Liability of subscribers and shareholders

A. A holder or a subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued, which, as to shares having a par value, shall be not less than the par value thereof, except as set forth in subsection (C) below. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid, shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

B. No person holding shares as executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver

shall be personally liable as a shareholder, but the shareholder estate and funds in the hands of said executor, administrator, conservator, guardian, trustee, assignee, or receiver shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

C. A holder or subscriber to shares of a corporation is presumed not to be personally liable for the debts of the corporation, but may be personally liable to the corporation in proportion to their ownership interest, after all assets of the corporation have been applied to claims of creditors, and the debts, obligations and liabilities of the corporation are not thereafter paid and discharged, to the extent determined by the court based upon the application of general decisional law relating to the piercing of the corporate veil, pursuant to 7 NNC, §204. The court may consider in making shareholders liable hereunder, whether under the circumstances giving rise to claims of creditors, the acts or omissions by the corporation involved:

1. Fraud;
2. Misrepresentation;
3. Thin-capitalization;
4. Ultra-hazardous activities;
5. Violation of applicable consumer protection laws;
6. Criminal wrong-doing;
7. Failure to maintain a reasonable amount of liability insurance coverage for the acts or omissions of its directors, officers, employees or agents; or
8. Failure to comply with any provision of this Code.

D. No right to contribution shall exist between the shareholders and no liability under this section shall be asserted more than one year from the later of the time a creditor's claim in tort or contract accrued or the date such claim should have been discovered.

HISTORY

CJA-2-86, January 30, 1986.

§ 3117. Voting of shares; exclusion of shares or corporation's own stock; determination of number of outstanding shares

A. Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

B. Shares of treasury stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted

and shall be counted in determining the total number of outstanding shares at any given time.

C. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his/her duly authorized attorney in fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his/her personal representatives or assigns; but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold, until the contract of pledge or sale is fully executed.

D. In all elections for directors every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by him/her, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of such directors multiplied by the number of his/her shares shall equal, or to distribute such votes on the same principle among any number of such candidates.

HISTORY

CJA-2-86, January 30, 1986.

§ 3118. Certain holders; proxy presumed valid

A. Shares outstanding in the name of another corporation may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. A proxy purporting to be executed by a corporation shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

B. Shares outstanding in the name of a deceased person may be voted by his/her administrator or executor, either in person or by proxy. Shares outstanding in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares held by him/her without evidence of the guardian, conservator, or trust relationship with the shareholder.

C. Shares outstanding in the name of a receiver or a trustee in bankruptcy may be voted by such a receiver or trustee, and shares held by or under the control of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee without the transfer thereof into his/her name, if authority to do so be contained in an appropriate order of the court, by which such receiver or trustee in bankruptcy was appointed.

D. Shares outstanding in the name of a partnership may be voted by any partner. A proxy purporting to be executed by a partnership shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

E. Shares outstanding in the name of two or more persons as joint tenants, or tenants in common, or tenants by the entirety, may be voted in person or by proxy by any one or more of such persons. If more than one of such tenants shall vote such shares, the vote shall be divided among them in proportion to the number of such tenants voting in person or proxy unless a different apportionment by such tenants is requested in writing prior to the vote.

HISTORY

CJA-2-86, January 30, 1986.

§ 3119. Stockholders' meetings

A. The bylaws of a corporation shall provide for an annual meeting of stockholders.

B. Meetings of shareholders may be held at such place within or without the boundaries of Navajo Indian Country as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the principal office of the cooperation.

C. Special meetings of the shareholders may be called by the president, the secretary, the board of directors, the holders of not less than one-fifth of all the outstanding shares entitled to vote, or by such other officers or persons as may be provided in the articles of incorporation, or the bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3120. Notice

A. Except as provided herein, written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting.

B. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his/her address as it appears on the records of the corporation, with postage thereon prepaid.

C. Notice may be waived in writing by any shareholder, and will be deemed to be waived by any shareholder attending the meeting in person.

HISTORY

CJA-2-86, January 30, 1986.

§ 3121. Quorum of shareholders required

A. Unless otherwise provided in the articles of incorporation, or bylaws, a majority of the outstanding shares having voting power, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders; provided, that in no event shall a quorum consist of less than one-third of the outstanding shares having voting power.

B. The shareholders present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

C. If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, at which time any business may be transacted that may have been transacted at the meeting as originally called.

D. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number is required by this chapter, or the articles of incorporation; provided however, that in elections of directors, those receiving the greatest number of votes shall be deemed elected even though not receiving a majority.

HISTORY

CJA-2-86, January 30, 1986.

§ 3122. Dividends declaration and payment on outstanding shares; restrictions on payment of dividends

A. The board of directors of a corporation may declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, subject to the following provisions:

1. No dividend shall be declared or paid at a time when the corporation is insolvent or its net assets are less than its stated capital, or when payments thereof would render the corporation insolvent or reduce its net assets below its stated capital;

2. Dividends may be paid out of earned surplus or surplus arising from the surrender to the corporation of any of its shares, provided that the source of such dividends shall be disclosed to the sharehold-

ers receiving such dividends, concurrently with payment thereof. The limitations of this paragraph shall not limit nor be deemed to conflict with the provisions of this chapter in respect of the distribution of assets as a liquidating dividend;

3. If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred from earned surplus to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregated par value of the shares to be issued as a dividend;

4. If a dividend is declared payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred from earned surplus to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregated value so fixed in respect of such shares. The amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof;

5. A split-up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this section;

6. No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation; and

7. Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (oil, gas or other minerals) may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such wasting assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation, and may pay dividends from the net profits so determined by the directors.

HISTORY

CJA-2-86, January 30, 1986.

§ 3123. Stockholders' right of inspection

A. A stockholder of a corporation or his/her agent may inspect and copy during usual business hours any records or documents of the corporation relevant to its business and affairs, including any:

1. Bylaws;
2. Minutes of the proceedings of the stockholders and directors;
3. Annual statement of affairs;
4. Stock ledger; and
5. Books of account.

HISTORY

CJA-2-86, January 30, 1986.

§ 3124. Statement of affairs

A. Once during each calendar year, one or more stockholders of a corporation may present to any officer of the corporation a written request for a statement of its affairs.

B. Within 20 days after a request is made for a statement of corporation's affairs, the corporation shall prepare and have available on file at its principle office a statement, verified under oath by its president or treasurer or its Vice-President or assistant treasurer, which sets forth fairly and accurately, in reasonable detail, the corporation's assets and liabilities as of a reasonable current date. This statement once prepared, shall fulfill the request for such a statement made by any shareholder for the following 12 months.

HISTORY

CJA-2-86, January 30, 1986.

*Article 4. Board of Directors; Officers***§ 3125. Organization meeting of Directors**

Unless otherwise provided in the articles of incorporation, after the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within the United States, at the call of a majority of the directors so named, for the purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five days notice thereof by mail to each director so elected, which notice shall state the time and place of the meeting; provided however, that if all the directors shall waive notice in writing and fix a time and place for said organization meeting, no notice shall be required of such meeting.

HISTORY

CJA-2-86, January 30, 1986.

§ 3126. Board of Directors; powers authorized; qualifications

A. The business and affairs of a corporation shall be managed by a board of directors. Directors need not be shareholders in the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

B. Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any director, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise.

HISTORY

CJA-2-86, January 30, 1986.

§ 3127. Number; election

The number of directors shall be fixed by the bylaws, except as to the number constituting the first board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders or until their successors shall have been elected and qualified. Each director shall hold office for the term for which he/she is elected or until his/her successor shall have been elected and qualified.

HISTORY

CJA-2-86, January 30, 1986.

§ 3128. Classification

The bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. Absent any such classifications the term of a director shall be for one year. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

HISTORY

CJA-2-86, January 30, 1986.

§ 3129. Vacancies

Any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual meeting or at a special meeting of shareholders entitled to vote called for that purpose. Any vacancy occurring in the board of directors for any cause other than by reason of an increase in the number of directors may be filled by an affirmative vote of a majority of the remaining directors, unless the articles of incorporation otherwise provide. A director elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office.

HISTORY

CJA-2-86, January 30, 1986.

§ 3130. Quorum

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles or incorporation of the bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3131. Executive committee; powers

If the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors then of the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the business and affairs of the corporation, but, the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

HISTORY

CJA-2-86, January 30, 1986.

§ 3132. Place of meetings; special meetings

Meetings of the board of directors, regular or special, may be held at such place within or without the boundaries of Navajo Indian Country as may be provided in the bylaws or by resolution adopted by a majority of the board of directors.

HISTORY

CJA-2-86, January 30, 1986.

§ 3133. Notice of meetings; waiver of notice

Meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

HISTORY

CJA-2-86, January 30, 1986.

§ 3134. Officers; powers authorized

A. The officers of a corporation shall consist of at least a president and secretary, and may additionally consist of one or more vice-presidents and a treasurer, as may be prescribed by the bylaws. Each officer shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. If the bylaws so provide, any two or more offices may be held by the same person.

B. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3135. Removal

Any officer or agent elected or appointed by the board of directors may be removed by a majority vote of the board of directors whenever in its judgment the best interests of the corporation will be served

thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

HISTORY

CJA-2-86, January 30, 1986.

§ 3136. Execution of documents

Notwithstanding any contrary provision of law, an individual who holds more than one office in a corporation may act in more than one capacity to execute, acknowledge, or verify any instrument required to be executed, acknowledged, or verified by more than one officer.

HISTORY

CJA-2-86, January 30, 1986.

§ 3137. Books and records; requirements for right to examine and make extracts therefrom

A. Each corporation shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its principal place of business or at the office, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Books, records and minutes shall be in written form, or in any other form capable of being converted into written form within a reasonable time.

B. Nothing herein contained shall impair the power of the court upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him/her, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders.

HISTORY

CJA-2-86, January 30, 1986.

§ 3138. Liability of directors in certain cases

A. In addition to any other liabilities imposed by law upon directors of a corporation:

1. Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such

assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles of incorporation;

2. Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this chapter; and

3. The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

B. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter under subsection (A) is taken shall be presumed to have assented to the action taken unless his/her dissent shall be entered in the minutes of the meeting or unless he/she shall file his/her written dissent to such action with the secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered or certified mail to the secretary of the corporation before five o'clock in the afternoon of the next day which is not a holiday or a Saturday after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

C. A director shall not be liable under subsection (A) if he/she relied and acted in good faith upon financial statements of the corporation represented to him/her to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he/she be so liable if in good faith in determining the amount available for any such dividend or distribution he/she considered the assets to be fairly valued at their book value.

D. Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or

received any such dividend or assets, knowing or who should have reasonably known that such dividend or distribution to have been made in violation of this chapter, in proportion to the amounts received by them.

E. Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

F. No liability under this section shall be asserted more than one year from the later of the time the claim accrued or the date such claim should have been discovered.

HISTORY

CJA-2-86, January 30, 1986.

Article 4. Merger and Dissolution

§ 3139. Voluntary dissolution, consolidation, merger, or transfer of assets

A voluntary dissolution, consolidation, merger or transfer of assets of a corporation shall be made in a manner consistent with the provisions applicable to domestic corporations under the corporation laws in the Model Business Corporation Act and Model Non-profit Corporation Act (as revised and approved as of January 1, 1986, by the American Bar Association Committee on Corporate Laws). However, approval of any proposed voluntary dissolution, consolidation, merger or transfer of assets under this chapter requires the affirmative vote of at least a majority of stock holders of the corporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3140. Involuntary dissolution by shareholders

Any stockholder of a corporation may petition the court for dissolution of the corporation on the ground that there is such internal dissension among the stockholders of the corporation that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally.

HISTORY

CJA-2-86, January 30, 1986.

§ 3141. Involuntary dissolution by Attorney General of the Navajo Nation

A. A corporation may be dissolved involuntarily by a judgment of the court in an action filed against it by the Attorney General when any one of the following is established:

1. The corporation has failed to comply with the provisions of this Code or regulations promulgated thereunder;
2. The corporation procured its formation through fraudulent misrepresentation or concealment of material fact;
3. The corporation has violated the laws of the Navajo Nation;
4. The corporation has failed to file the statement of change of registered agent required by this chapter within thirty days after such change is duly authorized by the corporation; or
5. The corporation has continued or persisted over a period of time to conduct its business in a fraudulent or otherwise illegal manner.

HISTORY

CJA-2-86, January 30, 1986.

§ 3142. Revocation by Department

A. The articles of incorporation of a corporation may be revoked by the Department if the corporation has failed to comply with the provisions of this Code or regulations promulgated thereunder

B. The articles of incorporation shall not be revoked by the Department unless:

1. It shall have given the corporation not less than sixty days notice thereof by mail addressed to the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business; and
2. Specifies the violation and gives the corporation a reasonable opportunity to comply or cure said violation.

C. Upon such revocation, the Department shall:

1. Issue a certificate of revocation in duplicate;
2. File one such certificate in its office; and
3. Mail to such corporation at the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation.

D. Upon the issuance of such certificate of revocation, the existence of such corporation shall terminate, subject to the provisions of subsection (E) of this section. If the corporation has not applied for reinstatement within the six month period following the issuance of a certificate of revocation, the Department shall release the corporate name for use by any proposed domestic corporation, any foreign

corporation applying for authority to do business within Navajo Indian Country or for use by a person intending to register the name as a trade name.

E. A corporation may apply for reinstatement within six months from the date a certificate of revocation is issued by the Department. If none of the conditions set forth in subsection (A) of this section exists at the time of such application of reinstatement and, if such corporation has paid all fees, penalties, and costs incurred by the Department, the Department shall issue a certificate of reinstatement.

F. The Department shall make available to the public a list, compiled annually, of the corporations whose articles of incorporation were revoked during the preceding year.

HISTORY

CJA-2-86, January 30, 1986.

§ 3143. Venue and process

Actions by the Attorney General for the involuntary dissolution of a corporation shall be commenced either in the court in which the known place of business or registered agent of the corporation is situated, or if the corporation has failed to maintain a registered agent or known place of business, then in the court of Window Rock. Process shall issue and be served as in other civil actions.

HISTORY

CJA-2-86, January 30, 1986.

§ 3144. Jurisdiction of court to liquidate assets and business of corporation

The Court shall have full power to liquidate the assets and business of a corporation. It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

HISTORY

CJA-2-86, January 30, 1986.

§ 3145. Procedure in liquidation of corporation by court

A. In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

B. After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings, and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sales. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receiver shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

C. The court shall have power to allow from time to time as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceedings, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

D. A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his/her own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction over the corporation and its property, wherever situated.

HISTORY

CJA-2-86, January 30, 1986.

§ 3146. Filing claims in liquidation proceedings

In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day of the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by

order of court, from participating in the distribution of the assets of the corporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3147. Discontinuance of liquidation proceedings

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

HISTORY

CJA-2-86, January 30, 1986.

§ 3148. Judgment of involuntary dissolution

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, and all the property and assets have been applied to their payment, the court shall enter a judgment dissolving the corporation, whereupon the existence of the corporation shall cease.

HISTORY

CJA-2-86, January 30, 1986.

Note. The "Department" as referred to in this section is the Business Regulatory Department within the Division of Economic Development.

§ 3149. Filing of judgment of dissolution

When the court enters a judgment dissolving a corporation, the clerk of such court shall cause a certified copy of the judgment to be filed with the Department. No filing fee shall be charged by the Department.

HISTORY

CJA-2-86, January 30, 1986.

§ 3150. Deposit with Division of Finance of amount due certain shareholders

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall

be reduced to cash and deposited with the Division of Finance and shall be paid over to such creditor or shareholder or to his/her legal representative upon proof satisfactory to the Division of Finance of his/her right thereto, and shall escheat to the Navajo Nation if unclaimed for a period of not less than five years.

HISTORY

CJA-2-86, January 30, 1986.

§ 3151. **Survival of remedy after dissolution**

The dissolution of a corporation either by the issuance of a certificate of dissolution or revocation by the Department, or dissolution of a judgment of the court, or by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers or shareholders, for any right to claim existing, or any liability incurred, prior to such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of corporation at any time within five years of the expiration of its period of duration.

HISTORY

CJA-2-86, January 30, 1986.

Article 6. Registered Agent

§ 3152. **Registered agent required**

Each corporation shall have and continuously maintain within Navajo Indian Country a registered agent, which agent may be either an individual resident within Navajo Indian Country or a corporation authorized by its own articles of incorporation to act as such agent and authorized to transact business within Navajo Indian Country.

HISTORY

CJA-2-86, January 30, 1986.

§ 3153. **Change of registered agent**

A. A corporation may change its registered agent by filing with the Department a statement setting forth:

1. The name of the corporation;
2. The name and address of its then-registered agent;
3. The name and address of its successor registered agent;

4. The date upon which such change shall take effect; and

5. That such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

B. Such statement shall be executed in duplicate by the corporation and delivered to the Department. If the Department finds that such statement conforms to the provisions of this chapter, it shall:

1. Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
2. File one of such duplicate originals in its office; and
3. Return the other duplicate original to the corporation or its representative.

C. The change of registered agent shall become effective upon the filing of such statement by the Department.

D. Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Department, which shall forthwith mail one copy thereof to the corporation at its principal office as shown on the records of the Department. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Department or upon the appointment of a successor agent becoming effective, whichever occurs first. No fee or charge of any kind shall be imposed with respect to a filing under this subsection.

E. A registered agent may change his/her address by filing with the Department a statement setting forth:

1. The name of the registered agent;
2. The present address, including street and number, if any, of such registered agent.
3. The names of the corporation or corporations represented by such registered agent at such address;
4. The address, including street and number, if any, to which the office of such registered agent is to be changed; and
5. The date upon which such change will take place.

F. Such statement shall be executed in duplicate by such registered agent in his/her individual name, but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or Vice-President and delivered to the Department. However, if the registered agent represents more than one corporation, he/she shall file an additional copy for such additional corporation. If the department finds that such statement conforms to law, it shall, when all fees and charges have been paid as prescribed in this chapter:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

2. File one of such duplicate originals in its office; and
3. Return the other duplicate original to the registered agent.

G. The change of address of such registered agent as to the domestic corporation or corporations named in such statement shall become effective upon the filing of such statement by the Department, or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later.

HISTORY

CJA-2-86, January 30, 1986.

§ 3154. Registered agent as agent for service; service when no registered agent

A. The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be made by delivering a copy of such process, notice, or demand to any officer, director or managing agent of the corporation, in lieu of the registered agent.

B. Whenever a corporation shall fail to appoint or maintain a registered agent within Navajo Indian Country, or whenever any such registered agent cannot with reasonable diligence be found at his/her office within Navajo Indian Country or whenever the articles of incorporation of any domestic corporation shall be revoked, then the Department shall be an agent of such corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service upon the Department of any such process, notice, or demand shall be made by delivering to and leaving with the Department, or with any clerk having charge of its office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is so served, the Department shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office.

C. The Department shall keep a permanent record of all processes, notices, and demands served upon it under this section, and shall record therein the time of such service and its action with respect thereto.

D. Service of process upon the Department as agent, pursuant to this section shall not constitute an action against or service upon the Navajo Nation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3155. Failure to maintain registered agent

Any corporation incorporated or reincorporated under this Code which fails or refuses to maintain a registered agent within Navajo Indian Country, in accordance with the provisions of this chapter, shall be subject to a civil sanction in the amount of \$250. The Attorney General upon the recommendation of the Department shall seek the imposition of such in the Window Rock District Court.

HISTORY

CJA-2-86, January 30, 1986.

*Article 7. Filings; Amendments***§ 3156. Articles of incorporation; procedure for filing**

A. Duplicate originals of the articles of incorporation shall be delivered to the Department. If the Department finds that the articles of incorporation conform to law, it shall, when all fees have been paid as to this chapter prescribed:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;
2. File one of such duplicate originals in its office; and
3. Issue a certificate of incorporation to which it shall affix the other duplicate original. Such certificate of incorporation may be evidenced by the signature of the Director of the Department or his/her designee on the duplicate original of the articles of incorporation.

B. The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Department shall be delivered to the incorporators or their representatives.

HISTORY

CJA-2-86, January 30, 1986.

§ 3157. Amendment of articles of incorporation; contents restricted; purposes

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided, that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or any exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation are stated.

HISTORY

CJA-2-86, January 30, 1986.

§ 3158. Procedures before acceptance of subscription to shares

A. Amendments to the articles of incorporation before any subscriptions to shares have been accepted by the board of directors shall be made in the following manner:

1. Amend articles of incorporation modifying, changing, or altering the original articles of incorporation shall be signed by all of the living or competent incorporators who signed the original articles of incorporation and filed with the Department. Such amended articles of incorporation shall contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amended articles of incorporation;

2. Such amended articles of incorporation shall be delivered in duplicate original to the Department. If the Department finds that such amended articles of incorporation conform to law, it shall, when all fees have been paid as in this chapter prescribed:

a. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

b. File one of such duplicate originals in its office; and

c. Issue an amended certificate of incorporation, to which it shall affix the other duplicate original. Such certificate may be evidence in the same manner as provided in §3156(A)(3);

3. The amended certificate of incorporation with the duplicate original of the amended articles of incorporation affixed thereto shall be delivered to the corporation or its representative; and

4. Upon the issuance of the amended certificate of incorporation, the amended articles of incorporation shall become effective and shall take the place of the original articles of incorporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3159. Procedures after acceptance of subscription to shares

A. Amendments to the articles of incorporation after acceptance of any subscriptions to shares shall be made in the following manner:

1. The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

2. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effective thereby shall be given to each shareholder of record entitled to vote at such meeting

within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;

3. At such meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote; and

4. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

HISTORY

CJA-2-86, January 30, 1986.

§ 3160. Articles of amendment; contents

A. The articles of amendment shall be executed in duplicate by the corporation by its president or a Vice-President and shall be set forth:

1. The name of the corporation;
2. The amendment so adopted;
3. The date of the adoption of the amendment by the shareholders;
4. The number of shares outstanding and the number of shares entitled to vote;
5. The number of shares voted for and against such amendment, respectively;

6. If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected; and

7. If such amendment effects a change in the amount of stated capital, or paid-in surplus, or both, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of capital surplus, either stated capital or paid-in surplus, as changed by such amendment.

B. If issued shares without par value are changed into the same or a different number of shares having par value, the aggregate par value of the shares into which the shares without par value are changed shall not exceed the sum of:

1. The amount of stated capital represented by such shares without par value;
2. The amount of surplus, if any, transferred to stated capital on account of such change; and
3. Any additional consideration paid for such shares with par value and allocated to stated capital.

HISTORY

CJA-2-86, January 30, 1986.

§ 3161. Procedure for filing

A. Duplicate originals of the articles of amendment shall be delivered to the Department. If it appears to the Department that the articles of amendment conform to law, it shall, when all fees have been paid as in this chapter prescribed:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;
2. File one of such duplicate originals in its office; and
3. Issue a certificate of amendment to which it shall affix the other duplicate original. Such certificate may be evidenced in the same manner as provided in §3156(A)(3).

B. The certificate of amendment with the duplicate original of the articles of amendment affixed thereto shall be delivered to the corporation or its representative.

HISTORY

CJA-2-86, January 30, 1986.

§ 3162. Effect of certificate of amendment

A. Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

B. No amendment shall effect any existing cause of action in favor of or against such corporation, or any pending suit to which the corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

HISTORY

CJA-2-86, January 30, 1986.

*Article 8. Department; Fees and Charges***§ 3163. Department; duties and functions**

A. The Department shall be charged with the administration and enforcement of this Code. Said Department is authorized to employ such personnel as may be necessary for the administration of this Code.

B. Every certificate and other document or paper executed by the Department, in pursuance of any authority conferred upon it by this chapter, and sealed with the seal of the Navajo Nation, and all copies of

such papers as well as of documents and other papers filed in accordance with the provisions of this chapter, when certified by it and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceedings in any court and before a public officer, or official body.

C. The Department is authorized to promulgate, upon the review and approval of the Attorney General and the Economic Development Committee of the Navajo Nation Council, regulations to effectuate the policies and purposes of this Code, or to modify or vary any provision of this Code incorporating by reference any Model Corporation Act. Provided, the Department shall set forth in such regulations what specific policy or purpose is purported to be furthered by such regulation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3164. Fees and charges

The Department shall impose fees and charges in accordance with schedules promulgated by regulation pursuant to §3163, provided however, the initial fee for filing of articles of incorporation shall be \$10.

HISTORY

CJA-2-86, January 30, 1986.

§ 3165. Non-payment of fees; sanctions

A. The Department shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation organized under the provisions of this chapter until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the corporation is in default in the payment of any fees charges, or sanctions herein provided to be paid by or assessed against it. Nothing in this section shall prevent the filing, without the payment of all such fees, charges, and sanctions, of a written notice of resignation by a registered agent of a corporation.

B. No corporation required to pay a fee, charge, or sanction under this chapter shall maintain within Navajo Indian Country any civil action until all such fees, charges, and sanctions have been paid in full.

C. The Navajo Nation shall have the right to offset any amounts due and owing from a corporation under this Code against payments due from the Navajo Nation to such corporation.

HISTORY

CJA-2-86, January 30, 1986.

*Article 9. Foreign Corporations***§ 3166. Admission of foreign corporation**

A. No foreign corporation shall have the right to transact business within Navajo Indian Country until it shall have been authorized to do so as provided in this chapter. No foreign corporation shall be authorized under this chapter to transact within Navajo Indian Country any business which a corporation organized under this chapter is not permitted to transact. A foreign corporation shall not be denied authority by reason of the fact that the laws under which such corporation is organized governing its organization and internal affairs differ from the laws of this chapter, and nothing in this chapter shall be construed to authorize regulation of the organization or the internal affairs of such corporation.

B. Without excluding other activities which may not constitute transacting business within Navajo Indian Country, a foreign corporation shall not be considered to be transacting business within Navajo Indian Country, for the purposes of this chapter, by reason of carrying on within Navajo Indian Country any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
2. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;
3. Maintaining checking or savings accounts;
4. Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;
5. Effecting sales through independent contractors;
6. Soliciting or receiving orders outside Navajo Indian Country in pursuance of letters, circulars, catalogs or other forms of advertising or solicitation and accepting such orders outside Navajo Indian Country and filling them with goods shipped into Navajo Indian Country;
7. Creating as borrower or lender, or acquiring indebtedness, mortgages or other security interests in real or personal property; or
8. Securing or collecting debts or enforcing any rights in property securing the same.

C. The provisions of this section shall not apply to the question of whether any foreign corporation is subject to service of process and suit within Navajo Indian Country.

D. The Department may promulgate regulations governing the registration and regulation of unincorporated associations, consistent with the policies and purposes contained herein.

HISTORY

CJA-2-86, January 30, 1986.

§ 3167. Powers of foreign corporation

A foreign corporation authorized to transact business under this chapter shall, until withdrawal as provided in this chapter, enjoy the right to engage in any lawful activities, and shall be subject to the applicable provisions of this chapter.

HISTORY

CJA-2-86, January 30, 1986.

§ 3168. Corporate name of foreign corporation

A. No authority shall be given a foreign corporation unless the corporate name of such corporation:

1. Shall contain the word "association", or "bank", "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words, or such corporation shall, for use within Navajo Indian Country, add at the end of its name one of such words or an abbreviation thereof;

2. Shall not contain any word or phrase likely to mislead the public or which indicates or implies that it is organized for any purpose other than any specific purpose contained in its articles of incorporation;

3. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of the Navajo Nation, or any foreign corporation authorized to transact business within Navajo Indian Country, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter or any trade name, except that this provision shall not apply if the foreign corporation applying for authority files with the Department any one of the following:

a. A resolution of its board of directors adopting a fictitious name for use in transacting business within Navajo Indian Country which fictitious name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business within Navajo Indian Country of any trade name;

b. The written consent of such other corporation or holder of a reserved or trade name to use the same or deceptively similar

name and one or more words are added to make such name distinguishable from such other name; or

c. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name within Navajo Indian Country;

4. Notwithstanding the provisions of subsection (A)(1) of this section, shall not include the words "bank", "trust", or "trust company" separately or in combination to indicate or convey the idea that the corporation is engaged in banking or trust business unless such corporation is to be and becomes actively and substantially engaged in banking or trust business or such corporation is a holding company holding substantial interest in companies actively and substantially engaged in banking or trust business; and

5. Shall not contain the words "Navajo Nation" or "Navajo Tribe", nor in anyway imply that it is associated with the Navajo Nation government or a Navajo Nation entity.

HISTORY

CJA-2-86, January 30, 1986.

§ 3169. Change of name by foreign corporation

Whenever a foreign corporation which is authorized to transact business within Navajo Indian Country shall change its name to one under which authority would not be granted to it on application therefore, it shall not thereafter transact any business within Navajo Indian Country until it has changed its name to a name which is available to it under the laws of the Navajo Nation, or has otherwise complied with the provision of this chapter.

HISTORY

CJA-2-86, January 30, 1986.

§ 3170. Application for authority to transact business

A foreign corporation, in order to procure authority to transact business within Navajo Indian Country, shall make application therefor in accordance with regulations promulgated by the Department.

HISTORY

CJA-2-86, January 30, 1986.

§ 3171. Known place of business and registered agent of foreign corporation

A. Each foreign corporation authorized to transact business within Navajo Indian Country shall have and continuously maintain within Navajo Indian Country:

1. A known place of business which shall be the office of its registered agent, unless otherwise designated in its application for authority; and

2. A registered agent, which agent may be either an individual resident of the Navajo Nation, a domestic corporation, or a foreign corporation authorized to transact business within Navajo Indian Country.

3. Notification of any change of the known place of business or registered agent of a foreign corporation shall be in accordance with regulations promulgated by the Department.

HISTORY

CJA-2-86, January 30, 1986.

§ 3172. Service of process on foreign corporation

A. The registered agent so appointed by a foreign corporation authorized to transact business within Navajo Indian Country shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served, and which, when so served, shall be lawful personal service on the corporation. Process, notice or demand may be served upon an officer, director or managing agent of the corporation in lieu of the registered agent.

B. Whenever a foreign corporation authorized to transact business within Navajo Indian Country shall fail to appoint or maintain a registered agent at the address shown on the records of the Department, the Department shall make available to any person the last known address of such corporation, its shareholders and officers upon whom any such process, notice or demand may be served. The litigant instituting an action shall be responsible for serving the corporation with process, in accordance with the Navajo Rules of Civil Procedure.

C. Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

HISTORY

CJA-2-86, January 30, 1986.

§ 3173. Revocation of authority

A. The authority of a foreign corporation to transact business within Navajo Indian Country may be revoked by the Department if the corporation fails to comply with the provisions of this Code or regulations promulgated thereunder.

B. The authority of a foreign corporation shall not be revoked by the Department unless:

1. It shall have given the corporation not less than sixty days notice thereof by mail addressed to the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation. Upon the issuance of such certification of revocation, the existence of such corporation shall terminate; and

2. It specifies the violation and gives the corporation a reasonable opportunity to comply or cure said violation.

C. Upon such revocation, the Department shall:

1. Issue a certificate of revocation in duplicate;

2. File one such certificate in its office; and

3. Mail to such corporation at the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation. Upon the issuance of such certification of revocation, the existence of such corporation shall terminate.

D. The Department shall make available to the public a list, compiled annually, of the foreign corporations for which authority to transact business within Navajo Indian Country has been revoked during the preceding year.

HISTORY

CJA-2-86, January 30, 1986.

§ 3174. Transacting business without authority

A. No foreign corporation transacting business within Navajo Indian Country without authority shall be permitted to maintain any action, suit or proceeding in any Navajo Nation Court, until such corporation shall have been authorized to transact business. Nor shall any action, suit or proceeding be maintained in any such court by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation within Navajo Indian Country, until authority to transact business has been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

B. The failure of a foreign corporation to obtain authority to transact business within Navajo Indian Country shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any Navajo Nation Court.

C. A foreign corporation which transacts business within Navajo Indian Country without authority shall be liable to the Navajo Nation,

for the years or portions thereof during which it transacted business within Navajo Indian Country without authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for, and received authority to transact business within Navajo Indian Country as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees. The Attorney General shall have authority to bring proceedings to recover all amounts due the Navajo Nation under the provisions of this section.

D. The Attorney General or any other person may bring and maintain an action to enjoin any foreign corporation from transacting business within Navajo Indian Country without authority. Upon a foreign corporation obtaining authority such action shall be dismissed but the plaintiff therein shall recover his/her costs and reasonable attorneys' fees. A determination by a court that a party to the action is a foreign corporation which was requested to, but, failed to qualify as a foreign corporation under this chapter shall be prima facie evidence against such foreign corporation in any other action brought by or against it by any other person of such requirement to and failure to qualify.

HISTORY

CJA-2-86, January 30, 1986.

Article 10. Reports and Filing

§ 3175. Annual report of domestic and foreign corporations

Each domestic corporation, and each foreign corporation authorized to transact business within Navajo Indian Country, shall file with the Department an annual report and accounting in accordance with regulations promulgated by the Department.

HISTORY

CJA-2-86, January 30, 1986.

§ 3176. Civil liability for false statements

A. If, as required by regulation, any report, certificate or other statement made, or public notice given by the officers or directors of a corporation is false in a material representation, or if any book, record or account of the corporation is knowingly or wrongfully altered, the officers, directors or agents knowingly or wrongfully authorizing, signing or making the false report, certificate, other statement or notice or authorizing or making the wrongful alteration are in their person jointly and severally liable to a person who has become a creditor or share-

holder of the corporation upon the faith in the false, material representation or alteration therein for all damages resulting therefrom.

B. An action for the liability imposed by this section shall be commenced within two years after discovery of the false representation or alteration and within six years after the certificate, report, public notice or other statement or the alteration has been made or given by the officers, directors or agents of the corporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3177. Civil investigatory demand or signature violations; corporate records, classification

A. A person who knowingly fails or refuses within the time prescribed by this chapter to answer truthfully and fully any civil investigatory demand propounded to him/her by the Department in accordance with this chapter, or who signs any articles, statement, report, application or other document filed with the Department which is known to the person as false in any material respect, is guilty of a misdemeanor and is subject to a civil sanction of \$500, or a sentence not to exceed 6 months in jail, or both, and, in the case of a non-Indian is subject to such civil sanction and exclusion from Navajo Indian Country.

B. A person who with the intent to defraud or deceive knowingly falsifies, alters, steals, destroys, mutilates, defaces, removes or secretes the books, records or accounts of a corporation is guilty of a misdemeanor and is subject to a civil sanction of \$500, or a sentence not to exceed 6 months in jail, or both, and, in the case of a non-Indian is subject to such civil sanction and exclusion from Navajo Indian Country.

HISTORY

CJA-2-86, January 30, 1986.

§ 3178. Civil investigative demands by the Department

The Department may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any director, officer, shareholders or employee thereof, such civil investigative demands as may be reasonably necessary and proper to enable it to ascertain whether such corporation has complied with all the provisions of this chapter or applicable regulations promulgated thereunder. The Department may also depose directors, officers, shareholders or employees for the same purpose. The Department by regulations shall

specify the manner and method of responding to such civil investigative demands.

HISTORY

CJA-2-86, January 30, 1986.

§ 3179. Public records; information disclosed by annual reports; certificates of disclosures civil investigative demands

Articles of Incorporation, amendments thereto, dissolution and certificates of incorporation, dissolution, revocation or reinstatement shall be maintained on file by the Department and available for public inspection and copying. Annual reports or information received in response to regulations or civil investigative demands propounded by the Department shall not be open to public inspection, nor shall the Department disclose any facts or information obtained therefrom, except as the same are to be made public or in the event such civil investigative demands or the answers are required for evidence in any court proceeding.

HISTORY

CJA-2-86, January 30, 1986.

Article 11. Miscellaneous

§ 3180. Jurisdiction of Navajo Nation Courts

A. The Court shall have original jurisdiction to the extent permitted by due process over any action against, or by, any domestic or foreign corporation, or for actions arising under this chapter including actions by an aggrieved party contesting acts or omissions by the Department, under this chapter. In the case of contests of Department acts or omissions, the Department shall provide for informal hearings within 30 days of a written request. Such written request shall be filed within 10 days of the alleged act or omission giving rise to the contested issue. Timely filing of such shall be jurisdictional to any subsequent court proceeding. A decision by the Department on the contested issue shall be rendered in writing within 30 days from the date of such hearing. Failure to render such decision within 30 days shall constitute denial of the requested relief.

B. Within 30 days of a written decision or a denial of requested relief or a failure to act on a written request after sixty (60) days of receipt of such request an aggrieved party may bring an action *de novo*, either in the court where the principle place of business is located or in the court in Window Rock, to compel, by injunctive or mandamus relief, the

department to discharge its statutory obligations or to refrain from violating such party's legal rights.

C. Nothing in this section shall be construed as an exception to or repeal of the provisions of the Navajo Sovereign Immunity Act, 1 NNC §§551 *et seq.*, as may be amended from time to time.

HISTORY

CJA-2-86, January 30, 1986.

§ 3181. Certified copies to be received in evidence

All copies of documents except for annual reports or responses to civil investigatory demands delivered to and filed by the Department in accordance with the provisions of this chapter when certified by it, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Department under seal, as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

HISTORY

CJA-2-86, January 30, 1986.

§ 3182. Greater voting requirements

Whenever with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation or bylaws require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this subchapter with respect to such action, the provisions of the articles of incorporation or bylaws shall control.

HISTORY

CJA-2-86, January 30, 1986.

§ 3183. Action by shareholders without a meeting

A. Any action required by this chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting, if a consent in writing setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

B. Such consent shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the Department under this chapter.

HISTORY

CJA-2-86, January 30, 1986.

§ 3184. Unauthorized assumption of corporate powers

All persons who assume to act as a corporation without authority to do so, or who procured incorporation through fraudulent misstatements or omissions of material fact in documents filed with the Department, shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. Ratification of preincorporation acts constitute authority to act in a corporate capacity as used herein.

HISTORY

CJA-2-86, January 30, 1986.

§ 3185. Indemnification of officers, directors, employees and agents

A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, if he/she acted, or failed to act, in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the corporation, but, with respect to any criminal action or proceeding, the corporation shall not pay criminal fines for which a person is personally liable.

HISTORY

CJA-2-86, January 30, 1986.

§ 3186. Defense of ultra vires

A. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act, or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

1. In a proceeding by a shareholder against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and

enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation; or

3. In a proceeding by the Attorney General, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

HISTORY

CJA-2-86, January 30, 1986.

Subchapter 2. Close Corporations

§ 3201. Short title

This chapter shall be known and may be cited as the "Navajo Nation Close Corporation Act".

HISTORY

CJA-2-86, January 30, 1986.

[Subchapter 2 redesignated] Common or Contract Carriers previously codified as Chapter 19, §§3201-3203 has been redesignated to Title 5, Chapter 3, Subchapter 3, §§411-413.

§ 3202. Definitions

A. "Capital units" means the proportions of the proprietary interest in the corporation owned by the investors;

B. "Corporation" or "closed corporation" means a corporation for profit organized pursuant to the provisions of this chapter;

C. "Good faith" or "in good faith" means an act or thing done when it is in fact done honestly, whether it be done negligently or not;

D. "Investor" means one who is the owner of capital units in a close corporation; and

E. "Manager" means the person or persons named in the articles of incorporation, either originally or by amendment thereto, in the capacity of manager or assistant manager, and does not include any person who is not so named.

HISTORY

CJA-2-86, January 30, 1986.

§ 3203. Mandatory provisions of articles of incorporation

A. The articles of incorporation of a close corporation shall set forth:

1. The name of the corporation which shall contain the words "close corporation" or an abbreviation therefor;
2. The name and address of the manager or managers of the corporation;
3. The names, addresses and amount of initial contribution of capital units of each of the original investors. The number of original investors shall not exceed thirty (30);
4. The aggregate amount in dollars of the initial capital units to be paid to be the corporation; and
5. The name and address of the corporation's initial registered agent.

B. It shall not be necessary to set forth in the articles of incorporation any corporate powers or any corporate purposes.

HISTORY

CJA-2-86, January 30, 1986.

§ 3204. Optional provisions of articles of incorporation

A. The articles of incorporation of a close corporation may set forth any of the following:

1. The period of duration, if less than perpetual;
2. Any restrictions on the authority of the manager or managers of the close corporation;
3. Any reservations of authority to the investors;
4. Any restriction on the power of any investor to sell, transfer or to create a security interest in his/her capital units. No restriction on the power to sell, transfer or create a security interest shall be binding except as to persons who have actual knowledge thereof unless such restriction is set forth in the articles of incorporation.
5. Any restriction on the subsequent issuance of additional capital units;
6. Whether the corporation will have the power to acquire its capital units and if so any restrictions or limitations thereon. If no power to acquire its capital units is set forth in the articles of incorporation, the corporation may not acquire any of its outstanding capital units;
7. Any provisions which provide for arbitration or other non-judicial procedure seeking resolution of any dispute as provided in §3206;
8. Any provisions for replacement or succession of a manager inconsistent with §3205(D);

9. Any provision which either relieves the manager entirely of the obligation to make accountings to investors or which modifies the period or form of such accounting in a manner inconsistent with §3205(E).

10. Any provision for annual or other periodic meetings of investors. If no such provision is set forth in the articles of incorporation, there shall be no requirement for meetings for investors.

11. Any requirement for bond or other security to be given to the corporation by a manager to secure the faithful performance of his/her duties;

12. Any restrictions upon competition by investors directly or indirectly with the business of the corporation;

13. Any provision for delegation of his/her authority by a manager;

14. Any provision for a dissolution option pursuant to §3207;

15. Any provision for varying relationships among investors as to relative rights in capital units; and

16. Any other provisions consistent with law which the incorporators elect to set forth.

HISTORY

CJA-2-86, January 30, 1986.

§ 3205. Managers

A. All managers shall be natural persons. It is the purpose of this chapter that the corporation be operated on a day-to-day basis by one manager, by managers having divided functions or by assistant managers who can serve either as alternates to the manager or assume some portion of managerial responsibility. As among the corporation, its investors, and any manager, there shall be no limitations on the authority of a manager unless specifically limited by provisions of the articles of incorporation, the written employment contract of such manager, or the records of the corporation evidencing the acts of the investors. Any person other than manager or investor who deals in good faith with the corporation will not be subject to any limitation on the authority of any manager, even though such manager's authority is expressly limited in the articles of incorporation.

B. No manager may delegate any of his/her authority to any other agent, employee or representative of a corporation unless authority to do so is contained in the articles of incorporation or is granted by act of the investors.

C. Any manager shall have the same rights, duties, obligations and privileges as a person who is both a director and officer of a corporation

for profit under the provisions of Subchapter 1, except as specifically modified in this chapter.

D. Any manager may be replaced or succeeded by a new manager at any time by a majority of the votes of the investors, unless otherwise provide by the articles of incorporation. Such replacement shall be effective when a certificate of change of manager, sworn under oath by an investor is filed with the Department stating the name of the replaced manager and the name and address of the new manager and that such new manager was elected by the required vote.

E. Unless the articles of incorporation or vote of the investors provided otherwise, a manager shall mail to each investor an annual accounting and annual report. Such annual accounting and report shall be mailed or delivered to the investors within thirty (30) days after the date filing is required.

HISTORY

CJA-2-86, January 30, 1986.

§ 3206. Settlement of disputes; arbitration

The articles of incorporation may provide for arbitration of any deadlock or dispute involving the internal affairs of the corporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3207. Option to dissolve

A. The articles of incorporation of any corporation may include a provision granting to any investor or investors an option to have the corporation dissolved at will or upon the performance or occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the investor or investors exercising such option shall give written notice thereof to all other investors. After the expiration of thirty (30) days following the mailing of such notice, the dissolution of the corporation shall proceed as if the required vote had consented to the dissolution of the corporation as provided by §3139.

B. If the articles of incorporation as originally filed do not contain a provision authorized by subsection (A) of this section, the articles of incorporation may be amended to include such provision if adopted by the affirmative vote of all investors. If the articles of incorporation as originally filed contain a provision authorized by subsection (A) of this section, such provision may be amended only by the affirmative vote of all investors.

HISTORY

CJA-2-86, January 30, 1986.

§ 3208. Purposes

Close corporations may be organized under this article for any lawful purpose or purposes.

HISTORY

CJA-2-86, January 30, 1986.

§ 3209. Capital units, transfers and encumbrances

A. Until a statement substantially in the form set forth in subsection (B) of this section has been filed with the Department, any transfer, hypothecation, other voluntary encumbrance of security interest in, or of any capital unit or units shall be void as to creditors and subsequent purchasers for valuable consideration without notice.

B. The state of transfer, hypothecation or other voluntary encumbrance or security interest in or of any capital unit or units in a close corporation shall be acknowledged and be substantially in one of the following forms:

1. Transfer:

On the ____ day of _____, _____,
the undersigned (name of transferor) transferred to (name of transferee), whose address is (address of transferee) (all or a stated percentage) of the undersigned's interest in the capital units of (name of corporation), a Navajo close corporation.

(Signature of transferor)

acknowledgment

2. Hypothecation, other voluntary encumbrance or security interest:

On the ____ day of _____, _____,
the undersigned (name of debtor) hypothecated and voluntarily encumbered to (name of creditor) (all or a stated percentage) of the undersigned's interest in the capital units of (name of corporation), a Navajo close corporation.

(Signature of debtor)

acknowledgment

HISTORY

CJA-2-86, January 30, 1986.

§ 3210. Definition of relative rights of capital units

“Relative rights of capital units” means all the rights, privileges, obligations and duties of the capital units and may include, but are not limited to, disproportionate variations of the following:

- A. Participation in dividends or distributions from operating income;
- B. Participation in dividends or distributions from income other than operating income;
- C. Participation in distributions of the proceeds of a sale of all or substantially all of the assets of the corporation with further disproportionate variation depending upon the degree of gain or loss;
- D. Participation in distribution upon liquidation or dissolution;
- E. Voting rights;
- F. Restrictions or limitations on transfer;
- G. The obligation to perform services or provide goods or other property to the corporation;
- H. The obligation to devote time and energies which are collateral to corporate purposes; and
- I. Assessments, if any.

HISTORY

CJA-2-86, January 30, 1986.

§ 3211. Changes in investor relationships

Unless otherwise provided by the articles of incorporation, any redemption, termination or cancellation of capital units, acquisition of capital units by the corporation, issuance of additional units or any change in the relative rights of capital units other than transfers or encumbrances provided for in §3209, shall be effective only upon an amendment of the articles of incorporation. The unanimous vote of all outstanding capital units shall be required to amend the articles of incorporation to create or to change the relative rights in capital units.

HISTORY

CJA-2-86, January 30, 1986.

§ 3212. Variable relative rights

The articles of incorporation may provide for varying relationships among investors as to relative rights in capital units. It is not necessary that each close corporation provide in its articles of incorporation for variable relative rights of capital units as encumbered in this section. Only those variable relative rights of capital units set forth in the articles of incorporation shall apply to the particular close corporation. When no provision is made in the articles of incorporation concerning a

particular relative right of capital units, then that particular relative right of capital units shall be proportionate to the dollar amount of the capital units.

HISTORY

CJA-2-86, January 30, 1986.

§ 3213. Limitation of liability

The investor shall not be liable for the debts, obligations or liabilities of the close corporation, except that investors will be held in the same standards as subscribers and shareholders as set forth in §3116 (C).

HISTORY

CJA-2-86, January 30, 1986.

§ 3214. Appointment of conservator

A. The court in which the known place of business or registered agent of the corporation is situated, may in an action by an investor, appoint a conservator or interim manager of the corporation if the court finds that a deadlock or dispute involving the internal affairs of the corporation impairs or threatens to impair the value of the assets or the continued conduct of the business of the corporation. Upon or subsequent to appointing such a conservator or interim manager, the court may enter orders, which, despite any contract or provision of the articles of incorporation to the contrary:

1. Suspend, revoke or nullify the authority, in whole or in part, of any existing manager or managers or any conservator or interim manager appointed in any arbitration pursuant to Section 3206;
2. Define the authority of such conservator or interim manager;
3. Set the compensation of such conservator or interim manager to be paid by the corporation; and/or
4. Resolve, partially resolve or aid in the resolution of any such deadlock or dispute.

B. When any order or appointment is issued pursuant to subsection (A) of this section, the clerk of the court shall immediately supply a copy thereof to the Department.

HISTORY

CJA-2-86, January 30, 1986.

§ 3215. Involuntary dissolution or liquidation pursuant to court order

A. The court shall have full power to liquidate the assets and business of a close corporation.

1. In an action filed by an investor when the court finds;

a. That a deadlock or dispute involving the internal affairs of the corporation, continues to impair or threatens to impair the value of the assets or the continued conduct of the business of the corporation, notwithstanding bonafide attempts to utilize the arbitration provisions in the articles of incorporation if available and the provisions of §3214;

b. That a deadlock or dispute involving the internal affairs of the corporation, impairs or threatens to impair the value of the assets, or the continued conduct of the business of the corporation, and no provision is contained in the articles of incorporation for arbitration of such disputes and that it would be a useless effort to invoke the provisions of §3214;

c. That the investors are so divided respecting the manager of the business and affairs of the corporation that either the corporation is suffering or will suffer irreparable injury, or the business and affairs of the corporation can no longer be conducted to the advantage of the investors generally, and the provisions of §§3206 and 3214 are inapplicable; or

d. That the corporation has abandoned its business and has failed within a reasonable period of time to take steps to dissolve and liquidate its affairs and distribute its assets.

2. In an action filed by the Attorney General in the manner provided by §3141.

HISTORY

CJA-2-86, January 30, 1986.

§ 3216. Court relief other than dissolution, liquidation or appointment of conservator

A. The court in an action filed by an investor seeking relief under Section 3215, shall have full power to make any such order or grant any such relief other than dissolution or liquidation as in its discretion it may deem appropriate including but not limited to:

1. Canceling, altering or amending any provisions contained in the articles of incorporation of such close corporation;

2. Directing, prohibiting or enjoining any act of the corporation or other persons who are parties to the court action; or

3. Providing for the purchase by the corporation or by other investors at their fair market value the capital units of the person bringing such action.

B. Relief under this section may be granted even though the court does not find any of the elements prescribed for relief under §3215.

HISTORY

CJA-2-86, January 30, 1986.

§ 3217. Merger of close corporations

Any two or more Navajo close corporations may merge as may be provided for pursuant to Section 3139.

HISTORY

CJA-2-86, January 30, 1986.

§ 3218. Conversion of corporate status

A. A close corporation may convert its status to that of a corporation organized pursuant to Subchapter 1 by amending its articles of incorporation to delete therefrom all reference to the term "close corporation", including its use in the name of the corporation, and to comply with §3107. Such an amendment shall be adopted by a two-thirds vote of the voting rights of the capital units unless the articles of incorporation require a greater vote to convert. The articles of incorporation as amended shall also provide for the cancellation of capital units and the basis on which shares will be issued in lieu thereof.

B. The conversion of a close corporation is affected if there has been substantial compliance in good faith with the requirements of subsection (A) of this section.

C. A corporation organized pursuant to Subchapter 1 having thirty (30) or fewer shareholders may convert its status to that of a close corporation and be subject to the provisions of this article by amending its articles of incorporation to comply with §3203. A resolution so amending its articles of incorporation shall be adopted by the unanimous vote of all shareholders whether otherwise entitled to vote or not. The resolution amending the articles of incorporation shall provide for the cancellation of all issue outstanding shares of stock and state the relative rights of capital units.

D. No conversion pursuant to this section shall be deemed a termination or dissolution of the corporate entity or a sale or exchange of the shares of capital units.

HISTORY

CJA-2-86, January 30, 1986.

§ 3219. Application of general corporation law

Close corporations organized pursuant to this subchapter are subject to the provisions of Subchapter 1 except insofar as this subchapter modifies or differs from such provision, in which case this chapter prevails. This chapter shall be applicable to all close corporations except as otherwise provided. This chapter shall be construed to simplify the management, structure, and operations of close corporations.

HISTORY

CJA-2-86, January 30, 1986.

Subchapter 3. Non-Profit Corporations**§ 3301. Short title**

This chapter shall be known and may be cited as the "Navajo Nation Non-Profit Corporation Act".

HISTORY

CJA-2-86, January 30, 1986.

§ 3302. Definitions

The definitions of Subchapter 1 are applicable in this chapter.

HISTORY

CJA-2-86, January 30, 1986.

§ 3303. Conversion of corporate status prohibited

No non-profit corporation organized under this chapter may convert its status to a corporation organized for profit, either foreign or domestic, or merge or consolidate with a domestic corporation or foreign corporation organized for profit, unless the corporation surviving the merger or consolidation is a non-profit corporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3304. Purposes

A. Corporations may be organized under this chapter for any lawful purpose or purposes, including without limitation any of the following purposes:

1. Charitable;
2. Benevolent;
3. Eleemosynary;
4. Educational;
5. Civic;
6. Patriotic;
7. Political;
8. Religious;
9. Social;
10. Fraternal;
11. Literary;
12. Cultural;
13. Athletic;

14. Scientific;
15. Agricultural;
16. Horticultural;
17. Animal husbandry; or
18. Professional, commercial, industrial or trade associations.

HISTORY

CJA-2-86, January 30, 1986.

§ 3305. Members

A. A non-profit corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of each class shall be set forth in the articles of incorporation or bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or bylaws. A corporation may issue certificates evidencing membership rights, voting rights, or ownership rights, as authorized in the articles of incorporation or bylaws.

B. Members are not liable for the debts, obligations or liabilities of the corporation.

C. A corporation formed under this chapter by a recognized Chapter of the Navajo Nation shall have one class of members, and any Navajo 18 years or older who is entitled to vote within said Chapter in Navajo Nation or Chapter elections shall be entitled to be a member of said corporation, and shall be entitled to vote on matters on which members are entitled to vote.

HISTORY

CJA-2-86, January 30, 1986.

§ 3306. Bylaws

The power to make, alter, amend, or repeal the bylaws of the non-profit corporation shall be vested in the board of directors unless reserved to the members by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law, or the articles of incorporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3307. Meetings of members

A. Meetings of members may be held at such place within or without Navajo Indian Country as stated in or fixed in accordance with the

bylaws. If no other place is stated or so fixed, meetings shall be held at the known place of business of the non-profit corporation.

B. An annual meeting of the voting members, if any, shall be held at such time as stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any 13 month period the court may, on the application of any voting member, order a meeting to be held. Failure to hold such annual meeting shall not work as a forfeiture of the corporate charter or dissolution of the corporation.

C. Special meetings of the voting members, if any, may be called by the board of directors, the members having at least one-tenth of the votes entitled to be cast at such meeting or any other person as may be authorized in the articles of incorporation or bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3308. Notice of members' meetings

Unless otherwise provided in the articles of incorporation or bylaws, written notice stating the place, day and hour of the meeting, and in case of a special meeting, the purpose for which the meeting is called, shall be mailed or delivered not less than ten nor more than 50 days before the date of the meeting by an officer of the non-profit corporation, at the direction of the person calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be addressed to the member at his/her address as it appears on the records of the corporation. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given at the adjourned meeting if the time and place of the meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which may have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each member entitled to vote at the meeting.

HISTORY

CJA-2-86, January 30, 1986.

§ 3309. Voting

A. Except for a non-profit corporation formed by a Chapter of the Navajo Nation, the right of the members or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

B. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy executed in writing by the member or by his/her duly authorized attorney in fact. No proxy may be valid after eleven months from the date of its execution.

C. If directors or officers are to be elected, the bylaws may provide that the elections be conducted by mail.

D. If a corporation has no members or its members have no right to vote, the directors have the sole voting power, unless otherwise provided in the articles of incorporation or bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3310. Quorum

The bylaws may provide the number or percentage of members entitled to vote, present or represented by proxy, or the number of percentage of votes entitled to be cast by members present or represented by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provisions, members present or represented by proxy, holding one-tenth of the votes entitled to be cast shall constitute a quorum.

HISTORY

CJA-2-86, January 30, 1986.

§ 3311. Board of Directors

A. The affairs of a non-profit corporation shall be managed by a board of directors except as may be otherwise provided in subsection (B). Directors need not be members of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

B. The articles of incorporation may vest the management of the affairs of the corporation in its members or may limit the authority of the board of directors to whatever extent is set forth in the articles of incorporation or bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3312. Number, election and classification and removal of Directors

A. Unless the articles of incorporation provide otherwise, a non-profit corporation may have only one director. The number of directors shall be fixed by or in the manner provided in the articles of incorporation or bylaws. The number of directors may be increased or de-

created by amendment to, or in the manner provided, in the articles of incorporation or bylaws, but no decrease in number may have the effect of shortening the term of any incumbent director. If the number of directors has not been fixed by, or in the manner provided, in the articles of incorporation or bylaws, the number shall be the same as the number of initial directors.

B. The person(s) constituting the initial board of directors shall be named in the articles of incorporation to hold office until the first annual election of directors, or for any other period as may be specified in the articles of incorporation or bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or bylaws. In the absence of a provision prescribing the manner of election or appointment of directors, the members having voting rights shall elect the directors, or, if a corporation has no members or no members having voting rights, the directors are elected or appointed by the incumbent directors or by the officer, representative body of any organization or society or other person designated in the articles of incorporation or bylaws. In the absence of a provision fixing the term of office, the term of office of a director is one year.

C. Directors may be divided into classes, and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he/she is elected or appointed, and until his/her successor is elected or appointed and qualified, or until his/her earlier death, resignation or removal. Any director may resign at any time upon written notice to the corporation.

D. A director may be removed from office pursuant to any procedure provided in the articles of incorporation or bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3313. Vacancies

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum, or by a sole remaining director, and any director so chosen shall hold office until the next election of directors when his/her successor is elected and qualified. Any newly created directorship shall be deemed a vacancy. Unless otherwise provided in the articles of incorporation or bylaws, when one or more directors resigns from the board, effective at a future time, a majority of the directors then in office, including those who have so resigned, may fill such vacancy, the vote on the vacancy to take effect when such resignation becomes effective. Each director so chosen shall hold office as provided for the filling of

other vacancies. If by reason of death, resignation or otherwise, a non-profit corporation has no directors in office, any officer or members may call a special meeting of members for the purpose of electing the board of directors unless otherwise provided in the articles of incorporation or bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3314. Quorum of directors

A majority of the number of directors fixed pursuant to the articles of incorporation or bylaws constitutes a quorum unless otherwise provided in the articles of incorporation or bylaws, but in no event may a quorum consist of less than one-third of the total number of directors.

HISTORY

CJA-2-86, January 30, 1986.

§ 3315. Committees of the board of directors

A. A majority of the full board of directors may designate from among the directors one or more committees each of which, to the extent provided in the articles of incorporation or bylaws, may be given all the authority of the board of directors, except no such committee may exercise the authority of the board of directors in reference to the following matters;

1. Submission to the members of any matter that requires an act of the members;
2. Filling vacancies on the board of directors or on any committee of the board of directors;
3. Adoption, amendment or repeal of bylaws; or
4. Fixing compensation of directors.

B. The board of directors, with or without cause, may dissolve any such committee or remove any director from the committee at any time. The designation of any such committee and the delegation of authority shall not operate to relieve the board of directors or any director of any responsibility imposed by law.

HISTORY

CJA-2-86, January 30, 1986.

§ 3316. Place and notice of directors' meeting

A. Meetings of the board of directors, regular or special, shall be held at least annually either within or without Navajo Indian Country, and may be held by means of conference telephone or similar communication equipment by means of which all persons participating in the

meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at any regular or special meeting of the board of directors need not be specified in the notice or waiver of notice of such meeting unless required by the articles of incorporation or bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3317. Officers

A. The officers of a non-profit corporation shall consist of a president, a secretary and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Other officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the one person.

B. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as provided in the bylaws or determined by resolution of the board of directors not inconsistent with the bylaws.

C. The articles of incorporation or bylaws may provide that any one or more officers of the corporation shall be *ex officio* members of the board of directors.

D. The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3318. Removal of officers

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interests of the non-profit corporation will be served by the removal, but such removal shall be without prejudice

to the contract rights, if any, of the person removed. Election or appointment of an officer or agent shall not in itself create contract rights.

HISTORY

CJA-2-86, January 30, 1986.

§ 3319. Books and records

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees of the board of directors. Each corporation shall keep at its registered agent's office, or its known place of business within Navajo Indian Country, a record of the name and addresses of its members entitled to vote. Books, records and minutes shall be in written form, or in any other form capable of being converted into written form within a reasonable time.

B. Each member entitled to vote, upon written demand stating the purpose of the examination, may examine, in person or by agent or attorney, at any reasonable time for any proper purpose, the corporation's relevant books and records of account, minutes and record of members and may make copies of or extracts from the books, records or minutes.

C. Nothing contained in this section shall impair the power of any court of competent jurisdiction, upon proof by a member of proper purpose, to compel the production for examination or copying by such member of the books and records of account, minutes and record of members of a corporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3320. Shares of stock and dividends prohibited

A non-profit corporation shall not have or issue shares of stock. No dividend may be paid and no part of the income or profit of such corporation may be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount of its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, but no such payment benefit or distribution may be deemed to be a dividend or a distribution or income or profit.

HISTORY

CJA-2-86, January 30, 1986.

§ 3321. Loans to directors and officers prohibited

A non-profit corporation shall not lend money to or use its credit to assist its directors, officers or employees. Any director, officer or employee who assents to or participates in the making of any such loan shall be personally liable to the corporation for the amount of such loan together with interest at 18% per annum until the repayment of the loan.

HISTORY

CJA-2-86, January 30, 1986.

§ 3322. Incorporators

One or more persons capable of contracting may act as incorporators of a corporation by signing and delivering to the Department an original and one or more copies of articles of incorporation for such corporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3323. Articles of incorporation

A. The articles of incorporation shall state:

1. The name of the corporation;
2. The period of duration, if less than perpetual;
3. The purpose or purposes for which the corporation is organized, which may be stated to include conducting any or all lawful affairs for which corporations may be incorporated under this subchapter;
4. A brief statement of the character of affairs which the corporation initially intends to actually conduct in this state. Such statement shall not limit the character of affairs which the corporation ultimately conducts;
5. The name and address of its initial registered agent;
6. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual election of directors or until their successors are elected and qualify;
7. The name and address of each incorporator; and
8. Any other provision not inconsistent with law which the incorporators elect to set forth.

B. It is not necessary to state in the articles of incorporation any of the corporate powers enumerated in this chapter.

HISTORY

CJA-2-86, January 30, 1986.

§ 3324. Filing of articles of incorporation

A. When the articles of incorporation have been delivered for filing, the Department shall determine that the articles:

1. Set forth the information required by §3323; and
2. Do not adopt as the name of the corporation a name which is in violation of §3105.

B. Upon making such determinations, the Department shall proceed with filing the articles.

HISTORY

CJA-2-86, January 30, 1986.

§ 3325. Effect of filing articles of incorporation

Upon the filing of the articles of incorporation, the corporate existence begins, and the filing is conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with, and that the non-profit corporation has been incorporated under this subchapter, except as against the Navajo Nation in a proceeding for involuntary dissolution of the corporation or revocation of the articles of incorporation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3326. Organization meeting

A. After delivery of the articles of incorporation for filing, an organization meeting of the initial board of directors shall be held at the call of a majority of the incorporators for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days notice of the meeting by mail to each director so named, which notice shall state the time and place of the meeting.

B. A first meeting of the members may be held at the call of a majority of the directors upon at least three days notice for those purposes as stated in the notice of the meeting.

HISTORY

CJA-2-86, January 30, 1986.

§ 3327. Right to amend articles of incorporation

A corporation may amend its articles of incorporation in any lawful respect.

HISTORY

CJA-2-86, January 30, 1986.

§ 3328. Procedures to amend articles of incorporation

A. Amendments to the articles of incorporation shall be made in the following manner:

1. If there are members entitled to vote on the proposed amendment, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of those members, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this subchapter for the giving of notice of meetings of members. The proposed amendment may be adopted only by act of the members; or

2. If there are no members or no members entitled to vote on the proposed amendment, an amendment may be adopted by act of the board of directors.

B. Any number of amendments may be submitted and voted upon at any one meeting.

HISTORY

CJA-2-86, January 30, 1986.

§ 3329. Articles of amendment

A. The articles of amendment shall be executed by the non-profit corporation in duplicate and shall state:

1. The name of the corporation;
2. The amendments adopted;
3. The date of the adoption of the amendments; and
4. That the amendments were duly adopted by act of the members or of the board of directors.

HISTORY

CJA-2-86, January 30, 1986.

§ 3330. Filing of articles of amendment; effect of amendment

A. When the articles of amendment have been delivered for filing, the Department shall determine that the articles set forth the information required by §3329.

B. Upon making such determination, the Department shall proceed with the filing the articles.

C. Upon the delivery of the articles of amendment to the Department, the amendment shall become effective and the articles of incorporation shall be deemed to be amended, except that, if the determination of the requirements of this chapter for filing are not

satisfied completely, the articles of amendment shall not be filed, the amendment shall not become effective and the articles of incorporation shall not be deemed to have been amended.

D. No amendment may affect any existing claim in favor of or against the non-profit corporation or any pending action or proceeding to which the corporation is a party or the existing rights of persons other than members. If the corporate name is changed by amendment, no action or proceeding brought by or against the corporation under its former name may abate for that reason.

HISTORY

CJA-2-86, January 30, 1986.

§ 3331. Sales, lease, exchange, mortgage or pledge of assets

A. A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of a non-profit corporation may be made only upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as are authorized in the following manner:

1. If there are members entitled to vote on the matter, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of those members, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of the corporation shall be given to each member entitled to vote at such meeting within the time and the manner provided by this subchapter for the giving of notice of meetings, the members may authorize such sale, lease exchange, mortgage, pledge or other disposition and may fix or may authorize the board of directors to fix, any or all of the terms and conditions and the consideration to be received by the corporation. Such authorization shall require an act of the members; or

2. If there are no members or no members entitled to vote on the matter, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of a corporation may be authorized by act of the board of directors.

B. If the authorization provides, the board of directors may abandon the sale, lease, exchange, mortgage, pledge or other disposition subject to the contractual rights of third parties.

HISTORY

CJA-2-86, January 30, 1986.

§ 3332. Application of general corporation law

The provisions of the general corporation laws of the Navajo Nation, and all powers, rights and duties thereunder, where applicable, shall apply to non-profit corporations organized hereunder, except when in conflict with the provisions of this chapter.

HISTORY

CJA-2-86, January 30, 1986.

Subchapter 4. Agricultural Cooperatives**§ 3401. Short title**

This subchapter shall be known and may be cited as the "Navajo Agricultural Cooperative Act".

HISTORY

CJA-2-86, January 30, 1986.

Note. [Subchapter 4 redesignated] Signs, billboards, and Advertising devices previously codified as Chapter 21, §§3401-3412 has been redesignated to Title 5, Chapter 3, Subchapter 3, §§421-432.

§ 3402. Definitions

A. The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bees, and any farm and ranch products;

B. The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

C. The term "association" means any corporation organized under this chapter of any association organized under the cooperative marketing acts of any other tribe or state. Associations organized hereunder shall be deemed non-profit because as they are organized not to make profit for themselves or for their members but only for their members as producers.

HISTORY

CJA-2-86, January 30, 1986.

§ 3403. Organizers

A. Five or more persons engaged in the production of agricultural procedures may form an association under this subchapter.

B. An agricultural cooperative organized under this chapter by recognized Chapters of the Navajo Nation shall permit as members entitled to hold common stock, or if organized without common stock, as members entitled to vote, all Navajos 18 years or older who are

entitled to vote within said Chapter in Navajo Nation or Chapter elections.

HISTORY

CJA-2-86, January 30, 1986.

§ 3404. Purpose

An association may be organized to engage in any activity in connection with the production, cultivation, marketing or selling of agricultural products produced by and marketed for its members, or in the harvesting, preserving, drying, processing, canning, storing, handling, shipping or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above-enumerated activities. Provided, however, any such activities may extend to nonmembers and to the production, cultivation of lands owned or cultivated by them and their products.

HISTORY

CJA-2-86, January 30, 1986.

§ 3405. Powers

A. Associations organized under this chapter shall have all of the powers granted to corporations organized under Subchapter 1, and in addition shall specifically have the following powers:

1. To engage in any activity in connection with the production, cultivation of farm products, including the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members, or the production, manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this subchapter;
2. To borrow money and make advances to members;
3. To act as the agent or representative of any member or members in any of the above-mentioned activities;
4. To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer, or pledge shares of capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association; including the power to subscribe, pay for and own the capital stock of Banks for Coopera-

tives organized under the "Farm Credit Act of 1933" passed by the Congress of the United States and approved June 16, 1933;

5. To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

6. To buy, hold and exercise privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;

7. To extend its activities to the products and supplies of non-members;

8. To consolidate with the consent of individual permittees land use permits and grazing permits under long-term agricultural business land leases with the Navajo Nation;

9. To enter into leasehold assignments, approved by the Navajo Nation, and the Secretary of the Interior or his/her authorized designee, with suppliers of agricultural production credit; and

10. To enter into management contracts and joint venture agreements for the mutual benefit of its members.

HISTORY

CJA-2-86, January 30, 1986.

§ 3406. Members

A. Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock to only persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

B. If a member of a non-stock association be other than a natural person, such member may be represented by an individual, associate officer or member thereof, duly authorized in writing.

C. Any association as defined in §3402(C) may become a member or stockholder of any other association or associations organized hereunder.

HISTORY

CJA-2-86, January 30, 1986.

§ 3407. Liability for debts

The stockholders or members of an association organized under this chapter shall not be individually liable for the debts of such association except as they may be held liable under provisions of Subchapter 1.

HISTORY

CJA-2-86, January 30, 1986.

§ 3408. Articles of incorporation

A. Each association formed under this chapter must prepare and file articles of incorporation, setting forth:

1. The name of the association;
2. The purpose for which it is formed;
3. The place where its principal business will be transacted;
4. The term for which it is to exist, which may be perpetual;
5. The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of the office of such directors;
6. If organized without capital stock, whether the property rights and interests of each member shall be equal or unequal; and if unequal, the property rights and interests of each member shall be set forth by the general rule or rules applicable to all members by which the property rights and interest, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended or repealed except by the written consent or the vote of three-fourths of the members; and
7. If organized with capital stock, the amount of such capital stock and the number of shares into which it is divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the nature and extent of the preferences and privileges granted to each. The incorporators must sign and file in duplicate the articles in accordance with the provisions of the general non-profit corporation law of the Navajo Nation; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in the courts, and other places, as prima facie evidence of the facts contained therein, and of the incorporation of such association. No part of such capital stock shall be required to be subscribed and/or paid in as a prerequisite to the filing of such articles of incorporation; provided further that such association may, from time to time sell and issue to their members or stockholders, shares of capital stock in such manner as provided in the bylaws.

HISTORY

CJA-2-86, January 30, 1986.

§ 3409. Amendments to articles of incorporation

The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds vote of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation when so adopted shall be filed in accordance with the provisions of the general non-profit corporation law of the Navajo Nation.

HISTORY

CJA-2-86, January 30, 1986.

§ 3410. Bylaws

A. Each association incorporated under this chapter must, within thirty days after its incorporation, adopt for its regulation and the management of its affairs, bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or common stockholders is necessary to adopt such bylaws. Each association, under its bylaws, may also provide for any or all of the following matters;

1. The time, place and manner of calling and conducting its meetings;
2. The number of stockholders or members constituting a quorum;
3. The right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner and effects of such vote and the method and manner in which an association which is a member may cast its vote;
4. The number of directors constituting a quorum;
5. The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof;
6. Penalties for violations of the bylaws;
7. The amount of entrance, organization and membership fees, if any, the manner and method of collection of the same, and the purposes for which they must be used;
8. The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him/her and the time of payment and the manner of collection; the marketing contract between the association to him/her and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

9. The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership or common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and of shares of common stock; and conditions upon which, and time when membership of any member shall cease. The automatic suspension of the rights of a member when he/she ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his/her membership, or at the option of the association by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his/her property interest in the association and shall fix the amount thereof in money, which shall be paid to him/her within one year after such expulsion or withdrawal; and

10. The distribution of earned surplus to members and nonmembers on the basis of patronage and land contribution;

HISTORY

CJA-2-86, January 30, 1986.

§ 3411. Meetings, notice; election of directors and officers

Meetings, notice and election of directors and officers shall be governed by the provisions of Subchapter 3 pertaining to non-profit corporations.

HISTORY

CJA-2-86, January 30, 1986.

§ 3412. Stock membership certificates

A. When a member of an association established without capital stock, has paid his/her membership fee in full, he/she shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the notice, but such retention as security shall not affect the members' right to vote.

B. Except for debts lawfully contracted between him/her and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his/her mem-

bership fee or his/her subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

C. No stockholder or a cooperative association shall own more than one-fifth of the issued common stock of the association; and an association, in its bylaws, may limit the amount of common stock which one member may own to any amount less than one-fifth of the issued common stock.

D. No member or stockholder shall be entitled to more than one vote.

E. Any association organized with stock under this subchapter may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retrievable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

F. The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

G. The association may at any time, except when the debts of the association exceed fifty percent of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter.

HISTORY

CJA-2-86, January 30, 1986.

§ 3413. Removal of officer or director

A. Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten percent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association; by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy.

B. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; the person or persons bringing the charges against him/her shall have the same opportunity.

HISTORY

CJA-2-86, January 30, 1986.

§ 3414. Referendum

Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership of the stockholders for decision at the next special or regular meeting. A special meeting may be called for that purpose.

HISTORY

CJA-2-86, January 30, 1986.

§ 3415. Marketing contract

A. The association and its members may make and execute marketing contracts requiring the members to sell, for a period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, if any, and other proper reserves; and interest not exceeding eight percent per annum upon common stock.

B. The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him/her of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts. In the event of any breach or threatened breach of such marketing contract by the member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof.

C. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

HISTORY

CJA-2-86, January 30, 1986.

§ 3416. Patronage distributions including land rentals

The earned surplus of an association organized under this chapter, including revenues received from land rentals, shall be apportioned,

distributed, and paid periodically on the basis of patronage and land use rights contributed to the association as the bylaws shall provide.

HISTORY

CJA-2-86, January 30, 1986.

§ 3417. Preferred stock

An association organized hereunder may issue preferred capital stock for any purpose so long as fair value is received therefore.

HISTORY

CJA-2-86, January 30, 1986.

§ 3418. Annual reports

Each association formed under this chapter shall prepare and make out an annual report on forms furnished by the Department containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of members and amount of membership fees received, if a non-stock association; the total expenses of operation; the amount of its indebtedness, or liability, and its balance sheets.

HISTORY

CJA-2-86, January 30, 1986.

§ 3419. Bond

Each and all officers, employees and agents, handling funds, or property of the corporation or funds of any person placed under the control of or in the possession of said corporation, shall be required to execute and deliver to the corporation a bond of indemnity, indemnifying the corporation and members against any fraudulent, dishonest or unlawful act on the part of such officers and employees and other acts as provided in the bylaws of the association. In case the officers and directors of any corporation authorized to be created under the provisions of this chapter, shall fail to have all officers, employees and agents handling such funds or property execute the bond provided for herein, each and all of said officers and directors shall be personally liable for all losses occasioned by such failure and which might have been recovered on said bond.

HISTORY

CJA-2-86, January 30, 1986.

§ 3420. Interest in other corporation or associations

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engage in preserving, drying, pressing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the agricultural products handled by the association, or by the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of the Navajo Nation, its warehouse receipts shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

HISTORY

CJA-2-86, January 30, 1986.

§ 3421. Contracts and agreement with other associations

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative corporation, association or associations, formed in the Navajo Nation or other tribal government or any other state for the cooperative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses.

HISTORY

CJA-2-86, January 30, 1986.

§ 3422. Association heretofore organized

Any corporation association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the Department, to the effect that the corporation or association has, by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this subchapter. Articles of incorporation shall be filed as required in §3407

of this chapter except that they shall be signed by the members of the board of directors.

HISTORY

CJA-2-86, January 30, 1986.

§ 3423. Breach of contract or false reports

Any person or person or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be liable to the association aggrieved thereby in a civil suit for damages suffered in three times the amount of actual damage proven for each offense.

HISTORY

CJA-2-86, January 30, 1986.

§ 3424. Associations not in restraint of trade

No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and its members nor any agreements authorized in this subchapter, be considered illegal or in restraint of trade.

HISTORY

CJA-2-86, January 30, 1986.

§ 3425. Application of general corporation law

The provision of the general corporation laws of the Navajo Nation, and all powers, rights and duties thereunder shall apply to associations organized hereunder except when in conflict with the provisions of this subchapter. Provided, however, that any cooperative marketing association incorporated under the laws of the Navajo Nation may apply for and be granted a permit to do business as a foreign corporation under laws organized for a similar purpose. Provided further, that such foreign cooperative marketing associations shall not be required to have a paid-up capital or any portion of the capital paid-up in order to be entitled to such permit.

HISTORY

CJA-2-86, January 30, 1986.

Best Practices

Corporations Codes

Cherokee Code

This Corporations Code is a comprehensive setting out of all aspects of corporate existence. It is set out in a format of chapters of an existing tribal code. The section re-produced here relates to corporations for profit. The chapter format is broken down into three articles. The first is reserved for future use and is titled General Provisions which suggest that the drafters intend at some point to draft a complete description of corporate possibilities pursuant to this code.

The second chapter is titled Incorporation and Regulation of Corporations Generally. A review of the sections contained in this chapter indicates that this chapter is of major importance as it specifies the relationship of the corporation to individuals, the state and to the tribe. Establishing the rights and responsibilities of each entity is the function of this chapter. The material covered in this chapter is vital and needs to be addressed in any corporations code. It is this chapter where the drafter will find the most deviation from state corporations codes as it is here where the identity of the corporations as tribal entities is established and defined.

The third chapter is titled Tribal Corporations. This is the chapter that most mirrors the traditional state corporations codes. It is here where the corporation is defined. There are nine articles that cover the entire existence of a corporation. They can be readily adapted as the basics of corporate life are completely set out in these articles. Those articles are:

1. Article 1. General Provisions
2. Article 2. Corporate Purposes and Powers
3. Article 3. Corporate Finance
4. Article 4. Shareholders
5. Article 5. Directors and Officers
6. Article 6. Organization of Corporations
7. Article 7. Amendments of Articles of Corporation
8. Article 8. Sale and Other Disposition of Corporate Assets
9. Article 9. Dissolution of Corporations

TITLE 17

COMMISSIONS

Reserved for Future Use

TITLE 18

CORPORATIONS

Chapter	Sect
1. General Provisions	
2. Incorporation and Regulation of Corporations Generally	
3. Tribal Corporations	

Cross References

Employment rights of Indians generally, see Cherokee Nation Code Annotated.

CHAPTER 1

GENERAL PROVISIONS

Reserved for future use

**Best Practices
 Corporations Codes
 Code #2: Cherokee Nation Corporation Code**

CHAPTER 2

INCORPORATION AND REGULATION OF CORPORATIONS GENERALLY

Section

- 11. Authorization
- 12. Board of directors
- 13. By-laws
- 14. Suits by and against corporations—Indemnification of directors, officers or employees
- 15. Disposition of surplus earnings
- 16. Borrowing and pledges of credit
- 17. Exemption from liability for corporate debts and obligations of private property of officers and directors
- 18. Inspection and auditing of books, records and reports

Tribal corporations generally, see 18 CNCA § 21 et seq.

Cross References

Research References

American Jurisprudence, 2d
 18 Am Jur 2d, Corporations, §§ 1-27.
 18A Am Jur 2d, Corporations, §§ 150-272.

§ 11. Authorization

- A. The Council of the Cherokee Nation hereby authorizes the executive branch of the Cherokee Nation to charter corporations. The Council may, from time to time, establish laws and regulations governing the activities of such corporations within the boundaries of the Cherokee Nation.
- B. A corporation chartered under this title shall be authorized to administer all commercial and financial transactions associated with the business of the corporation in such manner and to such extent as any corporation chartered by the State of Oklahoma, unless otherwise provided for by tribal law.

History

Source. LA 11-85, § 101, eff. June 8, 1985.

Cross References

Regulation of Corporations generally, see 18 CNCA § 11 et seq.

§ 12. Board of directors

- A. Any tribal corporation chartered under this title shall be administered by a board of directors of not less than five (5) or not more than eleven (11) in number as may be provided by the by-laws of the corporation.
- B. The board of directors shall be appointed by the Principal Chief of the Cherokee Nation and confirmed by the Council of the Cherokee Nation.

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History

Source. LA 11-85, § 102, eff. June 8, 1985.

Cross References

Indemnification of directors, see 18 CNCA § 14.

§ 13. By-laws

- A. The board of directors shall adopt by-laws for the corporation and such by-laws may be amended or repealed as provided herein.
- B. Compensation for the board of directors shall be established in the by-laws.

History

Source. LA 11-85, § 103, eff. June 8, 1985.

§ 14. Suits by and against corporations—Indemnification of directors, officers or employees

- A. A corporation chartered under this chapter may sue or be sued in the appropriate jurisdiction.
- B. Any person made a party to any action, suit or proceeding by reason of the fact that he, or his testator or intestate, is or was a director, officer or employee of the corporation, shall be indemnified by the corporation against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such director, officer or employee is liable for negligence or misconduct in the performance of his duties.

History

Source. LA 11-85, § 104, eff. June 8, 1985.

Cross References

Courts and procedure generally, see Title 20, Cherokee Nation Code Annotated. Powers, duties and liabilities of corporations generally, see 18 CNCA § 21 et seq.

§ 15. Disposition of surplus earnings

The Principal Chief, with the consent of the board of directors of the corporation, shall have the power to fix, from time to time, the amount to be reserved out of the surplus earnings of the corporation as working capital or for any other lawful purpose and to determine whether any, and if any, what part, of the surplus of the corporation shall be declared to revert to the General Fund of the Cherokee Nation or to such other funds as the board of directors may determine.

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Cross References

Corporate finance generally, see 18 CNCA § 41 et seq.

§ 16. Borrowing and pledges of credit

A. The corporation may borrow and pledge its credit separately from the Cherokee Nation. Such indebtedness shall be based solely on the assets and credits of the corporation.

B. The corporation may pledge the credit of the Cherokee Nation, upon written request of the board of directors, only with the approval of the Council.

History

Source. LA 11-85, § 106, eff. June 8, 1985.

Cross References

Corporate finance generally, see 18 CNCA § 41 et seq.

Pledges of credit of the Cherokee Nation, see Section 7 of Article X of the Cherokee Constitution.

17. Exemption from liability for corporate debts and obligations of private property of officers and directors

The private property of each and every officer and director of the corporation, real or personal, tangible or intangible, now owned or hereafter acquired by any of them, is and shall be forever exempt from all debts and obligations of the corporation of any kind whatsoever.

History

Source. LA 11-85, § 107, eff. June 8, 1985.

Cross References

Powers, duties and liabilities of corporate directors generally, see 18 CNCA § 81 et seq.

18. Inspection and auditing of books, records and reports

A. The accounts, books, and papers of the corporation shall be opened inspection by the Principal Chief or his authorized representative during regular business hours.

B. The account and records of the corporation shall be audited at the end of each fiscal year, and copies of the audit shall be furnished to the Principal Chief, the Council, and to such other persons as the Principal Chief directs.

History

See. LA 11-85, § 108, eff. June 8, 1985.

CHAPTER 3

TRIBAL CORPORATIONS

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- 23. Books and records
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- 26. Reservation of power

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ARTICLE 1. GENERAL PROVISIONS

Cross References

Oklahoma Business Corporation Act, general provisions, see Title 18 Okl. St. Ann. §§ 1.1-1.8.

§ 21. Short Title

This chapter shall be known, and may be cited, as the "Cherokee National Corporation Act". This chapter is enacted pursuant to chapter 2 of title.

§ 22. Definitions

As used in this chapter, unless the context otherwise requires, the terms:

- A. "Corporation" means a corporation for profit subject to the provisions of this chapter.
- B. "Articles of incorporation" means the original or restated articles of incorporation.
- C. "Shares" means the units into which the proprietary interests in a corporation are divided.
- D. "Subscriber" means one who has agreed to purchase stock from a corporation on the original issue of such stock.
- E. "Shareholder" means one who is a holder of record of shares in a corporation, notwithstanding the articles of incorporation or by-laws.
- F. "Authorized shares" means the amount by which the corporation is authorized to issue.
- G. "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation.
- H. "Stated capital" means, at any particular time, the sum of (1) the par value of all shares of the corporation having a par value that have been issued (2) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and (3) such amounts not included in clauses (1) and (2) of this article as have been transferred to stated capital of the corporation whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.
- I. "Surplus" means the excess of the net assets of a corporation over its stated capital.
- J. "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. "Earned surplus" shall include also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or

93. Removal of officers

ARTICLE 6. ORGANIZATION OF CORPORATIONS

- 111. Incorporators
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- 131. Right to amend articles of incorporation
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- 151. Sale of assets in regular course of business and mortgage or pledge of assets
- 152. Sale of assets other than in regular course of business

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- 173. Voluntary dissolution by act of corporation
- 174. Filing of statement of intent to dissolve
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- 179. Articles of dissolution
- 180. Filing of articles of dissolution
- 181. Jurisdiction of Tribal Judicial Tribunal to liquidate assets and business of corporation
- 182. Procedure in liquidation of corporation by Tribal Judicial Tribunal
- 183. Filing of claims in liquidation proceedings
- 184. Discontinuance of liquidation proceedings
- 185. Entry of decree of involuntary dissolution
- 186. Filing of decree of dissolution
- 187. Survival of remedy after dissolution

History

The provisions comprising this chapter were derived from a document which was adopted by vote of the Tribal Council at its regular meeting on December 14, 1985. Amended. L.A 3-90, eff. July 9, 1990.

Cross References

Business corporations, see Title 18 Okl. Ann. § 1.1 et seq. Organization and regulation of corporations generally, see 18 CNCA § 11 et seq.

substantially the outstanding shares or of the property and assets of another corporation, domestic or foreign.

K. "Capital surplus" means the entire surplus of a corporation other than its earned surplus.

L. "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

M. "Employee" includes officers but not directors. A director may accept duties which make him also an employee.

Research References

American Jurisprudence, 2d
18 Am Jur 2d, Corporations, §§ 1, 3, 4.
Model Business Corporation Act
Model Business Corporation Act § 2.

History

Amended. LA 3-90, eff. June 9, 1990.

§ 23. Books and records

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors.

B. Upon the written request of the Council, the corporation shall deliver its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operation.

Research References

American Jurisprudence, 2d
18A Am Jur 2d, Corporations, §§ 333-422.
Model Business Corporation Act
Model Business Corporation Act §§ 52, 125, 126, 135, 142.

§ 24. Waiver of notice

Whenever any notice is required to be given to any shareholder of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Cross References

Notice of directors meetings, see 18 CNCA § 88.

Research References

Model Business Corporation Act
Model Business Corporation Act § 144.

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§ 25. Unauthorized assumption of corporate powers

All persons who assume to act as a corporation without authority to do so shall be jointly and severally liable for all debts and liabilities incurred arising as a result thereof.

Cross References

Corporate powers and purposes generally, see 18 CNCA § 31 et seq.

Research References

American Jurisprudence, 2d
18B Am Jur 2d, Corporations, §§ 1990-2168.
Model Business Corporation Act
Model Business Corporation Act §§ 4, 7, 54.

§ 26. Reservation of power

The Council shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the Council shall have power to amend or modify this chapter at pleasure. Such amendments shall not apply to corporations previously chartered unless ratified by 75 percent of the stockholders of such corporations.

History

Amended. LA 3-90, eff. June 9, 1990.

ARTICLE 2. CORPORATE PURPOSES AND POWERS

Cross References

Corporate capacity and powers, see Title 18 Okl. St. Ann. §§ 1.18-1.130.
Effect of unauthorized assumption of corporate powers, see 18 CNCA § 25.

Research References

American Jurisprudence, 2d
18B Am Jur 2d, Corporations, §§ 1990-2168.
Model Business Corporation Act
Model Business Corporation Act §§ 4, 7, 54.

§ 31. Purposes

Corporations may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance.

§ 32. General powers

Each corporation shall have power:

A. To have perpetual succession by its corporate name unless a limitation of duration is stated in its articles of incorporation.

B. To sue and be sued, complain and defend, in its corporate name.

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C. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any manner reproduced.

D. To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

E. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

F. To lend money to its employees, other than its officers and directors, and otherwise assist its employees, officers and directors.

G. To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of other domestic or foreign corporations, association, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

H. To make contracts and guarantees and incur liabilities, borrow money such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

I. To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of bonds so loaned or invested.

J. To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.

K. To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

L. To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of the Cherokee Nation, for the administration and regulation of the affairs of the corporation.

M. To make donations for the public welfare or for charitable, scientific, educational purposes; and in time of war to make donations in aid of war activities.

N. In time of war to transact any lawful business in aid of the United States in the prosecution of the war.

O. To pay pensions and establish pension plans and pension trusts, for or all of its directors, officers and employees.

P. To cease its corporate activities and surrender its corporate franchise.

Q. To have and exercise all powers necessary or convenient to effect any part of the purposes for which the corporation is organized.

CORPORATE FINANCE

ARTICLE 3. CORPORATE FINANCE

Cross References

Rights and liabilities of shareholders generally, see 18 CNCA § 61 et seq.
Sale and other disposition of corporate assets, see 18 CNCA § 151 et seq.
Subscription for shares, see Title 18 Okl. St. Ann. §§ 1.31-1.33.

Research References

American Jurisprudence, 2d
18A Am Jur 2d, Corporations, §§ 423-577, 578-680, 681-727.
18B Am Jur 2d, Corporations, §§ 2601-2076.
Model Business Corporation Act §§ 2, 5, 54.
Model Business Corporation Act

History

Amended. LA 3-90, eff. June 9, 1990.

§ 42. Authorized shares

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be of only one class known as "common".

Cross References

Issuance of fractional shares, see 18 CNCA § 49.
Share certificates, see 18 CNCA § 48.

§ 43. Issuance of shares in series

A. If the articles of incorporation so provide, the shares may be divided into and issued in series. If the shares are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series. There shall be no variation in the relative rights and preferences as between different series.

B. If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series, the board of directors shall have authority to divide any or all of such stock into series.

C. In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series.

D. Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the Principal Chief of the Cherokee Nation, a statement setting forth:

- Certificates representing shares**
- A. The shares of a corporation may be represented by certificates issued by the president or a vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the Corporation or a facsimile thereof.
 - B. Each certificate representing shares shall state upon the face thereof:
 1. That the corporations organized under the laws of the Cherokee Nation.
 2. The name of the shareholder to whom the stock is issued.
 3. The par value of each share represented by such certificate.
 - C. No certificate shall be issued for any share until such share is fully paid.

History

Amended: LA 3-90, eff. June 9, 1990.

§ 49. Fractional shares

A corporation may not issue fractions of a share.

Cross References

Issuance of shares generally, see 18 CNCA §§ 42, 43.

ARTICLE 4. SHAREHOLDERS

Cross References

Issuance of shares general, see 18 CNCA § 41 et seq.
Rights and duties of shareholders generally, see Title 18 Okl. St. Ann. §§ 1.45-1.69.

Research References

American Jurisprudence, 2d
18A Am Jur 2d, Corporations, §§ 728-947, 948-1167.
Model Business Corporation Act
Model Business Corporation Act §§ 25, 28-34, 80, 81, 143-145.

§ 61. Liability of subscribers and shareholders

A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

§ 62. Shareholders' preemptive rights

(Repealed: LA 3-90)

§ 63. Meetings of shareholders

A. All meetings of shareholders shall be held at the registered corporate offices, such as the place as designated by the by-laws.

1. The name of the corporation.
 2. A copy of the resolution establishing designating the series.
 3. The date of adoption of such resolution.
 4. That such resolution was duly adopted by the board of directors.
 - E. Such statement shall be executed in duplicate by the corporation by president or a vice president and by its secretary or an assistant secretary, verified by one of the officers signing such statement, and shall be delivered to the Principal Chief of the Cherokee Nation.
 - F. Upon the receipt of such statement by the Principal Chief, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective.
- 14. Consideration for shares**
- A. Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.
 - B. There shall be no shares without par value.

Cross References

Treatment of consideration received for shares having par value, see 18 CNCA § 46.

15. Payment for shares

- A. The consideration for the issuance of shares may be paid, in whole or part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and non-assessable.
- B. In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

16. Determination of amount of stated capital

In case of issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital to the extent of par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

17. Expenses of organization, reorganization and financing

The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale and underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

B. An annual meeting of the shareholders shall be held at such time as may be stated in or fixed in accordance with the by-laws. If the annual meeting is not held within any thirteen-month period, the board of directors may, on the application of any shareholder, summarily order a meeting to be held.

C. Special meetings of shareholders may be called by a majority of the shareholders, a majority of the board of directors, or the Chairman of the board or Chief Executive Officer.

History

Amended. L.A. 3-90, eff. June 9, 1990.

64. Notice of shareholders' meetings

Written notice stating the place, day and hour of the meeting and in case of a special meeting, the purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary, except when waived by a majority of the shareholders.

History

Amended. LA 3-90, eff. June 9, 1990.

65. Quorum of shareholders

A majority of the shareholders entitled to vote, present in person or represented by proxy, shall constitute a quorum of shareholders for purposes of any shareholder meeting, either annual or special.

History

Amended. LA 3-90, eff. June 9, 1990.

66. Voting of shares

The exclusive right to vote shares shall be vested in the shareholder or by proxy.

History

Amended. LA 3-90, eff. June 9, 1990.

ARTICLE 5. DIRECTORS AND OFFICERS

Cross References

Directors, see Title 18 Okl. St. Ann. §§ 1.34-1.42.
Officers and agents, see Title 18 Okl. St. Ann. §§ 1.43-1.44.

Research References

American Jurisprudence, 2d
18B Am Jur 2d, Corporations, §§ 1341-1683, 1684-1689.
Model Business Corporation Act
Model Business Corporation Act §§ 2, 4, 5, 20, 27A, 33, 35-44, 50, 51.

§ 81. Board of directors

A. All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors, except as may be otherwise provided in this chapter and with the further exception that in any and all events or disputes a proper resolution of the shareholders shall govern. The articles of incorporation or by-laws may prescribe qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

B. A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing his duties, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

1. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
2. Counsel, public accountants or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence, or
3. A committee of the board upon which he does not serve, duly designated in accordance with a provision of the articles of incorporation or the by-laws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but he shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

A person who so performs his duties shall have no liability by reason of being or having been a director of the corporation.

C. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

History

Amended. L.A. 3-90, eff. June 9, 1990.

§ 82. Number and election of directors

The number of directors shall be fixed by, or in the manner provided in Section 12 of this Title. The names and addresses of the members of the first

board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting.

Cross References

Filing of vacancies, see 18 CNCA § 84.
Removal, see 18 CNCA § 85.

83. Classification of directors

No classification of directors shall be effective.

84. Vacancies

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors, subject to approval of the shareholders. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in number of directors may be filled by the board of directors for a term of one year continuing only until the next election of directors by the shareholders.

History

Amended, L.A. 3-90, eff. June 9, 1990.

85. Removal of directors

At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Any director or the entire board of directors may be removed, with or without cause, by majority vote of the shareholders.

History

Amended, L.A. 3-90, eff. June 9, 1990.

86. Quorum of directors

A majority of the number of directors shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the by-laws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the by-laws.

Cross References

Meetings generally, see 18 CNCA § 88.

§ 87. Director conflicts of interest

A. No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if

1. The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or
 2. The fact of such relationship or interest is disclosed or known to the shareholders and they authorize, approve or ratify such contract or transaction by vote or written consent; or
 3. The contract or transaction is fair and reasonable to the corporation.
- B. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

Cross References

Loans to employees and directors, see 18 CNCA § 91.

History

Amended, L.A. 3-90, eff. June 9, 1990.

§ 88. Notice of directors' meetings—Committee meetings

Regular meetings of the board of directors may be held with or without notice as prescribed in the by-laws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the by-laws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the by-laws.

Cross References

Quorum, see 18 CNCA § 86.

Waiver of notice, see 18 CNCA § 24.

§ 89. Dividends

The board of directors of a corporation shall, from time to time, declare and the corporation shall pay dividends in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent, subject to the following provisions:

A. Dividends shall be declared and paid; in cash or property only out of the earned surplus of the corporation, subject to the right of the shareholders to waive payment, upon which the said dividend will remain a corporate asset, except as otherwise provided in this section.

B. Dividends may be declared and paid in its own authorized but unissued shares out of any earned surplus of the corporation upon the following condition: A dividend payable in its own shares having a par value shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus at least equal to the aggregate par value of the shares to be issued as a dividend.

Cross References

Corporate finance generally, see 18 CNCA § 41 et seq.
Shareholder rights generally, see 18 CNCA § 61 et seq.

Research References

American Jurisprudence, 2d
18A Am Jur 2d, Corporations, §§ 1168-1340.
Model Business Corporation Act
Model Business Corporation Act §§ 2, 30, 45, 48.

History

Amended. LA 3-90, eff. June 9, 1990.

§ 90. Distribution from capital surplus

The board of directors of a corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

A. No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

B. No such distribution shall be made unless such distribution is authorized by the affirmative vote of a majority of the shareholders.

C. Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

Cross References

Corporate finance generally, see 18 CNCA § 41 et seq.
Shareholder rights generally, see 18 CNCA § 61 et seq.

History

Amended. LA 3-90, eff. June 9, 1990.

§ 91. Loans to employees and directors

A corporation shall not lend money to or use its credit to assist its directors without authorization in the particular case by the majority of the shareholders, but may lend money to and use its credit to assist any employee of the

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corporation or a subsidiary, including any such employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation, subject to the prior written approval of a majority of the shareholders.

Cross References

Conflicts of interest, see 18 CNCA § 87.

History

Amended. LA 3-90, eff. June 9, 1990.

§ 92. Officers

A. The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the by-laws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time in such manner as may be prescribed by the by-laws. Such other officers, assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as prescribed by the by-laws. Any two or more offices may be held by the same person, except the offices of president and secretary.

B. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws, or as determined by resolution of the board of directors not inconsistent with the by-laws.

§ 93. Removal of officers

Any officer or agent may be removed by the board of directors within its judgement the best interests of the corporation will be served thereby. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not create contract rights.

ARTICLE 6. ORGANIZATION OF CORPORATION:

Cross References

Amendment of articles of incorporation, see 18 CNCA § 131 et seq.
Articles and other documents, see Title 18 Okl. St. Ann. §§ 1.208-1.233.
By-laws, see Title 18 Okl. St. Ann. § 1.52.
Officers and directors, see 18 CNCA § 81 et seq.

Research References

American Jurisprudence, 2d
18A Am Jur 2d, Corporations, §§ 150-272, 310-332.
Model Business Corporation Act
Model Business Corporation Act §§ 3, 4, 27, 27A, 53-57, 127-134, 146.

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§ 111. Incorporators

One or more persons, a domestic corporation, or the Cherokee Nation may act as incorporator or incorporators of a corporation by signing and delivering in duplicate to the Principal Chief articles of incorporation for such corporation.

§ 112. Articles of incorporation

- A. The articles of incorporation shall set forth:
 1. The name of the corporation.
 2. The period of duration, which may be perpetual.
 3. The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this chapter.
 4. The aggregate number of shares which the corporation shall have the authority to issue.
 5. Any provision, not inconsistent with this chapter, which the incorporators elect to set forth in the articles of incorporation for the regulation of internal affairs of the corporation, including any provision restricting the transfer of shares and any provisions which under this chapter is required or permitted to be set forth in the by-laws.
 6. The address of its initial registered office, and the name of its initial registered agent at such address.
 7. The number of directors constituting the initial board of directors and the names and address of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify. [§]
 8. The name and address of each incorporator.
- B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

§ 113. Filing of articles of incorporation

The articles of incorporation shall be filed in the office of the Principal Chief of the Cherokee Nation. It shall be the sole discretion of the Principal Chief to accept or reject the same.

§ 114. Effect of issuance of certificate of incorporation

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the Cherokee Nation in proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

§ 115. By-laws

The initial by-laws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the by-laws or adopt new by-laws shall be vested in the board of directors unless reserved to the shareholders in the articles of incorporation. The by-laws may contain provisions for the limitation and management of the affairs of the corporation not inconsistent with the laws of the Cherokee Nation or the articles of incorporation.

ARTICLE 7. AMENDMENT OF ARTICLES OF INCORPORATION**Cross References**

Amendment of articles and rights of dissenting shareholders, see Title 18 Okl. St. Ann. §§ 1-11.
Articles of incorporation generally, see 18 CNCA §§ 112, 113.

Research References

American Jurisprudence, 2d
18A Am Jur 2d, Corporations, § 211.
Model Business Corporation Act
Model Business Corporation Act § 2.

§ 131. Right to amend articles of incorporation

- A. A corporation may amend its articles of incorporation, from time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be contained in original articles of incorporation at the time of making such amendment.
- B. In particular, and without limitation upon such general principle, a corporation may amend its articles of incorporation from time, so as
 1. To change its corporate name.
 2. To change its period of duration.
 3. To change, enlarge or diminish its corporate purposes.

§ 132. Procedure to amend articles of incorporation

- A. Amendments to the articles of incorporation shall be made in the following manner:
 1. The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that the amendment be submitted to a vote at a meeting of the shareholders, which may be the annual or a special meeting.
 2. Written notice setting forth the proposed amendment or a copy of the changes to be affected thereby shall be given to the shareholders within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

3. At such meeting a vote of the shareholders shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the shareholders.
- B. Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting.

History

Amended. L.A. 3-90, eff. June 9, 1990.

§ 133. Execution of articles of amendment

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

- A. The name of the corporation.
- B. The amendments so adopted.
- C. The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued.
- D. The number of shares outstanding.
- E. The number of shareholders voting for and against such amendment, respectively.

History

Amended. L.A. 3-90, eff. June 9, 1990.

§ 134. Filing of articles of amendment

- A. Duplicate originals of the articles of amendment shall be delivered to the Principal Chief. If the Principal Chief finds that the articles of amendment conform to law, he shall, when all fees and franchise taxes have been paid as in this chapter prescribed:
 1. Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
 2. File one of such duplicate originals in his office.
 3. Issue a certificate of amendment to which he shall affix the other duplicate original.
- B. The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Principal Chief, shall be returned to the corporation or its representative.

§ 135. Effect of certificate of amendment

- A. The amendment shall become effective upon the issuance of the certificate of amendment by the Principal Chief or on such later date, not more than thirty days subsequent to the filing thereof with the Principal Chief, as shall be provided for in the articles of incorporation.

- B. No amendment shall affect any existing cause of action in favor against such corporation, or any pending suit to which such corporation be a party, or the existing rights of persons other than shareholders; an event the corporate name shall be changed by amendment, no suit brought against such corporation under its former name shall abate for that

ARTICLE 8. SALE AND OTHER DISPOSITION OF CORPORATE ASSETS

Cross References

Dissolution of corporations, see 18 CNCA § 171 et seq.
 Sale of assets, see Title 18 Okl. St. Ann. §§ 1.163, 1.164.

Research References

American Jurisprudence, 2d
 19 Am Jur 2d, Corporations, §§ 2654-2679.
 Model Business Corporation Act
 Model Business Corporation Act §§ 78, 79.

§ 151. Sale of assets in regular course of business and mortgage of assets

The sale, lease, exchange, or other disposition of all, or substantial the property and assets of a corporation in the usual and regular course of business and the mortgage or pledge of any or all property and as corporation whether or not in the usual and regular course of business made upon such terms and conditions and for such consideration, which consist in whole or in part of money or property, real or personal, shares of any other corporation, domestic or foreign, as shall be authorized by the board of directors; and in any case no authorization or consent of shareholders shall be required.

History

Amended. L.A. 3-90, eff. June 9, 1990.

§ 152. Sale of assets other than in regular course of business

A sale, lease, exchange, or other disposition of all, or substantial property and assets, with or without the good will of a corporation, in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or of cash or other property, including shares, obligations or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

- A. The board of directors shall adopt a resolution recommending sale, lease, exchange, or other disposition and directing the submission to a vote at a meeting of the shareholders, which may be either an annual or a special meeting.
- B. Written notice shall be given to the shareholders, not less than ten days before such meeting, in the manner provided in this chapter for

of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, is to consider the proposed sale, lease, exchange, or other disposition.

C. At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of a majority of the Council.

D. After such authorization by a vote of the Council, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contract relating thereto, without further action or approval by the Council.

Cross References

Meetings of shareholders, see 18 CNCA § 63.

ARTICLE 9. DISSOLUTION OF CORPORATIONS

Cross References

Dissolution and winding up, see Title 18 Okl. St. Ann. §§ 1.77-1.198a.

Sale and other disposition of corporate assets, see 18 CNCA § 151 et seq.

Research References

American Jurisprudence, 2d

19 Am Jur 2d, Corporations, §§ 2733-2907.

Model Business Corporation Act

Model Business Corporation Act §§ 82-91, 97-105.

History

Amended. LA 3-90, eff. June 9, 1990.

§ 171. Voluntary dissolution by incorporators

A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time.

§ 172. Voluntary dissolution by consent of Cherokee Nation

A. A corporation may be voluntarily dissolved by a written resolution passed by a majority vote of the shareholders.

B. Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

1. The name of the corporation.
2. The names and respective addresses of its officers.
3. The names and respective addresses of its directors.
4. A copy of the written resolution signed by a majority of the shareholders.

Cross References

Dissolution decrees, see 18 CNCA §§ 185, 186.

Liquidation of corporations by Tribal Judicial Tribunal, see 18 CNCA §§ 181-184.

Revocation of voluntary dissolution proceedings by consent of Cherokee Nation, see 18 CN

History

Amended. LA 3-90, eff. June 9, 1990.

§ 173. Voluntary dissolution by act of corporation

A corporation may be dissolved by the act of the corporation, authorized in the following manner:

A. The board of directors shall adopt a resolution recommending corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of the shareholders which may be an annual or a special meeting.

B. Written notice shall be given to each shareholder of record to vote at such meeting within the time and in the manner provided chapter for the giving of notice of meetings of shareholders, and, whether meeting be an annual or special meeting, shall state that the purpose, of the purposes, of such meeting is to consider the advisability of dissolution of the corporation.

C. At such meeting a vote of shareholders entitled to vote there shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of a majority of the shareholders.

D. Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

1. The name of the corporation.
2. The names and respective addresses of its officers.
3. The names and respective addresses of its directors.
4. A copy of the resolution adopted by the shareholders authorizing dissolution of the corporation.
5. The number of shares outstanding.
6. The number of shareholders voting for and against the resolution respectively.

Cross References

Dissolution decrees, see 18 CNCA §§ 185, 186.

Liquidation of corporations by Tribal Judicial Tribunal, see 18 CNCA §§ 181-184.

Meetings of shareholders, see 18 CNCA § 63.

Revocation of voluntary dissolution proceedings by act of corporation, see 18 CNCA § 177.

History

Amended. LA 3-90, eff. June 9, 1990.

§ 174. Filing of statement of intent to dissolve

Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Principal Chief. If the Principal Chief finds that such statement conforms to law, he shall:

- A. Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
- B. File one of such duplicate originals in his office.
- C. Return the other duplicate original to the corporation or its representative.

§ 175. Effect of statement of intent to dissolve

Upon the filing with the Principal Chief of a statement of intent to dissolve, whether by consent of the shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the Principal Chief or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this chapter provided.

History

Amended, LA 3-90, eff. June 9, 1990.

§ 176. Procedure after filing of statement of intent to dissolve

After the filing by the Principal Chief of a statement of intent to dissolve:

- A. The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.
- B. The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind.

Cross References

Articles of dissolution, see 18 CNCA §§ 179, 180.

§ 177. Revocation of voluntary dissolution proceedings by consent of Cherokee Nation

By the written consent of a majority of the shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Principal Chief, revoke voluntary dissolution proceedings theretofore taken in the following manner. Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president and by its secretary

or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- A. The name of the corporation.
- B. The names and respective addresses of its officers.
- C. The names and respective addresses of its directors.
- D. A copy of the written consent signed by a majority of the shareholders revoking such voluntary dissolution proceedings.
- E. That such written consent has been signed by a majority of the holders.

Cross References

Voluntary dissolution by consent of Cherokee Nation generally, see 18 CNCA § 172.

History

Amended, LA 3-90, eff. June 9, 1990.

§ 178. Revocation of voluntary dissolution proceedings by act of corporation

By the act of the corporation, a corporation may, at any time prior to issuance of a certificate of dissolution by the Principal Chief, revoke voluntary dissolution proceedings theretofore taken in the following manner:

- A. The board of directors shall adopt a resolution recommending that voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of the shareholders.
- B. Written notice, stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.
- C. At such meeting a vote of the shareholders entitled to vote thereon shall be taken on a resolution to revoke the voluntary dissolution proceedings which shall require for its adoption the affirmative vote of a majority of the shareholders entitled to vote thereon.
- D. Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, a statement shall set forth:
 1. The name of the corporation.
 2. The names and respective addresses of its officers.
 3. The names and respective addresses of its directors.
 4. A copy of the resolution adopted by the shareholders revoking voluntary dissolution proceedings.
 5. The number of shares outstanding.

6. The number of shareholders voting for and against the resolution, respectively.
- E. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

Cross References

Meetings of shareholders, see 18 CNCA § 63.
 Voluntary dissolution proceedings by act of corporation generally, see 18 CNCA § 173.

History

Amended. LA 3-90, eff. June 9, 1990.

§ 179. Articles of dissolution

If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- A. The name of the corporation.
- B. That the Principal Chief has theretofore filed a statement of intent to dissolve the corporation, and the date on which such statement was filed.
- C. That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.
- D. That all the remaining property and assets of the corporation have been distributed to the shareholders in accordance with their respective rights and interests.

Cross References

Statement of intent to dissolve, see 18 CNCA §§ 174-176.

History

Amended. LA 3-90, eff. June 9, 1990.

§ 180. Filing of articles of dissolution

- A. Duplicate originals of such articles of dissolution shall be delivered to the Principal Chief. If the Principal Chief finds that such articles of dissolution conform to law, he shall:
 1. Endorse on each such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
 2. File one of such duplicate originals in his office.
 3. Issue a certificate of dissolution to which he shall affix the other duplicate original.

B. The certificate of dissolution, together with the duplicate original articles of dissolution affixed thereto by the Principal Chief, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution, the existence of the corporation shall be terminated for the purpose of suits, other proceedings and appropriate action by the shareholders, directors and officers as provided in this chapter.

History

Amended. LA 3-90, eff. June 9, 1990.

§ 181. Jurisdiction of Tribal Judicial Tribunal to liquidate assets and business of corporation

The Tribal Judicial Tribunal shall have full power to liquidate the assets and business of a corporation:

- A. In an action by the Cherokee Nation when it is established:
 1. That the directors are deadlocked in the management of the corporation affairs and the shareholders are unable to break the deadlock, an irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
 2. That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
 3. That the shareholders are deadlocked in voting power, and the corporation has failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired and would have expired upon the election of their successors; or
 4. That the corporate assets are being misapplied or wasted.
- B. In an action by a creditor:
 1. When the claim of the creditor has been reduced to judgment and execution thereon returned unsatisfied and it is established that the corporation is insolvent; or
 2. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

History

Amended. LA 3-90, eff. June 9, 1990.

§ 182. Procedure in liquidation of corporation by Tribal Judicial Tribunal

In proceedings to liquidate the assets and business of a corporation the Tribal Judicial Tribunal shall have power to issue injunctions, and to take other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

§ 183. Filing of claims in liquidation proceedings

In proceedings to liquidate the assets and business of a corporation the Tribal Judicial Tribunal may require all creditors of the corporation to file with the clerk of the tribunal, in such form as the tribunal may prescribe, proofs under oath of their respective claims. If the tribunal requires the filing of claims, it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the tribunal may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of the tribunal, from participating in the distribution of the assets of the corporation.

§ 184. Discontinuance of liquidation proceedings

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the tribunal shall dismiss the proceedings.

§ 185. Entry of decree of involuntary dissolution

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholder, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the tribunal shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

Cross References

Liquidation proceedings generally, see 18 CNCA §§ 181-185.

§ 186. Filing of decree of dissolution

In case the tribunal shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Principal Chief. No fee shall be charged by the Principal Chief for the filing thereof.

§ 187. Survival of remedy after dissolution

The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Principal Chief or (2) by a decree of the Tribal Judicial Tribunal when the court has not liquidated the assets and business of the corporation as provided in this chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolu-

tion. Any such action or proceeding by or against the corporation prosecuted or defended by the corporation in its corporate name. Holders, directors and officers shall have power to take such corporate action as shall be appropriate to protect such remedy, right or claim. Corporation may amend its articles of incorporation at any time during a period of two years so as to extend its period of duration.

*

Best Practices

Corporations Codes

Hoopla Code

These codes were selected to demonstrate a different approach to drafting a corporations code. Specifically the selected examples are titles of the tribe's code and show a different approach than the one utilized by Cherokee. The format is by ordinance, a format widely used in Indian Country and as such may be easier for tribal drafters to accept as a model. Each title is easily separable and can be adopted at different times and each chapter establishes its authority pursuant to the existing laws of the tribe. This is helpful in giving a legal context to the provisions. Unlike the Cherokee example the general provisions of this code are contained in a separate title, Title 51. Title 51 is meant to be introductory and controlling on the following titles that define the different corporate structures that are possible in this tribe. It has general language and a review of the sections in this first title indicates that this portion of the code was meant to serve as the foundation for the tribe's corporate activities. It is in this title that the specific tribal concerns mentioned in the above article are addressed. Drafters should pay particular attention to the following sections:

Purpose and Construction: This establishes for any interpreter the rules of construction, i.e., this section will guide future legislative action of the tribal council and any tribal court that is required to make a determination on the meaning of any section of the code.

Tribal Department of Commerce: This section establishes what branch of the tribal government shall oversee corporations. Many tribes are going to this format of establishing Departments of Commerce for the purpose of regulation of corporate life on the reservations.

Reporting Requirements: This section is vital in that it establishes the authority of the Department of Commerce to seek compliance with the tribe's code. This particular section sets forth the specific authority of the director of the Department to propound interrogatories or demands to inspect documents to insure that a corporation is complying with corporate laws of the tribe.

Jurisdiction of the Tribal Court: This section establishes the authority of the Tribe's court system. And it contains a section that should be in every corporations code indicating that the section shall not be construed as a waiver of sovereign immunity.

Registered Agents: The need for this section was discussed above. This section is a good example of such a requirement. It also serves as an example of protective language and structure for the circumstance where a corporation is out of compliance with this requirement. This protective language is of particular importance to a tribe and should be considered by all drafters.

The three additional titles are for corporations for profit, non-profit and tribal corporations. The first, the profit corporation is in Title 53 and can be compared to the Cherokee example. The second is in Title 54 and is a representative example of a non-profit corporation statute and can

be used for adaptation purposes if a tribe is seeking to enact a non-profit statute. The third title is Title 51 and is entitled Tribal Entities, most probably to avoid confusion as the title actually describes tribal corporations. These are corporations/entities that are formed by the tribal council and are controlled by the council. These corporations/entities can be established for economic or governmental purposes. They were discussed in the above article and this title is an example of that type of corporation.

Northern California Indian Development Council

American Indian Community Coordinator project
Northwest Economic Adjustment Initiative (NWEAI)

TRIBAL SAMPLE BUSINESS CODES AND COURT CODE MODEL (updates posted on 6/2/99)

[25 CFR, Part 11 \(Court of Indian Offenses\)](#) | [Tribal Business Codes](#) | [Legal Business Documents](#) | [Tribal Court Codes](#) | [NCIDC Home](#)

Legal Disclaimer

Business codes and the Tribal Court model are samples provided courtesy of the submitting tribe(s) for informational purposes ONLY. These codes should only be used as an example of the types of codes currently being utilized by other Tribal governments. Please seek appropriate legal advise when drafting any legal document.

The sample codes and other information provided on this web site are for the sole use of the recipient and recipient's acceptance of the data signifies its agreement that it shall use the data for internal purposes only. Northern California Indian Development Council (NCIDC), and the submitting Tribe(s) make no express or implied warranties relating to the sample information or as to any results to be obtained by recipient from the use of the sample information. NCIDC does not guarantee the legality, timeliness, accuracy or completeness of the information. NCIDC will not be liable in any way to Recipient for any delays, inaccuracies, errors in, or omissions of, any of the data or in the transmission thereof, or for any damages arising therefrom. Information herein is posted as submitted by various tribes, and NCIDC does not warrant its completeness or accuracy.

No liability is assumed for the content of these documents!

Proposed Tribal Circuit Court System

The Court of Indian Offenses (C.I.O.), also known as a CFR Court is described in detail in [25 CFR, Part 11](#). The link to the C.I.O is provided for your review and consideration. The CFR Court system has served many Tribes i.e. Yurok and Hoopa, as well as other tribes listed within this CFR. as an interim court system and is recognized by the Federal Government. Tribal Governments interested in exploring their participation in a [Tribal Circuit Court system](#) are encouraged to send a letter of interest/intent to participate in the development of the [Tribal Circuit Court system](#).

Letters of interest/intent, please address to:

- Keith Taylor, American Indian Community Coordinator,
Northern California Indian Development Council
241 F Street
Eureka, CA 95501.
- Phone:(707)445-8451

- e-mail: ktaylor@ncidc.org

Hoopa Uniform Business Codes and Court System

(Provided courtesy of the Hoopa Tribe)

The Hoopa Court Rules and Business Codes are provided courtesy of the Hoopa Tribe. There may have been revisions since these examples were posted. If you wish to obtain the most current information you should contact: Chief Judge, Byron Nelson, regarding the Hoopa Court system, Phone: (530)625-4305 and Danny Jordan at the Hoopa Tribal Office, Phone (530) 625-4211 for Business Code amendments and updates.

Title 50 - Tribal Comprehensive Business Policy code - Sets forth the overall policies for business development. Includes provisions for employment in lieu of tax, non-interference, local purchase policy, Department of Commerce tax.

Title 51 - Tribal Corporations and Entities Code - Sets forth authorities to create corporations under Tribal law, establishes parameters for "close corporations", sets out liabilities and authorities of corporation shareholders.

Title 52 - Tribal Entities Code - Sets out how Tribal entities are created, general authorities and protections, requirements for charters, authorizes tribal/private sector partnerships, and provides for multi-year and long term permits and leases.

Title 53 - Tribal Business Corporations Code - Set forth procedures for creating private for-profit corporations, corporation general operational procedures, rights of shareholders, and mechanisms for how for-profit corporations can function.

Title 54 - Tribal Non-Profit Corporations Code - Set forth procedures for creating private non-profit corporations, corporation general operational procedures, rights of shareholders, and mechanisms for how non-profit corporations can function

Title 55 - Tribal Business Partnership Code - Sets out how business partnerships can function, establishes standards for partners, and sets out procedures for addressing partnership concerns, such as dissolution, partner responsibilities, etc.

Title 56 - Tribal Business License and Standards Code - Sets out procedures for issuing and revoking business licenses, business standards, complaints and appeals.

Title 57 - Tribal Commercial Transactions Code - This Title sets out how and when commercial agreements are legally entered into and how they are enforced.

Title 58 - Federal Government Surplus and Excess Property Code - The regulations for the Federal Government Surplus and Excess Property Program are presently being revised, therefore this Title is reserved at this time.

Title 59 - Tribal Small Business Incentive Program Code - This Program provides basic capital funds for starting up or expanding businesses.

Title 60 - Tribal Business Miscellaneous Provisions Code - This Title sets forth clarifications regarding how specific Tribal laws apply to businesses.

Click on one of the underlined links in the table below to view a Title.

The HTML files can be viewed by any browser. Save the HTML file as "TEXT" (not "SOURCE") after you open it, to use/modify the text in almost any word processor.

The PDF format files will require Adobe Acrobat Reader to view, but this format will retain more of the original formatting than the HTML text files.

(NOTE: the Table of Contents in each sample Business Code will not have the correct page numbers because your computer will reformat the number of pages for your individual selected printer. Changes you make to customize these codes to your situation will also cause page reformatting. Please edit the page numbers in the Table of Contents of your version of these documents!)

Sample Code Title	View in Browser (HTML)	PDF Format*
Tribal Comprehensive Business Policy code	<u>Title 50</u>	Title 50.pdf
Tribal Corporations and Entities Code	<u>Title 51</u>	Title 51.pdf
Tribal Entities Code	<u>Title 52</u>	Title 52.pdf
Tribal Business Corporations Code	<u>Title 53</u>	Title 53.pdf
Tribal Non-Profit Corporations Code	<u>Title 54</u>	Title 54.pdf
Tribal Business Partnership Code	<u>Title 55</u>	Title 55.pdf
Tribal Business License and Standards Code	<u>Title 56</u>	Title 56.pdf
Tribal Secured Transactions Code	<u>Title 57</u>	Title 57.pdf
Fed. Gov. Surplus and Excess Property Code	<u>Title 58</u>	Title 58.pdf
Tribal Small Business Incentive Program Code	<u>Title 59</u>	Title 59.pdf
Tribal Business Miscellaneous Provisions Code	<u>Title 60</u>	Title 60.pdf
"READ ME" Notes (HTML only)	Notes	n/a

If for any reason you are unable to download any of these files, please contact NCIDC to inquire about obtaining text files on floppy disk, ask for Keith Taylor.

Other Business Document Models:

These templates include Tribal Articles of Incorporation, Bylaws, and Commercial Lease models as well as a briefing paper titled "CREATING BUSINESS OPPORTUNITIES ON INDIAN RESERVATIONS".

Document Name	View in Browser (HTML)	PDF Format*
Articles of Incorporation	articles.htm	articles.pdf
Bylaws	bylaw.htm	bylaw.pdf
Tribal Business License Application	buss_app.htm	n/a
Commercial Lease	lease.htm	lease.pdf
Briefing Paper Titled: "Creating Business Opportunities on Indian Reservations"	ind_buss.htm	n/a

Model Tribal Court Code:
(Provided courtesy of the Hoopa Tribe)

This code of the ##### tribe of the ##### Indian reservation in the state of California, is enacted for the purpose of protecting and promoting tribal sovereignty, strengthening tribal self-government, providing for the judicial needs of the reservation, and thereby assuring the maintenance of the law and order on the reservation for the protection of tribal resources and the rights of the members of the ##### tribe and all others within the tribe's jurisdiction. It is further understood that this code shall be subject to the authority of the ##### tribal constitution.

Click on one of the underlined links in the table below to view a Title.

The HTML files can be viewed by any browser. Save the HTML file as "TEXT" (not "SOURCE") after you open it, to use/modify the text in almost any word processor.

The PDF format files will require Adobe Acrobat Reader to view, but this format will retain more of the original formatting than the HTML text files.

(NOTE: the Table of Contents in each sample Business Code will not have the correct page numbers because your computer will reformat the number of pages for your individual selected printer. Please edit the page numbers in the Table of Contents of each code after you have opened the file in your word processing program as necessary!)

Sample Code Title	View in Browser (HTML)	PDF Format*
Tribal Court	Court Model	court.pdf

If for any reason you are unable to download any of these files, please contact NCIDC to inquire about obtaining text files on floppy disk, ask for Keith Taylor.

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Part Nine

Environmental Review Codes

What is the purpose of an environmental review code?

Environmental review codes can facilitate tribal protection of members' health and safety and ensure suitable land, clean water and air for future generations, and preserve a traditional land based way of life. To these ends environmental review codes:

1. provide information thorough data collection and dissemination of information to the tribe about development projects to inform decision making by the tribe on specific projects;
2. coordinate new development with ongoing land use planning by the tribe;
3. coordinate related tribal programs and clarify areas where codes overlap or leave gaps that affect the environment e.g. land use plans, water quality regulations, fish and wildlife protections, building codes, solid waste codes, preservation of historic sites, preservation of spiritual sites, cemetery preservation;
4. facilitate public participation in planning and development decisions through public hearings and comments on proposed projects;
5. provide procedures for tribes to monitor ongoing development projects for consistency with permits and plans;
6. coordinate tribal compliance with federal environmental laws as they apply to tribal lands, e.g. under NEPA, ESA, and CWA § 404, and provide a framework for compliance with both federal and tribal environmental requirements.

Why may Tribes want to develop tribal environmental review codes when NEPA and other federal environmental laws already apply to many projects on reservation lands?

1. Although many actions on reservations are subject to federal NEPA requirements, NEPA is limited in several ways:
 - NEPA guidelines do not always account for issues of concern to tribes including greater priority for natural resource protection and spiritual/cultural values of natural resources.
 - NEPA is limited to procedural requirements and does not impose substantive limits on environmental effects.
 - fee lands within reservations and off reservation non-federal lands where tribes legal rights and interests (e.g. hunting and fishing rights in particular) are not subject to NEPA (but may be subject to state environmental review procedures or state environmental quality acts SEQA's).

2. While the Endangered Species Act (ESA) requires habitat conservation plans (HCP's) in areas with endangered species these plans may not adequately protect some species on which tribes depend for subsistence, e.g. salmon, or which have cultural/spiritual value for tribes. Further, the ESA is only triggered once species are threatened or endangered and do nothing to maintain relatively healthy species at current levels or recover species to sustainable levels.
3. Clean Water Act § 404 permit requirements are aimed at preserving wetlands and prioritizes the preservation of existing wetlands, but where "unavoidable" loss is caused by development, guidelines allow for reclamation of degraded wetlands or construction of manmade wetlands as mitigation. However, loss of natural wetlands may be of more concern to tribes who rely on natural systems for subsistence gathering, e.g. wild rice lakes and fish spawning areas, or tribes who value native wetlands preservation to protect medicinal plants and animals sacred to the tribe.

What types of environmental review codes are there?

1. Environmental review codes can be used to coordinate existing tribal codes' permit requirements or add additional informational or substantive permitting requirements.
2. Environmental codes can be either:
 - comprehensive review codes that are triggered by any actions affecting the environment on the reservation, including repairs of existing structures and upgrades of existing roads, or
 - limited in scope so that they are only triggered by major projects or by certain types of projects, including mining proposals, timber sales, new housing development, new water and sewage systems, or only for projects that affect particular resources or designated environmentally sensitive areas.
3. Environmental review codes may require either purely procedural codes or both procedural and substantive:
 - procedural codes require only that applicants provide certain information and analysis of environmental effects of a project and fulfill procedural requirements in order to receive a permit, or
 - require that projects meet substantive requirements including choosing the alternative which will have the least effect on the environment, or mitigating any substantial effects by scaling back the project, or providing funds for reclamation of other sites.

What issues should tribes consider before developing environmental review codes?

1. Prioritizing environmental issues within the reservation, particularly focusing on the most sensitive resources and those most central to tribal health and safety, e.g. groundwater quality, air quality, open space preservation, range preservation, reclamation of existing sites with environmental problems, sacred site preservation, salmon preservation, forest preservation.
2. Prioritizing development needs of the tribe, e.g. need for modern housing stock, need for revenue and jobs, transportation needs.

3. Funding for a environmental review committees or tribal staff time to review applications
4. Funding for data collection for tribal projects, or coordinating the procedure with NEPA procedures for tribal projects.
5. Funding for tribal staff training in administering and enforcing environmental review codes and coordinating tribal agencies in administering the codes consistently.
6. Involvement of the affected community in prioritizing issues and developing codes that are not unnecessarily bureaucratic or confusing.

For more in depth analysis of the role of tribal environmental review codes see, Dean B. Suagee & Patrick A. Parenteau, "Fashioning a Comprehensive Environmental Review Code for Tribal Governments: Institutions and Processes," 21 American Indian Law Review 297 (1997). For a useful model of an environmental review code see, Oglala Sioux Tribal Environmental Review Code (1998) (developed with assistance from Native American Rights Fund, see also, NARF Legal Review Vol. 23, No.2, 7-8 (Summer/Fall 1998)).

MODEL TRIBAL ENVIRONMENTAL REVIEW CODE

**DRAFT TEXT -- FOR DISCUSSION PURPOSES
DECEMBER 13, 1993**

**SUBTITLE A: ENVIRONMENTAL REVIEW PROCESS AND
PERMIT REQUIREMENTS FOR DEVELOPMENT**

PART 1. POLICY AND PURPOSES

SECTION

- 101. STATEMENT OF FINDINGS
- 102. POLICY
- 103. PURPOSES

PART 2. DEFINITIONS

SECTION

- 201. DEFINITION OF "DEVELOPMENT"
- 202. OTHER DEFINITIONS

PART 3. ADMINISTRATION OF DEVELOPMENT REGULATION

SECTION

- 301. ESTABLISHMENT OF ENVIRONMENTAL REVIEW COMMISSION (ERC) AND GRANT OF POWER
- 302. ORGANIZATION OF ERC
- 303. POWERS OF ERC
- 304. RULES
- 305. HEARINGS
- 306. DEVELOPMENT ORDERS
- 307. CONDITIONS OF PERMITS

PART 4. LAND USE AND DEVELOPMENT PLANNING

SECTION

- 401. LAND USE AND DEVELOPMENT PLAN
- 402. ADOPTION OF LAND USE AND DEVELOPMENT PLAN
- 403. ANNUAL LAND USE AND DEVELOPMENT REPORTS
- 404. DESIGNATION OF AREAS OF SPECIAL TRIBAL CONCERN

PART 5. PERMIT REQUIREMENTS FOR DEVELOPMENT

SECTION

- 501. PERMITS REQUIRED FOR ALL DEVELOPMENT
- 502. PROCEDURE FOR LOW-IMPACT DEVELOPMENT PERMITS
- 503. PROCEDURE FOR GENERAL DEVELOPMENT PERMITS
- 504. PROCEDURE WHEN THE [TRIBAL GOVERNING BODY] OR A TRIBAL AGENCY OR DEPARTMENT IS THE APPLICANT
- 505. ENVIRONMENTAL ASSESSMENTS (EAs)
- 506. OTHER ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS
- 507. PROCEDURE FOR AREAS OF SPECIAL TRIBAL CONCERN
- 508. REVIEW OF PERMIT APPLICATIONS BY ERC STAFF
- 509. FILING FEES AND SERVICE CHARGES

PART 6. COORDINATION WITH FEDERAL ENVIRONMENTAL LAWS

SECTION

- 601. POLICY REGARDING TREATMENT AS A "STATE" BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY
- 602. ERC TO ISSUE INTERIM GUIDANCE ON COMPLIANCE WITH FEDERAL ENVIRONMENTAL LAWS

PART 7. ISSUANCE OF PERMITS AND ORDERS BY ERC

SECTION

- 701. "LOW-IMPACT" DEVELOPMENT PERMITS
- 702. GENERAL DEVELOPMENT PERMITS
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- 801. INVESTIGATIONS
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**SUBJECTS THAT MIGHT BE COVERED IN
ADDITIONAL SUBTITLES OF A TRIBAL ENVIRONMENTAL PROTECTION CODE
OR IN SEPERATE TRIBAL LEGISLATION**

SUBTITLE B. CULTURAL PRESERVATION AND CULTURAL RESOURCES CONSERVATION

SUBTITLE C. PUBLIC WATER SYSTEMS

SUBTITLE D. WATER QUALITY AND WETLANDS

SUBTITLE E. WASTE MANAGEMENT AND RECYCLING

SUBTITLE F. AIR QUALITY

SUBTITLE G. HAZARDOUS AND TOXIC SUBSTANCES

SUBTITLE H. EMERGENCY RESPONSE PLAN AND COMMUNITY RIGHT-TO-KNOW

MODEL TRIBAL ENVIRONMENTAL REVIEW CODE

DRAFT TEXT -- DECEMBER 13, 1993
FOR DISCUSSION PURPOSES

NOTE: This document is only a DRAFT. Tribal legislation to regulate development and to protect the environment involves a variety of legal issues. Prior to the enactment of such legislation tribal officials should consider the issues in consultation with legal counsel. Some issues are discussed briefly in notes in this draft text; some issues are discussed in more detail in the paper that accompanies this draft text.

Subtitle A. ENVIRONMENTAL REVIEW PROCESS AND PERMIT REQUIREMENTS FOR DEVELOPMENT

PART 1. POLICY AND PURPOSES

§ 101. STATEMENT OF FINDINGS

The [Governing Body] of the [Name of Tribe] finds and declares that the environmental and cultural impacts of development activities within the Reservation [and other lands within the Tribe's jurisdiction] threaten the political integrity, the economic security and the health and safety of the Tribe and its members.

[Note: More specific findings should be included to reflect the particular situation of the Tribe. If there are fee lands within the reservation owned by non-Indians, the findings should expressly address this. Rather than simply stating that the tribal governing body is acting in accordance with the Montana standard, it would be preferable to show with specificity that the standard has been met.]

§ 102. POLICY

The [Governing Body] hereby declares that it is the policy of the [Name of Tribe] to protect the natural environment of the [reservation and region within which the reservation is located], to take affirmative action to restore and enhance environmental quality in areas that have been subject to degradation, and to ensure that no proposed development that might cause significant environmental degradation will be permitted prior to the completion of a thorough environmental review in which alternatives and mitigation measures are fully considered.

[Note: The tribal governing body might include specific language about the relationship between the tribe's culture and the natural environment of its reservation and the region in which its reservation is located. If the tribe was removed from its ancestral lands, this section might include some language expressing the tribe's continuing interests in those lands.]

§ 103. PURPOSES

It is the legislative purpose of the [Tribal Governing Body] to protect the land, air, water, natural resources and environment of all lands within Reservation boundaries [and other lands over which the Tribe has jurisdiction], to encourage the economic use of Reservation lands in ways that are compatible with tribal cultural values, and to provide a mechanism through which the Tribe can establish and carry out a Tribal land use and development policy, including:

- (a) designation of the [designated Tribal planning agency] as the primary authority for planning development within all Tribal lands;
- (b) designation of the Environmental Review Commission (ERC) as the primary authority for regulating land use and development in accordance with the system established in this Subtitle including the Land Use and Development Plan prepared by the [designated Tribal planning agency] and adopted by the [Tribal Governing Body];
- (c) authorization of judicial review of ERC decisions to provide for prompt resolution of disputes;
- (d) provision of a fair and effective means for enforcement of land use and development regulations and orders;
- (e) establishment of a system for recording land use and development regulations and decisions so that Tribal policies established in or pursuant to this Subtitle can be carried out in an efficient and consistent manner;
- (f) establishment of a system for ensuring that financial support for capital improvements, whether provided by federal agencies, private parties, the state of [_____] or the Tribe, will be used in ways that are consistent with the Tribe's land use and development policies.

PART 2. DEFINITIONS

§ 201. DEFINITION OF "DEVELOPMENT"

- (a) "Development" means the performance of any building operation, the making of any material change in the use or appearance of any structure, or the making of any material change in the use or appearance of land (including wetlands).

[Note: The tribal governing body may want to expressly exclude certain kinds of activities from the definition of "Development." For example, building of traditional structures might be expressly excluded. The tribal governing body might also set a threshold land area, and provide that development which disturbs less than the threshold area of land will be excluded from the permit requirement established by the Code. Another issue to consider in this definition is whether to draft it so that it expressly includes certain kinds of actions that the Tribe is currently regulating or plans to regulate in the future, e.g., actions that cause discharges into waters, including wetlands. The definition above is probably broad enough to include such actions, but greater specificity may be desired.]

- (b) "General" development. All development shall be treated as general development unless it is included within the definition of "low-impact" development below.
- (c) "Low-Impact" development. The Commission may by rule (issued pursuant to section 303 of this Subtitle) define as "low-impact" development a class of development activities which normally have little impact on the natural environment. Such definition must be adopted by unanimous vote of the Commissioners.

§ 202. OTHER DEFINITIONS

Many terms used in this Subtitle are defined elsewhere in this Code, and their meanings remain the same.

(a) "Applicant" means any person or entity that applies for a development permit pursuant to this Subtitle, including a subdivision of the Tribe or a corporation chartered by the Tribe.

(b) An environmental assessment (EA) is a brief document that is used by federal agencies to aid in their compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4370a) and implementing regulations (40 C.F.R. Parts 1500-1508) issued by the Council on Environmental Quality (CEQ). Because EAs have proven to be quite useful in federal agency decision-making and appear well-suited for the purposes of the [Tribe] set forth in section 103 of this Title, the [Tribal Governing Body] has decided to use EAs in its development permitting process. NEPA imposes a requirement on every federal agency that, prior to taking an action that may have a significant impact on the environment, the federal agency must first prepare an environmental impact statement (EIS). An EA is typically 10 to 20 pages in length, while an EIS is typically 150 pages long and involves a formal process of public review and comment. The primary purpose of an EA is to determine whether a proposed action may result in significant environmental impacts; if so, an EIS is required. An additional purpose of an EA is to help in planning and making decisions. The preparation of an EA can also help achieve compliance with environmental review and consultation requirements established by federal laws other than NEPA. As defined in the CEQ regulations (40 CFR § 1508.9), the content of an EA must include brief discussions of:

- (1) the need for the proposed action;
- (2) alternatives to the proposed action if it involves unresolved conflicts concerning alternative uses of available resources;
- (3) the environmental impacts of the proposed action and alternatives; and
- (4) agencies and persons consulted.

For purposes of this Title, an environmental assessment must also comply with any guidance provided by ERC for the use by applicants.

[Note: The above defined terms are just some of the key terms that require definition in the Code. Other terms should be included in the definitions as well.]

PART 3. ADMINISTRATION OF DEVELOPMENT REGULATION

§ 301. ESTABLISHMENT OF ENVIRONMENTAL REVIEW COMMISSION (ERC) AND GRANT OF POWER

(a) There is hereby established an Environmental Review Commission (ERC or Commission) to administer a review and permit procedure for all development activities that are proposed for any site within the Reservation [possibly including lands outside Reservation boundaries in which the Tribe has jurisdiction or recognized rights] in order to ensure that:

- (1) no development activity will be carried out without a permit; and

- (2) all development activities which are permitted will be carried out in accordance with all applicable Tribal and Federal environmental protection laws and regulations.

(b) The ERC shall be governed by a three-member Board of Commissioners, each of whom shall be appointed by the [Governing Body]. Each Commissioner shall serve a three-year term, except that the first time that Commissioners are appointed, one will be appointed to serve a three-year term, one a two-year term, and the other a one-year term. Thereafter, one Commissioner shall be appointed each year. Commissioners shall be eligible for re-appointment without limitation. The Commissioners shall elect one member to serve as Chairperson.

[Note: This is only one option. Many alternatives could be imagined. For example, the commissioners might be elected. We picked the number three because we are trying to fashion a process that can be used by small tribes. For large tribes, a larger number of commissioners might be desirable. If there are many nonmember landowners within reservation boundaries, a tribe might want to consider including one or more nonmembers on the Commission or providing some other structured way for nonmembers to have input into the Commission.]

(c) The ERC shall work cooperatively with the Tribal [Tribal Governing Body] and all Tribal agencies and departments to enforce Tribal and Federal environmental laws. [Until such time as ERC employs a sufficient number of employees to carry out all of its responsibilities, the [designated tribal agency or department] shall provide staff support to ERC; provided, that ERC shall conduct an independent review of all development applications in which the Tribe itself is an applicant.

(d) The ERC shall have the authority to hire employees, who shall be treated as Tribal employees and who shall be subject to Tribal Personnel Policies adopted by the [Tribal Governing Body] provided that employees of the ERC shall not be dismissed from employment except through action of the ERC.

(e) The ERC shall have the authority to issue rules to carry out its responsibilities under this Title of the Tribal Code [and in accordance with the Tribal Administrative Procedure Act].

§ 302. ORGANIZATION OF THE ERC

The Board of Commissioners of ERC is authorized to prescribe the internal organization of ERC. The Board of Commissioners shall prescribe its own decision-making processes, except to the extent that specific requirements are established in this Subtitle [and the Tribal Administrative Procedure Act]. The Board of Commissioners may establish that certain categories of decisions may be made by the Chairperson or by a single designated Commissioner and that other categories of decisions must be made by the entire Board. The Board may establish that certain categories of decisions shall require a unanimous vote of the entire Board. The Board shall provide written guidance on its decision-making processes, which shall be issued as rules pursuant to section 303 of this Subtitle, in order to inform Tribal members and applicants for development permits.

§ 303. POWERS OF THE ERC

By the enactment of this Subtitle, the [Tribal Governing Body] delegates to the ERC all powers necessary to carry out its responsibilities under this Subtitle. These powers are derived from the powers of the [Tribal Governing Body] pursuant to [the Tribal Constitution].

[Note: The power of a tribe to enact a Code such as this is derived from inherent tribal sovereignty. The power of a tribal governing body to exercise this power on behalf of the tribe

may be based on a tribal constitution. In the absence of a tribal constitution, it may be advisable to include in the Code some other explanation of the power of the tribal governing body.]

§ 304. RULES

The Board of Commissioners of ERC is authorized and directed to issue rules governing its procedures and supplementing the substantive law prescribed in this Subtitle. [The ERC's rules shall be developed and adopted in accordance with the Tribal Administrative Procedure Act.] At a minimum, the Board of Commissioners shall issue its rules in proposed form and request comments, and it shall hold a legislative-type hearing to assist it in developing rules. Any rules issued by the Board of Commissioners shall not take effect until 30 days after they have been provided to the [Tribal Governing Body], except that, if the Board of Commissioners finds that there is a substantial threat to public health, safety, or welfare, it may issue rules on an emergency basis which will take effect immediately. The [Tribal Governing Body/or a designated tribal department/ or the ERC staff] will make the rules available to applicants for development permits and interests persons.

[Note: If a tribe has not enacted an administrative procedure act, it may be advisable to incorporate the minimal requirements specified in EPA regulations for Rule-making by states (including tribes treated as states). See 40 CFR Part 25.]

§ 305. HEARINGS

In carrying out its responsibilities, the Board of Commissioners is authorized to hold legislative hearings as part of the Rule-making process, administrative hearings on permit applications, and adjudicatory hearings on alleged violations of this Subtitle. [All hearings shall be conducted in accordance with applicable provisions of the Tribal Administrative Procedure Act.] All hearings may be conducted in either the [tribal] language or the English language or both as warranted by the circumstances.

(a) Rule-making hearings. In developing rules, the Commission shall hold at least one hearing in which Tribal members and others who may be affected by rules issued by the Board are given the opportunity to express their views. Notice of Rule-making hearings shall be provided at least 45 days prior to the date of the hearing and the text of the proposed rules, with explanatory materials shall be made available to the public at least 30 days prior to the date of the hearing.

(b) Administrative hearings. The Commission is authorized to hold administrative hearings when it decides whether to approve an application for a development permit. In an administrative hearing, the burden is on the applicant to demonstrate to the Commission that the issuance of a permit would be consistent with the Tribe's Land Use and Development Plan. A written transcript shall not be required, but the applicant shall be entitled to a written decision. For administrative hearings, the Commission shall provide written notice to the [Tribal Governing Body] at least one week prior to the scheduled date of the hearing, which notice shall be posted in the Tribal Office and at such other places as may be specified in the Commission's rules.

(c) Adjudicatory hearings. The Commission shall by issuing rules establish procedures for adjudicatory hearings, as provided for in section 803 of this Subtitle, to ensure that all persons whose rights and interests are adjudicated by the Commission re afforded due process of law.

[Note: If there is no tribal administrative procedure act, this section should provide more detail. The time frames specified for Rule-making hearings are based on EPA regulations in 40 CFR part 25.]

§ 306. DEVELOPMENT ORDERS

(a) The decision of the Commission to issue a permit, to deny a permit, or to issue a permit subject to conditions, shall be recorded in a brief document that shall be known as a "development order." Each development order will:

- (1) briefly set forth the reason(s) in support of the Board's decision;
- (2) advise the applicant of the procedure to be followed if the applicant chooses to appeal the decision;
- (3) if the permit is issued subject to conditions, inform the applicant of what the conditions are;
- (4) if the permit is denied, advise the applicant whether the Board would reconsider the application if certain changes were made; and
- (5) advise the applicant that failure to comply with the order may be grounds for enforcement and penalties under sections 802 and 803 of this Subtitle.

(b) A copy of each development order shall be provided to the [Tribal Governing Body]. The Commission shall take appropriate steps to inform Reservation communities regarding the orders that it issues.

§ 307. CONDITIONS OF PERMITS

The Commission is authorized to include in any permit issued any conditions that it considers to be appropriate to ensure that permitted development is consistent with the Tribe's Land Use and Development Plan. The Commission is also authorized to include conditions to ensure compliance with other tribal laws and with applicable federal laws and regulations.

PART 4. LAND USE AND DEVELOPMENT PLANNING

§ 401. LAND USE AND DEVELOPMENT PLAN

(a) The [Tribal Governing Body] shall cause to be prepared (or updated) a Tribal Land Use and Development Plan for all lands under the Tribe's jurisdiction. The [tribal agency or department] is charged with lead responsibility for the preparation of this plan. The staff of ERC shall assist the staff of the [designated tribal agency or department] in the preparation of this Plan, as well as in the preparation of any planning studies that may be conducted.

(b) The content of the Plan shall include:

- (1) the Tribe's objectives, policies and standards to guide Tribal and private development within Tribal Lands over the long-term; and
- (2) the Tribe's short-term program (one-year to five-years) of Tribal actions to achieve the long-term objectives of the Plan.

§ 402. ADOPTION OF LAND USE AND DEVELOPMENT PLAN

(a) The [Tribal Governing Body] shall direct the ERC to hold a legislative-type hearing on the Tribal Land Use and Development Plan, during which the Plan will be explained to Tribal members and their views shall be sought.

(b) Following the hearing, the [Tribal Governing Body] and the ERC shall jointly meet to consider the Plan in light of comments expressed by Tribal members and shall attempt to reach a consensus on the specific content of the Plan.

(c) If the [Tribal Governing Body] and the ERC succeed in reaching consensus, the Plan shall be formally adopted by resolution of the [Tribal Governing Body] pursuant to its powers under [the Tribal Constitution].

(d) If the [Tribal Governing Body] and the ERC fail to reach consensus, the [Tribal Governing Body] shall direct the [designated tribal agency or department] to prepare a final Tribal Land Use and Development Plan, in accordance with instructions of the [Tribal Governing Body]. The [designated tribal agency or department] shall present the Plan to the tribal membership and the concerned public at a special meeting of the [Tribal Governing Body] called for the purpose of reviewing and adopting a Land Use and Development Plan. The ERC is authorized but not required to present an alternative to the [designated tribal agency's] Plan. After providing opportunity for comment from the tribal membership and the public, the [Tribal Governing Body] shall have the sole authority to adopt a Tribal Land Use and Development Plan.

§ 403. ANNUAL LAND USE AND DEVELOPMENT REPORTS

(a) The Commission shall submit annual reports to the [Tribal Governing Body] regarding land use and development on lands within the Tribe's jurisdiction. These annual reports shall briefly summarize:

- (1) Progress that has been made toward the accomplishment of the short-term program and long-term objectives;
- (2) Major problems that have arisen or that remain unresolved;
- (3) The extent to which there have been changes in the assumptions or information on which the Tribe's Land Use and Development Plan was based; and
- (4) Any recommendations for changes in the Tribe's Land Use and Development Plan.

(b) The [Tribal Governing Body] will consider the Commission's Annual Report and take action as may be appropriate. Action by the [Tribal Governing Body] may include adopting, by resolution, changes in the Land Use and Development Plan or directing the Commission to hold a legislative-type hearing to seek the views of Tribal members and the public on any proposed changes.

§ 404. DESIGNATION OF AREAS OF SPECIAL TRIBAL CONCERN

The Land Use and Development Plan may include the designation of Areas of Special Tribal Concern in order to provide added protection for important tribal interests. The [Tribal Governing Body] may designate such areas for a variety of reasons, including their importance for religious or cultural practices, wildlife habitat, or sources of water supply. If there is a need to maintain confidentiality of the precise location of any such areas, their location need not be shown on maps that are incorporated into

the Land Use and Development Plan, provided that the [Tribal Governing Body] and the Commission may establish some confidential means of recording the locational information. Any development that is proposed within an Area of Special Tribal Concern is subject to additional review requirements prescribed in section 704 of this Subtitle.

PART 5. PERMIT REQUIREMENTS FOR DEVELOPMENT

§ 501. PERMITS REQUIRED FOR ALL DEVELOPMENT

No development on any lands within the jurisdiction of the Tribe shall be lawful unless the developer has been issued a permit by the Commission. This requirement for a permit applies to all Tribal members, all lessees and permittees of the Tribe, all lessees and permittees of Tribal members, the Tribe, or any agency thereof, and any other person who performs development activities on lands within the jurisdiction of the Tribe.

[Note: If a tribe has rights on lands outside of reservation boundaries, the code might include specific language to cover development by tribal members on such lands.]

§ 502. PROCEDURE FOR LOW-IMPACT DEVELOPMENT PERMITS

(a) Any person proposing to perform low-impact development activities shall submit an application to ERC using such forms as ERC shall prescribe and shall include all supporting information required by ERC. The application shall include a signed statement that:

- (1) the applicant believes that the proposed development is "low-impact" development as defined in ERC's regulations; and
- (2) the applicant will comply with any conditions that ERC decides to include in a development permit.

(b) ERC shall issue written guidance for applicants, and ERC's staff and/or staff of [a designated tribal agency or department] may provide assistance to applicants.

(c) Applications for low-impact development permits will be acted upon by ERC as provided in section 701 of this Subtitle. If ERC's staff determines that proposed development covered by an application for a low-impact development permit cannot be properly treated as low-impact development, the staff shall advise the applicant to file for a general development permit pursuant to section 503 of this Subtitle.

§ 503. PROCEDURE FOR GENERAL DEVELOPMENT PERMITS

(a) Any person proposing to perform general development activities shall submit an application to ERC using such forms as the ERC shall prescribe in its regulations. The application shall include:

- (1) a brief description of the proposed development;
- (2) if the applicant is other than the [Tribal Governing Body] or a Tribal agency or department, and the proposed development would be located entirely or partially on Indian trust or restricted lands, a certification by the [designated tribal agency or Bureau

of Indian Affairs] that the applicant either possesses or has applied for the requisite property interest in the trust or restricted land to proceed with the development should a permit be issued;

- (3) a draft environmental assessment (EA) in accordance with section 505 of this Subtitle unless a categorical exclusion applies; and
- (4) all supporting information required by ERC.

(b) ERC shall issue written guidance for applicants, and ERC's staff and/or staff of [a designated tribal agency or department] may provide assistance to applicants.

(c) ERC's staff will screen each application to determine if it is sufficiently complete to be accepted and processed. The staff may require the applicant to revise or supplement an application, or the staff may accept a substantially complete application and perform whatever actions are necessary to complete it.

§ 504. PROCEDURE WHEN THE [TRIBAL GOVERNING BODY] OR A TRIBAL AGENCY OR DEPARTMENT IS THE APPLICANT

When the [Tribal Governing Body] or a Tribal agency or department is the applicant for a development permit (either low-impact or general), ERC's staff may cooperate with and assist other tribal staff and officials in preparing the necessary application; provided, that in order to ensure against improper political influence in decisions made by ERC on such tribal applications, the issuance of a permit by ERC must comply with the additional requirements provided in section 703 of this Subtitle.

§ 505. ENVIRONMENTAL ASSESSMENTS (EAS)

(a) EA normally required. An environmental assessment (EA) is required for all applications for permits for proposed general development, except:

- (1) An EA is not required if ERC staff determines that the environmental impacts of the proposed development are adequately addressed in an earlier EA or an environmental impact statement (EIS). In such cases, a copy of the earlier EA or EIS will be used by ERC in deciding whether or not to issue the permit.
- (2) The proposed development is included within a category of development which has been excluded, through rules issued by ERC pursuant to paragraph (d) of this section, from the requirement to prepare an EA.

(b) Responsibility for preparation of the EA. The applicant is normally responsible for preparing the EA. If the applicant is the [Tribal Governing Body] or a Tribal agency or department, and the proposed development involves a joint venture with any other party, responsibility for preparation of the EA may be determined by agreement between the joint venture partners.

(c) Review by ERC. ERC's staff will review each EA to determine its adequacy. The applicant may submit a draft EA for review prior to submitting the permit application or may submit a completed EA and permit application at the same time. The staff may require additional information or analyses or consultation with appropriate federal, tribal or state agencies. If an EA is almost adequate but lacking in

some minor way, the staff may accept the EA without requiring revisions; provided, that in such cases, the staff shall advise the Chairperson of ERC in writing of the nature of any inadequacies in the EA.

(d) Categorical exclusions. ERC is authorized to exclude certain categories of development from the requirement for an EA if it is determined that such categories of development do not result in significant environmental impacts and are not subject to any environmental review and consultation requirements established by federal laws or regulations or by Tribal laws other than this Subtitle. Such "categorical exclusions" may be established by ERC only through rules issued pursuant to section 303 of this Subtitle; provided, that if any such categorical exclusions are so established, ERC shall establish a procedure for identifying any specific development included within such an exclusion that may nevertheless have a significant impact on the environment, and, in any such case, ERC will retain authority to order the applicant to prepare an EA.

§ 506. OTHER ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS

The EA prepared for each permit application shall identify any environmental review and consultation requirements established by Tribal laws and regulations other than this Subtitle or by federal laws and regulations. If an EA discusses alternatives to the proposed development, the EA shall indicate whether an environmental review or consultation requirement applies to all alternatives considered or only to certain alternative(s). If any environmental review and/or consultation requirements apply to the proposed development, the EA shall document steps taken to achieve compliance. Normally, compliance should be achieved prior to submitting the application for the development permit under this Subtitle. If compliance has not been achieved at the time the development permit application is submitted, the application shall state a target date by which the applicant expects to have achieved compliance.

§ 507. REQUIREMENTS FOR AREAS OF SPECIAL TRIBAL CONCERN

If the applicant is proposing to conduct development activities within an Area of Special Tribal Concern designated pursuant to section 407 of this Subtitle, the EA shall include a discussion of alternative locations or an explanation of why alternative locations are not practicable. In addition, a permit authorizing development within an Area of Special Tribal Concern may be issued only after compliance with the procedural requirements provided in section 705 of this Subtitle.

§ 508. REVIEW OF PERMIT APPLICATIONS BY ERC STAFF

(a) ERC staff shall review each application for a development permit and shall prepare a staff report containing findings on the following:

- (1) Whether the proposed development is consistent with the Tribe's Land Use and Development Plan.
- (2) Whether the EA adequately discusses the environmental impacts of the proposed development and alternatives.
- (3) Whether the EA identifies all applicable environmental review and consultation requirements established by Tribal laws and regulations other than this Subtitle and by Federal laws and regulations, and whether compliance with such requirements has been accomplished or is likely to be accomplished in the near future.

- (4) Whether, in the judgment of the staff, the proposed development may or will result in significant environmental impacts. If the staff reaches such a conclusion, the staff report will indicate whether any of the alternatives considered in the EA would avoid such significant environmental impacts.
- (5) Whether, if ERC issues a permit as requested, any conditions should be included in the permit in order to insure that the development will: (A) be consistent with the Tribe's Land Use and Development Plan; (B) comply with any applicable other environmental review and consultation requirements; and (C) adequately mitigate any adverse environmental impacts that may result from the development. If the staff recommends that conditions be included in a permit, the staff report will include recommended conditions.

(b) The staff report shall be submitted to the Commission for action in accordance with part 7 of this Subtitle.

§ 509. FILING FEES AND SERVICE CHARGES

The Commission is authorized to charge applicants filing fees for the costs associated with processing their applications and to assess service charges for the costs of helping applicants to complete their applications, including their EAs. The Commission is also authorized to establish procedures through which filing fees and service charges may be waived. Prior to assessing any filing fees or service charges, the Commission shall establish a policy on fees, charges and waivers through rules pursuant to section 303 of this Subtitle.

PART 6. COORDINATION WITH FEDERAL ENVIRONMENTAL LAWS

§ 601. POLICY OF TRIBE REGARDING TREATMENT AS A "STATE" BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Certain federal environmental laws authorize the U.S. Environmental Protection Agency (EPA) to treat Indian tribes as "states" for certain purposes. The Commission is directed to submit a report to the [Tribal Governing Body] on an annual basis providing recommendations on whether the Tribe should seek treatment as a state under one or more federal statutes, and which purposes and programs under the federal statutes should be the Tribe's priorities.

§ 602. ERC TO ISSUE INTERIM GUIDANCE ON COMPLIANCE WITH FEDERAL ENVIRONMENTAL LAWS

Until such time as the EPA designates the Tribe a "state" for purposes of federal environmental laws, ERC shall issue written guidance to assist applicants for Tribal development permits to identify and achieve compliance with any requirements of federal environmental laws that may be applicable to proposed development. Such guidance need not be issued through the Rule-making process.

PART 7. ISSUANCE OF PERMITS AND ORDERS BY ERC

§ 701. "LOW-IMPACT" DEVELOPMENT PERMITS

The Chairman of the Commissioners is authorized to issue permits for "low-impact" development. The Chairman may delegate this authority to either or both of the other Commissioners. No administrative hearing shall be required for action on such permits. The Commission shall post notice of the issuance of any low-impact permit within one week after the date of issuance. Such notice shall be posted in the [Tribal Office] and at such other locations as the Commission shall specify in its rules.

§ 702. GENERAL DEVELOPMENT PERMITS

(a) Administrative hearing normally required. Applications for general development permits shall normally be reviewed by the Commission in an administrative hearing. This shall be an informal hearing in which the applicant will describe the proposed development, explain how it would be consistent with the Tribe's Land Use and Development Plan, describe actions taken to insure compliance with any other environmental review and consultation requirements established by Tribal or federal law, and respond to questions from the Commissioners. ERC's staff shall also make an oral presentation to the Board. The [Tribal Governing Body]'s staff may make an oral presentation, whether or not the [Tribal Governing Body] or any Tribal agency or department is an applicant or is associated with the applicant.

(b) Exceptions to the hearing requirement. The Commission may, through the issuance of rules, establish certain kinds of development permit applications on which the Commission may take action without first holding an administrative hearing. Such exceptions might include applications which are excluded from the requirement to prepare an EA, either by categorical exclusion or because the environmental impacts are sufficiently covered in an earlier EA or EIS. In any such case, if the Commission denies a permit without holding a hearing, the applicant may request that a hearing be held and the Commission shall do so.

§ 703. ADDITIONAL REQUIREMENTS WHEN THE [TRIBAL GOVERNING BODY] OR A TRIBAL AGENCY OR DEPARTMENT IS THE APPLICANT

(a) When the [Tribal Governing Body] or a Tribal agency or department is the applicant, the Commission shall independently determine whether:

- (1) the proposed development would be consistent with the Tribe's Land Use and Development Plan,
- (2) the environmental assessment is adequate, and
- (3) the proposed development may have significant environmental impacts.

(b) In order to help make such an independent determination, the Commissioners shall question ERC staff on these points, but this questioning need not take place during the administrative hearing.

(c) The development order issued in any such case will include a statement the Commission has independently made the determinations listed in paragraph (a) of this section.

§ 704. ADDITIONAL REQUIREMENT FOR AREAS OF SPECIAL TRIBAL CONCERN

Any application that proposes development within any Area of Special Tribal Concern must be presented to the [Governing Body] for ultimate resolution. In any such case, the [Tribal Governing Body] and the Commission shall both present their views on the proposed development in a meeting of the [Governing Body] called to consider such proposed development.

§ 705. ISSUANCE OF DEVELOPMENT ORDERS

The decision of the Commission on any application for development (low-impact as well as general) shall be recorded in a development order, as described in section 305 of this Subtitle. In the case of an application for which an administrative hearing has been held, the development order shall be issued no later than thirty days after the close of the hearing. A copy of the development order shall be provided to the applicant and to the [Tribal Governing Body].

§ 706. DETERMINATION THAT AN ENVIRONMENTAL IMPACT STATEMENT (EIS) WILL BE REQUIRED FOR PROPOSED DEVELOPMENT

In certain cases, the Commission may determine that the environmental assessment submitted with an application for development will not support a conclusion that the proposed development will not result in significant environmental impacts. In such a case, if an action by a federal agency (such as the Bureau of Indian Affairs) would be required for such proposed development to be permitted, an environmental impact statement (EIS) may be required. In any such case, the Commission shall suspend consideration of the permit application and inform the applicant that an EIS will be required for the proposed development. In any such case, the applicant may revise the proposed development to avoid significant environmental impacts or may resubmit the application after an EIS has been prepared in accordance with federal regulations.

[Note: A tribe might consider establishing an intermediate level of environmental review -- something between an environmental assessment and an environmental impact statement -- to cover situations in which an EA leaves the Commission (or the Commission's staff) with unresolved concerns about a development proposal and/or situations in which community and public review would be desirable. If an EIS is required for a federal action, however, adding an intermediate level of review under tribal law might have the effect of making the review process take longer. To avoid this effect, a tribal law might provide that the intermediate level could be skipped.]

§ 707. PROCEDURE WHEN AN EIS IS REQUIRED

When an EIS is required, the applicable procedure is specified in the federal regulations issued by Council on Environmental Quality (40 C.F.R. Parts 1500-1508). If the [Tribal Governing Body] or a Tribal agency or department is the applicant, or is associated with the applicant, the [Tribal Governing Body] may direct an appropriate Tribal agency or department to participate in the preparation of the EIS as a cooperating agency.

PART 8. ENFORCEMENT AND JUDICIAL REVIEW

§ 801. INVESTIGATIONS

The Commission is authorized to investigate compliance with development orders that it has issued and to investigate activities that are being carried out without a permit in possible violation of this Subtitle. As part of an investigation, the Commission's staff may serve any person with a letter of inquiry. Any such letter of inquiry shall inform the person to whom it is addressed that answers must be provided to the Commission within 60 days and that failure to respond may result in the imposition of civil penalties.

§ 802. NOTICE OF VIOLATION; CEASE AND DESIST ORDER

If the Commission's staff has reason to believe that a violation of this Subtitle has occurred or that there is a substantial likelihood that a violation will occur in the near future, the Commission's staff shall so advise the Chairperson of the Commission. In the case of an apparent violation of this subtitle, the Chairperson may issue is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation, and, if the apparent violation occurred on property owned by a person other than the alleged violator, a Notice of Violation shall also be issued to the landowner. In the case of a continuing violation or a threatened violation, the Chairperson is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring. Failure to comply with a Cease and Desist Order shall constitute a violation of this Subtitle. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the Commission at an enforcement hearing at a specified time and date, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties. If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation of this Subtitle which will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

§ 803. ENFORCEMENT HEARINGS

The Commission is authorized to conduct adjudicatory hearings to determine if a violation of this Subtitle has occurred. [Such hearings shall be conducted in accordance with the Tribal Administrative Procedure Act/ or (if there is no tribal APA or if the tribal APA does not establish procedures for such hearings) in accordance with rules issued by the Commission pursuant to section 304 of this Subtitle.] In such a hearing, the Tribal Attorney General [or other designated official or agency], in cooperation with the Commission's staff, shall present the case to the Commission to establish that the person(s) charged has (have) committed a violation of this Subtitle. Any person so charged shall be entitled, at his or her own expense, to represented by an attorney.

(a) Burden of Proof. The Tribal Attorney General [or other designated official or agency] shall have the burden of proving that a violation of this Subtitle has occurred and that a person charged was responsible for the violation. The Commission shall rule that a violation of this Subtitle has occurred if it finds that the charges are supported by substantial evidence and that preponderance of the credible evidence supports a finding that a violation has occurred.

(b) Enforcement Orders. Within thirty (30) days after the date of any enforcement hearing, the Commission shall issue a written decision. If the Commission determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the Commission's decision shall include an Enforcement Order.

(c) Civil Penalties and Corrective Action. An Enforcement Order shall direct any person(s) found to have committed a violation of this Subtitle to take whatever corrective action the Commission deems

appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedules of civil penalties prescribed in the Commission's rules. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation does not take corrective action in accordance with the Order within a prescribed time frame. If a person who has been found to have committed a violation does not take corrective action within the prescribed time frame, an appropriate department or agency of the Tribal government may take the necessary corrective action, in which case, the amount of any civil penalty shall be increased by twice the amount of the cost incurred by the tribal department or agency in taking the corrective action.

[Note: If there is no tribal administrative procedure act or if the tribal APA does not establish procedures for such hearings, this section, or another section of the Subtitle, should establish minimum requirements for the Commission's rules in order to ensure that the Commission provides due process for all persons who are subject to its rulings.]

§ 804. SPECIAL PROVISIONS FOR TRIBAL DEPARTMENTS AND AGENCIES

In any case in which the [Tribal Governing Body] or any Tribal agency or department is alleged to have violated the terms and conditions of a development order, or to have conducted development activity without a permit, the Chairperson of the Commission shall bring the matter to the attention of the [Chief Executive Officer of the Tribal Governing Body] who shall consider taking action to ensure compliance with this Subtitle. If the matter cannot be resolved informally, the Commission shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending a course of corrective action if necessary.

[Note: The tribal governing body should consider whether to make its agencies and departments subject to enforcement orders and civil penalties assessed by the Commission. The above draft language limits the Commission's authority to making factual determinations and recommendations.]

§ 805. JUDICIAL REVIEW

Any person who is aggrieved by the issuance or denial of a development permit, or who is the subject of an Enforcement Order, may file an appeal in Tribal Court, in accordance with the rules of the Court. The Court is authorized to hear such appeals but shall not set aside an order of the Commission unless the Court finds that the Commission's order: (a) is not supported by substantial evidence; (b) was issued without compliance with the requirements of this Subtitle or the Commission's rules; or (c) is arbitrary and capricious.

[Note: A tribal governing body may want to consider including a citizen suit provision like that in most federal environmental statutes to authorize citizens to enforce the Code. The language above takes a step in that direction by authorizing any "aggrieved" person to appeal the issuance or denial of a development permit. If the above language is used, the term "aggrieved" should be defined.]

Part Ten

Tribal Probate Codes

It is critical that tribes enact comprehensive inheritance or probate codes for many reasons, including (1) to prevent more Indian land from falling out of trust status, (2) to prevent the eroding of tribal land base, (3) to comply with the decedent's wishes as much as possible, (4) to ensure that non-trust property is handling in tribal court, and (5) to provide a simple, efficient, and inexpensive method for probating the decedent's property (including tribal housing).

Included is an example of a comprehensive tribal probate code from the Chitimacha Tribe of Louisiana. Although this probate code is included as chapters 5-11 of Title VI (Family Law) of the Chitimacha Comprehensive Codes of Justice, most tribal probate codes are located in a separate chapter of the tribal code. The code includes many provisions from the Uniform Probate Code. However, it also includes many innovative provisions, including purpose clause, oral wills, restrictions on inheritance of trust land by non-Indians (as allowed under the Indian Land Consolidation Act), family/homestead allowances, and Indian custom and tradition distribution of Indian finery and artifacts.

Chapter 5: General Probate Provisions

This chapter includes purposes and definitions sections. It contains a broad jurisdiction provision (section 503) which provides for jurisdiction over all non-trust property of anyone (tribal member, non-member Indian, and/or non-Indian) who - at the time of their death - was either domiciled on the Chitimacha Reservation or owned real or personal property on the Chitimacha Reservation. It contains two practical traditional provisions - control of funeral arrangements based on family decision and the tribal customs (section 504) and Indian custom and tradition distribution of Indian finery and artifacts (section 506). Most of the remaining general provisions are similar to the general provisions in the Uniform Probate Code with minor adaptation to meet the specific needs of the Chitimacha Tribe.

Chapter 6: Wills

This chapter provides the general procedures for recognition and processing of wills. Many of these provisions are similar to the provisions of the Uniform Probate Code with minor adaptation to meet the specific needs of the Chitimacha Tribe. The major exception is Section 604 (Oral Wills) which provides that a will "is valid as an oral will under Chitimacha custom, if all children, whether residing in testator's home or not, and testator's spouse, if alive, are present at the announcement of the oral will and agree that the testator orally made known the testator's last testament before them." Most state codes do not allow for oral wills, but an increasing number of tribes are authorizing their use (under conditions similar to this code provision) in keeping with tribal custom and in order to more adequately comply with the decedent's wishes while protecting the family.

Chapter 7: Intestate Succession

When a person dies leaving a valid will, the person is said to have died "testate". However, if they die without leaving a valid will, they are said to have died "intestate" and their property is distributed according to the laws of "intestate succession". This chapter sets out the Chitimacha law of intestate succession which is generally based upon the Uniform Probate Code and, in keeping with the modern trend, provides a larger share for the surviving spouse.

Chapter 8: Family Rights/Protections

This chapter includes a series of procedures designed to protect family rights, allow an elective share for the surviving spouse and children unprovided for in wills, establish exempt property and allowances, and establish summary probate procedures for small estates.

Chapter 9: Inheritance by Non-Indians/Fractionated Heirship

This chapter contains very important provisions concerning protection of tribal lands, including restrictions on inheritance by non-Indians and attempts to reduce the potential problems presented by fractionated heirship (where property is held by so many owners in common that effective use of the property is not possible). The first two sections (sections 901 and 902) concern the assignment of tribal lands provision from the tribal constitution and an effort to clarify possible ambiguity in that provision. This chapter takes advantage of the provisions of the Indian Land Consolidation Act of 1983 and 1984 to restrict inheritance by non-Indians (section 903). It also attempts to improve upon the escheat provisions of the Indian Land Consolidation Act by providing an alternative escheat provision (section 904), but this provision is no longer necessary since both the escheat provision of the 1983 and the 1984 versions of the Act have been overturned by the U. S. Supreme Court as an unlawful taking without just compensation.

Chapter 10: Administration of Intestate Estates

This chapter sets out the specific procedures involved in administering intestate estates. The general purpose is to provide for the orderly distribution of property after death. This code provides general guidance, but some codes contain more detailed provisions concerning the administration of estates. Some tribal codes also provide for public administrators so that the decedent's family does not have to handle the cost and effort of probating the intestate estate by themselves.

Chapter 11: Probate of Wills

This chapter sets out the specific procedures involved in probating wills. The general purpose is to provide for the fair and orderly distribution of property after death in accordance with the wishes of the testator to the greatest extent possible.

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TITLE VI - FAMILY LAW

CHAPTER 1. ADOPTION

Sec. 101. Purpose of Adoption.

The purpose of this Chapter is to protect the rights and promote the welfare of Indian children, natural parents and adoptive parents.

Sec. 102. Definitions (For Sections 101-102).

- (a) **Adult** - A person eighteen years of age or older.
- (b) **Minor** - A person less than eighteen years of age.
- (c) **Guardian** - A person appointed by the Court to assume care and custody of a minor, and/or a person determined to be mentally incompetent.
- (d) **Parent** -
 - (1) a child's mother;
 - (2) a father as to whom a child is presumed legitimate;
 - (3) a person adjudicated to be a child's father;
 - (4) a natural father of an illegitimate child who shows reasonable interest, concern, and responsibility for the child during the first thirty (30) days of the child's life or prior to the mother's consent to have the child adopted.

(Revised by Ordinance #3-95 ;Adopted: March 2,1995;Effective: March 2,1995)

Sec. 103. Who May File Adoption Petition.

Any adult may file a petition to adopt an Indian minor residing within the Reservation or a minor tribal member not residing on the Reservation. The Court may also hear petitions transferred from state courts pursuant to 25 U.S.C. Subsection 1911(b) and Chapter 6 of Title V of this Code. In the case of married persons maintaining a home together, the petition shall be the joint petition of

(c) The Tribal Court shall establish such rules of procedure as may be necessary to administer this Section.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

CHAPTER 5. GENERAL PROBATE PROVISIONS

Sec. 501. Purpose.

The following seven chapters of the Chitimacha Comprehensive Codes of Justice (Chapters 5 through 11 of the Family Law Code) are hereinafter referred to as the Probate Code. The objective of the Probate Code is to provide for the exercise of the greatest possible tribal jurisdiction over the probate of the estate of decedents who were domiciled or owned real or personal property on the Chitimacha Indian Reservation. The Chitimacha Tribe finds that probate procedure in the Chitimacha Tribal Court is in the best interest of tribal members in that probate may be concluded more economically and more expeditiously than by other jurisdictions. This code shall be liberally construed and applied to meet the following objectives:

- (a) To ensure that the property of decedents passes to the rightful heirs or beneficiaries.
- (b) To comply with the decedent's wishes as much as possible.
- (c) To comply with tribal custom and tradition.
- (d) To provide a simple, efficient and inexpensive method for probating decedent's property.
- (e) To prevent the transfer of land out of tribal ownership and control.
- (f) To ensure that the rights of creditors of decedents are protected to the extent possible and fair.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 502.

Definitions.

As used in the following seven chapters (Chapters 5 through 11 of the Family Law Code), unless the context otherwise requires:

(a) "**Administrator**" means the person appointed by the Tribal Court to administer the estate of a decedent according to this Probate Code and may include an Administrator nominated by the decedent's will, appointed at the request of an interested party, appointed by the Court, or the public Administrator.

(b) "**Beneficiary**" means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.

(c) "**Decedent**" means a person who has died leaving property that is subject to administration.

(d) "**Decedent's Estate**" all movable and immovable property and all rights and interest related thereto within which the decedent had an interest at the time of his or her death. Including decedent's interest in any property acquired during the marriage.

(e) "**Distributee**" means any person to whom property of a decedent is distributed other than in payment of a claim, or who is entitled to property of a decedent under their will or the laws governing intestate succession.

(f) "**Heir**" means any person, including the surviving spouse, who is entitled under the law governing intestate succession to an interest in the property of a decedent.

(g) "**Indian**" means a person enrolled or eligible for enrollment as a member of the Chitimacha Tribe of Louisiana, or any other person of Indian blood who is an enrolled member of another federally recognized Indian Tribe.

(h) "**Interested Witness**" means any of the following:

(1) An heir of the decedent.

(2) A beneficiary named in any document offered for probate as the will of the decedent.

(3) A beneficiary of a trust created under any document offered for probate as the will of the decedent.

(4) A person named as Administrator or personal representative in any document offered for probate as the will of the decedent.

(5) Additional persons as the Tribal Court may order included.

(i) "**Intestate**" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will effectively disposing of all of the estate.

(j) "**Intestate succession**" means succession to property of a decedent who dies intestate or partially intestate.

(k) "**Issue**" used to refer to persons who take by intestate succession, means children, grandchildren, lineal descendants of more remote degree, except those who are the lineal descendants of living descendants. The term does include adopted children and non-marital children and their issue.

(l) "**Member**" means an enrolled member of the Chitimacha Tribe of Louisiana.

(m) "**Personal Property**" means all property other than real property.

(n) "**Property**" means any interest, legal or equitable in real or personal property, without distinction as to kind, except trust property.

(o) "**Real property**" means all interest in land or in buildings or improvements permanently attached to land.

(p) "**Reservation**" means the Chitimacha Reservation in Louisiana.

(q) "**Take by Representation**" means the principle upon which the issue of a decedent takes or inherits the share of an estate which their immediate ancestor would have taken or inherited, if living.

(r) "**Testator**" means a decedent who dies leaving a valid will.

(s) "**Tribal Court**" means the Tribal Court of the Chitimacha Tribe of Louisiana.

(t) "**Tribe**" means the Chitimacha Tribe of Louisiana.

(u) "Trust Property" means real or personal property title to which is in the United States for the benefit of an Indian or Indian Tribe.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 503. Jurisdiction.

The Tribal Court shall have jurisdiction to administer in probate the estate of a decedent who, at the time of their death, was domiciled or owned real or personal property situated within the Chitimacha Indian Reservation to the extent that such estate consists of property which does not come within the exclusive jurisdiction of the Secretary of the Interior of the United States.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 504. Control of Funeral Arrangements.

Control of funeral arrangements and disposition of the remains of the decedent shall be based upon a decision of the family and the Indian customs of the Tribe.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 505. Indian Custom and Tradition Distribution of Indian Finery and Artifacts.

Notwithstanding the provisions of this Probate Code relating to descent and distribution, the surviving spouse or other surviving next of kin may distribute any Indian artifacts and finery belonging to the decedent in accordance with the customs and traditions of the Chitimacha Tribe of Louisiana prior to the initiation of the administration of the estate. Such distribution shall be in accordance with directions left by the decedent, if any.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 506. Effect of Fraud and Evasion

Whenever fraud has been perpetuated in connection with any proceeding or in any statement filed under this Probate Code or if fraud is used to avoid or circumvent the provisions or purposes of this Probate Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud including restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against anyone later than six years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during their lifetime which affect the succession of the estate.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 507. Evidence as to Death or Status.

In proceedings under this Probate Code, the following rules relating to determination of death and status are applicable:

(a) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is *prima facie* proof of the fact, place, date and time of death and the identity of the decedent;

(b) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive, is *prima facie* evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(c) A person who is absent for a continuous period of five years, during which they have not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. Their death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 508. Practice in Court.

Unless specifically provided to the contrary in this Probate Code or unless inconsistent with its provisions, the Chitimacha Rules of Civil Procedure (Title IV), including the rules concerning vacation of orders, and the Chitimacha Rules of Appellate Review (Title I) govern formal proceedings under this Probate Code.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 509. Judicial Powers and Duties.

(a) The judge of the Court may make orders for the sale of personal property at public or private sale for the compounding of debts, for the settlement of an estate as insolvent, for the approval of bonds and all other orders of an ex parte nature as may facilitate the settlement of estates. The orders shall be in writing, signed by the judge issuing the same, and shall be filed and recorded as an entry in the proper record.

(b) The judge shall examine the bonds filed by the personal representatives, with a view to ascertaining their sufficiency and may approve the same. The judge may examine any inventory, sale, bill, account current, final account and vouchers filed therewith, or examine into the condition of an estate generally. Bond may be waived for good cause shown.

(c) The Court shall have the authority to draft orders requesting property of funds outside the exterior boundaries of the Reservation to be delivered to the Court for probate in the Tribal Court.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 510. Records and Certified Copies.

The clerk shall keep a file for each decedent of all documents filed with the Court under this Probate Code and shall keep a numerical index of all such estates to facilitate access to such records. Upon payment of a fee, the Clerk shall issue certified copies of any document or paper so filed.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 511. Jury Trial.

If properly demanded, a party may request a trial by jury in any proceeding in which any genuine controverted question of fact arises. Otherwise all proceedings under this Probate Code shall be handled by a trial judge or the clerk, as is appropriate.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 512. Oath or Affirmation on Filed Documents.

Except as specifically provided in this Probate Code, every document filed with the Court under this Probate Code shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and the penalties for perjury shall follow deliberate falsification therein.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 513. Notice.

(a) If notice of a hearing on any petition or other matter is required and except for specific notice requirements as otherwise provided, the clerk shall cause notice of the time and place of hearing of any petition to be given to any interested person or their attorney if they have appeared by attorney or requested that notice be sent to their attorney. Notice shall be given in accordance with Title IV, Section 102 of this Code, at least 15 days prior to the hearing date.

(b) The Court for good cause shown may provide for a different method or time of serving notice for any hearing.

(c) Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.

(d) A person, including a guardian *ad litem*, or other fiduciary, may waive notice by a writing signed by the person or their attorney and filed in the proceeding.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 514. Renunciation of Succession.

A person (or their personal representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument with the Court not later than six months after the decedent's death or the time at which it is determined that the person is entitled to take property if such is not known at the time of death. The instrument shall (a) describe the property or part thereof or interest therein renounced, (b) be signed by the person renouncing and (c) declare the renunciation and the extent thereof. Upon proper renouncement, the interest renounced passes as if the renouncing person had predeceased the decedent or donee.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 515. Effect of Divorce, Annulment, and Decree of Separation

A person who is divorced from a decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, they are married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this Probate Code.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 516. Effect of Homicide on Intestate Succession, Wills, Joint Assets, Life Insurance and Beneficiary Designation.

(a) A surviving spouse, heir or devisee who criminally and intentionally kills the decedent is not entitled to any benefits passing under this Probate Code and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who criminally and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as their property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who criminally and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(e) A final judgment of conviction of an offense containing the elements of criminal and intentional killing is conclusive for purposes of this section. In the absence of a conviction of criminal and intentional killing, the Court may determine by a preponderance of evidence whether the killing was criminal and intentional for purposes of this section.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 517. Simultaneous Death Provisions.

(a) Where the title to property covered under this Probate Code or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if they had survived except where provided otherwise in this Probate Code.

(b) Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is to sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed.

(c) Where there is not sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(d) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(e) These provisions on simultaneous death shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed, contract or insurance.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

CHAPTER 6. WILLS

Sec. 601. Who May Make a Will.

Any person 18 or more years of age and who is of sound mind may make a will.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 602. Execution.

Except as otherwise provided for oral wills (Section 604) or holographic wills (Section 603), every will shall be put in writing signed by the testator, or in the testator's presence and at the testator's direction signed by another person, and shall be signed by at least two persons each of whom either witnessed the signing by the testator of the will or the testator's acknowledgement of the signature and direction to do so.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 603. Holographic Will.

A will which does not comply with section 602 of this Probate Code is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 604. Oral Wills.

A will which does not comply with Section 602 of this Probate Code is valid as an oral will under Chitimacha custom, if all children, whether residing in testator's home or not, and testator's spouse, if alive, are present at the announcement of the oral will and agree that the testator orally made known the testator's last will before them.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 605. Self-Proved Will-Form.

An attested will may, at the time of its existence or at any subsequent date, be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a notary public, authorized authority or a judge, under official seal, attached or annexed to the will in form and content and substantially as follows:

The Chitimacha Indian Reservation
Chitimacha Tribal Court
Charenton, Louisiana

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached and foregoing instrument, being first duly sworn, do hereby declare to the foregoing authority that the testator signed and executed the instrument as the testator's last will and that the testator signed willingly or directed another to sign for the testator, and that the testator executed the instrument as their free and voluntary act for the purposes therein

expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of their knowledge the testator was at the time 18 years or more of age, of sound mind and under no constraint or undue influence.

TESTATOR

WITNESS

WITNESS

Subscribed, sworn to and acknowledged before me by _____ the testator, and subscribed and sworn to before me by _____ and _____ witnesses, this _____ day of _____ 19_____.

SIGNED BY JUDGE, AUTHORIZED AUTHORITY OR NOTARY

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 606. Who May Witness.

(a) Any person who, at the time of execution of the will, would be competent to testify as a witness in Court to the facts relating to execution may act as a witness to the will. Subsequent incompetency of a witness is not a ground for denial of probate if the execution of the will is otherwise satisfactorily proved.

(b) A will is not invalidated because signed by an interested witness; but, unless the will is also signed by two disinterested witnesses, any beneficial provisions of the will for a witness or the witness' spouse are invalid to the extent that such provisions in the aggregate exceed in value what the witness or spouse would have received had the testator died intestate. Valuation is to be made as of testator's death.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 607. Choice of Law as to Execution.

A written will is valid if executed in compliance with this Probate Code or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death of the testator is domiciled.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 608. Revocation by Writing or by Act.

A will or any part thereof is revoked:

(a) By a subsequent valid will, codicil, or other instrument which revokes the prior will in whole or in part expressly or by inconsistency; or

(b) By being burned, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in the testator's presence and at the testator's direction.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 609. Revocation by Divorce; No Revocation by Other Changes of Circumstances.

If, after executing a will, the testator is divorced or the testator's marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse as Executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse, A decree of separation

which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 610. Revival of Revoked Will.

If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third, the first will is revoked in whole or in part unless it is evident from the circumstances and the terms of the revocation of the second or from the testator's contemporary or subsequent declarations that the testator intended the first will to take effect as executed.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 611. Incorporation by Reference.

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 612. Events of Independent Significance.

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 613.

Rules of Construction and Intention.

(a) The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions;

(b) The following rules of construction apply unless a contrary intent is clear in the will:

(1) **All property; after-acquired property.** A will is construed to pass all property which the testator owns at their death including property acquired after the execution of their will;

(2) **Devisee must survive testator by 120 hours.** A devisee who does not survive the testator by 120 hours is treated as if they predeceased the testator, unless the will of the decedent contains such language dealing explicitly with simultaneous deaths, including common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will;

(3) **Failure of testamentary provision.** If a devise other than a residuary devise fails for any reason, it becomes part of the residue. If the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, their share passes to the other residuary devisees, or to other residuary devisees in proportion to their interests in the residue.

(4) **Class Gifts.** One who would have been a devisee under a class gift if they had survived the testator is treated as a devisee for purposes of this section whether their death occurred before or after the execution of the will;

(5) **Exercise of power of appointment.** A general residuary clause in a will, or a will making general disposition of all the testator's property, does not exercise a power of appointment unless specific reference is made to that power;

(6) **Generic Terms.** Half-bloods, adopted persons and persons born out of wedlock are included in class gifts terminology and terms of relationships in accordance with rules

for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father or unless paternity has been judicially determined during the life of the father.

(7) **Ademption by satisfaction.** Property which a testator gave in their lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction. For the purpose of partial satisfaction, property given during the lifetime is valued as of the time of devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

CHAPTER 7. INTESTATE SUCCESSION

Sec. 701. Intestate Succession.

Any part of the estate of a decedent not effectively disposed of by the decedent's will passes to the decedent's heirs as prescribed in the following sections of this Probate Code.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 702. Share of the Spouse.

The intestate share of the surviving spouse is:

- (1) if there is are surviving issue, one-half of the intestate estate;
- (2) if there is no surviving issue of the decedent, the entire intestate estate.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 703.

Share of Heirs Other Than Surviving Spouse.

The part of the intestate estate not passing to the surviving spouse under Section 702 of this Probate Code, or the entire intestate estate if there is no surviving spouse, passes as follows:

- (1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
- (2) if there is not surviving issue, to the decedent's parent or parents equally;
- (3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation;
- (4) if there is no surviving issue, parent or issue of a parent by the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 704.

No Taker.

If there is no taker under the provisions of this chapter, the intestate estate passes to the Chitimacha Tribe.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 705.

Representation.

If representation is called for by this Probate Code, the estate is divided into as many shares as

there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among their issue in the same manner.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 706. Posthumous Persons.

Person conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 707. Kindred of Half Blood; Stepchildren; Foster Children.

Persons of the half blood inherit the same share they would inherit if they were of the whole blood, but stepchildren and foster children and their descendants do not inherit, unless adopted.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 708. Divorce.

Divorces of husband and wife do not affect the right of children to inherit their property.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 709. Determination of Relationship of Parent and Child

For the purpose of intestate succession a relationship of parent and child shall be established to determine succession by, through or from a person:

(a) An adopted person is the child of an adopting parent and of the natural parents for inheritance purposes only. The adoption of a child by the spouse of a natural parent has no effect on the

relationship between the child and that natural parent;

(b) An adopted person shall inherit from all other relatives of an adoptive parent as though the adopted person was the natural child of the adoptive parent and the relatives shall inherit from the adoptive parent's estate as if they were the adoptive parent's relatives;

(c) In cases not covered by Subsection 709(a), a person born out of wedlock is a child of the mother and is a child of the father, if the relationship of parent and child has been established in accordance with this Chitimacha Code.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

CHAPTER 8. FAMILY RIGHTS\PROTECTION

Sec. 801. Omitted Spouse.

(a) If a testator fails to provide by will for their surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate they would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) In satisfying a share provided in this section, the devises made by the will abate as provided in section 1110 of this Probate Code, which concerns "abatement".

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 802. Pretermitted Children.

(a) If a testator fails to provide in their will for any of their children living or born or adopted after the execution of the will, the omitted child receives a share in the estate equal in value to that which they

would have received if the testator had died intestate unless:

- (1) It appears from the will that the omission was intentional; or
- (2) When the will was executed the testator had one or more children and devised substantially all their estate to the other parent of the omitted child; or
- (3) The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If at the time of execution of the will, the testator fails to provide in their will for a living child solely because they believe the child to be dead, the child receives a share in the estate equal in value to that which they would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in section 1110 of this Probate Code, which concerns "abatement".

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 803. Homestead Allowance.

A surviving spouse of a decedent who was domiciled on the reservation is entitled to a homestead allowance of \$5,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$5,000 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided by intestate succession.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 804.

Exempt Property.

In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled on the reservation is entitled from the estate to a value not exceeding \$3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$3,500, or if there is not \$3,500 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$3,500 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 805.

Family Allowance.

In addition to the right to homestead allowance and exempt property, if the decedent was domiciled on the reservation, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case of any minor child or dependent child that is not living with the surviving spouse, the allowance may be made partially to the

child or their guardian or other person having their care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates their right to allowances not yet paid.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 806. Source, Determination, and Documentation.

If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representation may determine the family allowance in a lump sum not exceeding \$6,000 or periodic installments not exceeding \$500 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the Court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 807.

Dwelling Exemption.

Upon the appraisal of an estate and it appearing that a dwelling is personal property in which other heirs and/or creditors have an interest, and the dwelling is occupied by the surviving spouse and/or the dwelling is necessary for the welfare and protection of such surviving spouse and/or children, the Court may, by order, set aside such dwelling for the benefit of said surviving spouse and/or children as a homestead for a period of not to exceed ten years, provided that in case of special hardship or emergency, the Court may extend such term from year to year thereafter, provided that any heir or heirs or creditors of the deceased shall have the opportunity to appear before the Court and protest the extension of the original terms setting aside said homestead. The Court may also set aside such sums from the estate as the Court may deem necessary for maintenance and upkeep of the home. The Court shall hear evidence on any contest before making any order of extension.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 808.

Summary Probate of Exempt Estates.

(a) **Exempt Estates.** An estate having an appraised value which does not exceed \$5,000 and which is to be inherited by a surviving spouse and/or minor children of the deceased shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provided in this section.

(b) **Notice of Hearing to Determine Whether the Estate is an Exempt Estate.** Upon petition of the Administrator, the Court shall enter an order stating that it appears, from the appraised value of the whole estate does not exceed \$5,000 and that such estate is to be inherited by the surviving spouse and/or minor children of the decedent and shall set a date and hour for hearing objections of and interested persons, if any there be, why the whole estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be given to all persons known to the Administrator to be an heir, devisee, legatee or creditor of the decedent, in accordance with Title IV, Section 102 of this Code.

(c) **Hearing to Determine Whether the Estate is an Exempt Estate.** If, upon such hearing, the Court finds that such estate is an exempt estate, the Court shall enter an order directing the Administrator to distribute such estate to the surviving spouse and/or the minor children of the deceased as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such estate to those entitled thereto and filing receipts therefor, the estate shall be closed.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

CHAPTER 9. INHERITANCE BY NON-INDIANS/FRACTIONATED HEIRSHIP

Sec. 901. Incorporation by Reference of Article IV of the Chitimacha Constitution (Assignment of Tribal Lands).

Article IV (Assignment of Tribal Lands) of the Chitimacha Constitution is hereby incorporated by reference into this Probate Code. Article IV of the Chitimacha Constitution provides as follows:

ARTICLE IV - ASSIGNMENT OF TRIBAL LANDS

Section 1. The members of the Chitimacha Tribe now occupying home sites on tribal land may continue to occupy such as their home sites, the remaining acreage to be available for present and future assignments. The use and assignment of tribal land shall be in accordance with an ordinance enacted by the Tribal Council, which shall be subject to approval of the Secretary of the Interior.

Section 2. Upon the death of any member, male or female, now married to a non-Indian, the home site of such member shall continue to be held by the non-Indian husband or wife until said non-Indian person's death; provided, that this non-Indian person does not remarry a non-Indian. Should they remarry a non-Indian, the assignment shall be canceled, but any improvements accumulated on the land during the marriage of the non-Indian and the member of the Chitimacha Tribe or during the occupancy by said non-Indian after the death of the spouse, may be appraised and sold, the proceeds to be paid to the surviving spouse, or such improvements may be removed from the land in accordance with the land assignment ordinance.

Section 3. Upon the death of any member or non-Indian surviving spouse who did not remarry, the home site and improvements may continue to be occupied by the heirs or assigns, provided they qualify for membership in the Tribe.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 902. Clarification of Article IV of the Chitimacha Constitution (Assignment of Tribal Lands).

The following provisions shall apply to clarify Article IV (Assignment of Tribal Lands) of the Chitimacha Constitution:

(a) The provisions of Article IV of the Chitimacha Constitution and this Probate Code concerning remarriage to a non-Indian shall apply whether the surviving spouse formally remarries a non-Indian or the surviving spouse lives with a non-Indian in a relationship which could be recognized as a common law marriage or Indian custom marriage under any state or tribal law.

(b) A non-Indian surviving spouse who does not remarry a non-Indian may sell their interest in the improvements accumulated on the home site in accordance with the provisions of Article IV of the

Chitimacha Constitution.

(c) Any improvements on home sites under Article IV of the Chitimacha Constitution or this Probate Code shall be sold only to members of the Chitimacha Tribe.

(d) Any person may renounce their interest in home sites or improvements on home sites in accordance with section 514 (Renunciation of Succession) of this Probate Code.

(e) The provisions of Article IV of the Chitimacha Constitution and this chapter of the Probate Code shall apply to inheritance by either will or intestate succession.

(f) The provisions of Article IV of the Chitimacha Constitution and this Probate Code shall apply to all actions by the Chitimacha Housing Authority, including succession upon death of home buyer.

(g) Under no circumstances shall a non-Indian be entitled to any interest in a home site greater than a life estate.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 903.

Restrictions on Inheritance of Individual Trust/Restricted Lands by Non-Indians.

(a) Non-Indians shall not be entitled to receive by devise or descent any interest in individual trust or restricted lands within the Chitimacha Reservation or otherwise subject to the jurisdiction of the Chitimacha Tribe provided that:

(1) if an Indian dies intestate, the surviving non-Indian spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of such restriction on eligibility for inheritance and the remainder shall vest in the Chitimacha Indians who would have been heirs in the absence of a qualified person taking a life estate;

(2) if an intestate Indian descendent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the Tribe, subject to any non-

Indian spouse and/or children's rights as described in paragraph (1) of this section;

(3) if an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of a tribal ordinance enacted pursuant to this section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the Tribe acquires such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death: Provided, That any non-Indian and/or children of such decedent who have been devised such interests may retain, at their option, a life estate in such interests.

(b) Any ineligible devisee shall also have the right to renounce their devise in favor of a person or persons who are eligible to inherit in accordance with Section 514 (Renunciation of Succession) of this Probate Code.

(c) The right to receive a life estate under this section shall be limited to:

(1) a spouse and/or children who, if they had been eligible, would have inherited an ownership interest of 10 per centum or more in the tract of land; or

(2) a spouse and/or children who occupied the tract as a home at the time of the decedent's death.

(d) This section shall apply only to individual trust/restricted lands. Article IV of the Chitimacha Constitution and Sections 901 and 902 of this Probate Code shall apply to Chitimacha Tribal Lands.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 904. Escheat of Certain Fractionated Interests.

The following section is enacted under Section 2206(c) of Title 25 of the United States Code - The Indian Land Consolidation Act - to take precedence over the escheat provisions of Section 2206 of Title 25 of the United States Code.

(a) No undivided interest in any tract of trust or restricted land within the Chitimacha Reservation or otherwise subject to the Chitimacha Tribe's jurisdiction shall descend by intestacy or devise but shall escheat to the Chitimacha Tribe if such interests represents 2 per centum or less of the total acreage in such tract and is incapable of earning to the respective heirs \$100 in any one of the five years from the date of decedent's death, and is otherwise without significantly greater future potential value, Provided, that -

- (1) in determining the future earning capacity of such interest and hearing examiner shall consider the presence of known or probable minerals and timber;
- (2) in determining whether such interest is otherwise without significantly greater future potential value the hearing examiner shall consider, among other things, the geographic location of such property and its potential for commercial or other exploitation;
- (3) where the fractional interest has earned to its owner less than \$100 in any one of the five years before it is due to escheat, in absence of previously unexploited known or probable mineral reserves or standing timber, there shall be a rebuttable presumption that such interest is incapable of earning to the respective heirs \$100 in any one of the five years from the date of decedent's death, and that the property is otherwise without significantly greater future potential value.

(b) Nothing in this section shall prohibit the devise of such a fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or restricted land.

(c) Any beneficiary who, but for the provisions of this section, would have inherited such fractional interest, may assign such interest to any other owner of an undivided fractional interest in such trust or restricted land, such assignment to be made and filed with the hearing examiner within 60 days of the issuance of notice of intent to escheat the interest to the Tribe. The hearing examiner shall formally notify the beneficiary of their rights under this subsection at the time of the notice of intent to escheat and

shall assist with the assignment process as needed.

(d) The Tribal Court Judge and the Federal Administrative Law Judge shall have the discretion to order any appropriate distribution of the decedent's estate as needed to reduce further fractionation so long as the distribution is fair and equitable.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

CHAPTER 10. ADMINISTRATION OF INTESTATE ESTATES

Sec. 1001. Petition.

(a) When any person dies leaving an intestate estate subject to the jurisdiction of the Chitimacha Court under this Probate Code, any person claiming to be an heir of the decedent, or the Tribe, may petition the Court for a determination of the heirs of the decedent and for the distribution of such property. The petition shall contain the names and addresses of all persons known to the petitioners who may be entitled to share in the distribution of the estate.

(b) Whenever there is a valid will probated by the Court which does not dispose of all the decedent's property, a determination of the heirs entitled to such property and its distribution shall be made by the Court at or before the time the remainder of the estate is distributed without the necessity of a separate petition and proceeding.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1002. Administration of Intestate Estate.

(a) If an Executor is appointed over a decedent's property which is disposed of by a valid will, such person shall likewise assume authority over the decedent's intestate estate and administer it with the rest of the decedent's estate.

(b) Whenever it reasonably appears that such is necessary to the preservation, administration

and/or distribution of a decedent's intestate estate, the Court may appoint an Administrator over the estate. It shall not be necessary to appoint an Administrator if the value of the decedent's property appears to be less than \$5,000 in value, no problems in administering the estate are foreseen, and no one requests that one be appointed.

(c) The following persons, if legally competent, shall be afforded priority in order of their listing for appointment as Administrator: the surviving spouse, children over 18 years of age in descending order of age, other blood relatives in order of their closeness of relationship, any adult tribal member, any adult person.

(d) The duties of the Administrator shall be:

- (1) To take possession of all property of the decedent subject to this Probate Code;
- (2) Within one month of appointment make an inventory and appraisal of such property and file it with the Court;
- (3) Within one month of appointment, determine and file with the Court a list of all known relatives of the decedent, their ages, their relationship to the decedent, and their whereabouts if known;
- (4) Subject to the approval of the Court, ascertain and pay all of the debts and legal obligations of the decedent;
- (5) Prosecute and defend actions for or against the estate;
- (6) Distribute the estate in accordance with the order of the Court and file receipts with the Court showing distribution of the estate.

(e) The Administrator shall file a bond in an amount to be set by the Court to insure their faithful, honest performance of their duties as Administrator. Unless otherwise made to appear necessary or desirable, no bond shall be required of an Administrator who is the spouse or child of a decedent.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1003. Appointment of Administrator.

(a) Upon receipt of a petition to administer an intestate estate, a hearing shall be scheduled, and notice provided to all parties, as required.

(b) The Court shall determine who is the proper person to appoint as Administrator, and if such person manifests their willingness to serve, order their appointment as Administrator.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1004. Oath of Administrator; Letters of Administration.

(a) Upon their appointment as Administrator, the person appointed shall take an oath to be prescribed by the Court to the effect that they will faithfully and honestly administer the estate.

(b) Upon taking the oath and filing the bond, if any is required, the Administrator shall be granted letters of administration as proof of their appointment.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1005. Notice to Creditors.

If an Administration has been ordered by the Court, the clerk shall cause notice to creditors to be posted in at least three conspicuous places on the reservation and published once per week, for three consecutive weeks in a publication of general distribution on the reservation. Said notice shall state that creditors have 90 days from the date of the first publication of the notice to present their claims to the Administrator or clerk and that only those claims so presented may be paid by the estate. The Court, upon Motion of the Administrator and heirs or legatees, may waive the requirement for notice to creditors and be placed into possession, but in so doing, shall become personally liable for the debts of the estate if any.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1006. Payment of Creditors.

(a) Payment to creditors of the decedent shall be made by the Administrator or by the clerk if no Administrator is appointed only upon the order of the Court after determining the validity of the claims by affidavit or personal testimony of the claimant.

(b) All just claims of creditors allowed by the Court shall be paid before distribution of the estate but shall be paid only after payment of the family allowance and homestead allowances as provided herein.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1007. Accounting.

Prior to the distribution of every estate for which an Administrator has been appointed, such Administrator shall render an accounting to the Court, for its approval, of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or Administrator's fees involved for which approval for payment is sought. In estates in which no Administrator is appointed, the clerk shall account to the Court for all transactions relating to the estate.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1008. No Taker/Escheat To Tribe.

If there is no taker of the intestate estate, the intestate estate passes or escheats to the Chitimacha Tribe.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1009. Advancements.

If a person dies intestate, property which they gave in their lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1010. Debts to Decedent.

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate or other share of the debtor's issue.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1011. Distribution: Closing Estate.

(a) When it is made to appear to the Court that an estate is ready to be distributed, the Court shall order such according to the rules of intestate succession and this Probate Code.

(b) The estate shall be closed and the Administrator dismissed and their bond released upon the filing of receipts and an affidavit showing the estate is fully distributed, and after being fully administered, is now ready to be closed.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

CHAPTER 11. PROBATE OF WILLS

Sec. 1101. Duty to Present Will for Probate.

Every custodian of a will shall deliver the will to the Tribal Court within 30 days after receipt of information that the testator is deceased. Any will custodian who fails or neglects to do so shall be liable for damages sustained by any person injured thereby.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1102. Proving, Contesting and Admitting Will.

(a) Proof of Will

(1) Upon initiating the probate of an estate, the will of the decedent shall be filed with the Court. The will may be proven and admitted to probate by filing the affidavit of an attesting witness which identifies such will as being the will which the decedent executed and declared to be their last will.

(2) If the evidence of none of the attesting witnesses is available, the Court may allow proof of the will by testimony or other evidence that the signature of the testator or at least one of the witnesses is genuine.

(b) **Contest of Will** - At any time within 90 days after a will has been admitted to probate, or within such time as the Court shall establish in the case of an exempt estate, any person having an interest in the decedent's estate may contest the validity of the will. In the event of a will contest, the Court shall take no further action with respect to the probate of the estate, but shall set a day and hour, at which time relevant evidence shall be presented at the will hearing concerning the decedent's capacity to execute a valid will and the circumstances surrounding its execution. Every reasonable effort shall be made to procure the testimony of the attesting witnesses to the will, or if their testimony is not reasonably available, an effort shall be made to identify signatures to the will through other evidence.

(c) **Admission of Contested Will to Probate** - Upon considering all relevant evidence concerning the will, the Tribal Court shall enter an order affirming the admission of the will to probate or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died without executing the will.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1103. Petition for Letters Testamentary.

A petition for letters testamentary may be made by any person having possession of a decedent's will. The petition must be in writing, signed by the petitioner, and shall state the basis for the Court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as Executor and the address of such person if known. The original copy of the will shall be submitted to the Court with the petition.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1104. Qualification of Executor.

The Court shall appoint an Executor to administer the estate. The Executor shall be a competent adult and preference shall be given, if such persons are otherwise qualified, to the person named in the will as such, followed by the surviving spouse, child of the decedent over 18 years of age with preference given in descending order of age, other blood relatives in order of their closeness of relationship, any adult tribal member, any adult person.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1105. Appointment of Executor.

(a) Upon receipt of a petition for letters testamentary, a hearing shall be scheduled and Notice provided to all parties as required.

(b) At the hearing, the Court shall first determine the validity of the decedent's will and then appoint an Executor to administer the estate according to the terms of this Probate Code and the decedent's will.

(c) Letters testamentary shall be granted to the person appointed as Executor upon their taking an oath, to be prescribed by the Court, to the effect that the Executor will faithfully and honestly administer the estate, and upon the Executor's filing of bond, if required.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1106. Duties of Executor: Bond.

The duties of the Executor shall be the same as those prescribed in this Probate Code for the Administrator of an intestate estate (Chapter 10), and the Executor shall file bond in a like manner and subject to the same exceptions.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1107. Creditors.

Notice to creditors, determination of the validity of claims, and payment of claims shall be handled as prescribed for intestate estates (Chapter 10). The Court upon Motion by the Executor and heirs or legatees, may waive the requirement for notice to creditors and be placed into possession, but in so doing, shall become personally liable for the debts of the estate, if any.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1108. Accounting.

Prior to the distribution of the estate remaining after payment of all just claims and priority payments, the Executor shall submit to the Court for approval an accounting of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or Executor's fees involved for which

approval for payment is sought.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1109. Distribution: Closing Estate.

(a) When it is made to appear to the Court that an estate is ready to be distributed, the Court shall order such distribution according to the provisions of the decedent's will or the rules of intestate succession, whichever is applicable, and according to the rules set forth in this Probate Code.

(b) The estate shall be closed and the personal representative of the estate dismissed and his bond, if any, released upon filing with the Court receipts showing that the estate is fully distributed, and also upon filing the personal representative's affidavit that the estate is fully administered and ready to be closed. "Personal Representation" as used herein includes both Administrators and Executors.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1110. Distribution: Order in which Assets Appropriated; Abatement.

(a) Except as provided in subsection 1110 (b), shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

- (1) Property not disposed of by the will;
- (2) Residuary devises;
- (3) General devises;
- (4) Specific devises.

For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection 1110 (a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)

Sec. 1111. Property Discovered After Estate Closed.

An estate may be reopened whenever necessary to dispose of a decedent's property discovered after their estate has been closed. The Court shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after discovered property in the expenses of the estate.

(Added by Ordinance #3-95 ; Adopted: March 2, 1995 ; Effective: March 2, 1995)