

**WHITE MOUNTAIN APACHE**  
**LAND RESTORATION CODE**

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# WHITE MOUNTAIN APACHE LAND RESTORATION CODE

[NOTE: The Land Restoration Code was derived from Ordinance No. 213 which (1) set aside twenty percent (20%) of the 22-H judgment funds, including investment income thereon, for the establishment of a perpetual and permanent White Mountain Apache Land Restoration Fund; (2) established an investment policy for the Fund; (3) established supervisory bodies for implementation of this Code; and (4) established guidelines for the expenditure of the Fund's investment proceeds. Ordinance No. 213 was enacted on April 8, 1998; Ordinance 231 eliminated Chapter 5 in its entirety, enacted on May 3, 2017]

## CHAPTER ONE GENERAL PROVISIONS

### SECTION 1.1 BACKGROUND AND PURPOSE

In 1951, the White Mountain Apache Tribe filed a claim against the United States for wrongful taking of its aboriginal lands, and for mismanagement of the Tribe's forests, range land, and funds. In 1995, the Tribe received a final judgment for the mismanagement and accounting portion of the case, known as 22-H, in the amount of \$22,123,247.32. In accordance with federal law, not less than twenty percent (20%) of the judgment proceeds, including investment income thereon, must be used for Tribal programs.

A substantial portion of the 22-H judgment was for damages arising from the federal government's over-cutting and mismanagement of the Tribe's forest, and over-grazing and mismanagement of the Tribe's once vast grazing areas. To help reverse damage done to the Tribe's resources, the Tribal Council adopted Resolution No. 11-95-354 "to return tribal ecosystems to a condition that better reflects their condition prior to suffering damage from the mismanagement and to fund the education of Tribal members in disciplines related to natural resource management." It is the purpose of this Tribal Land Restoration Code (the Code) to implement Resolution No. 11-95-354.

### SECTION 1.2 AUTHORITY

This Tribal Land Restoration Code is adopted pursuant to the authority vested in the White Mountain Apache Tribal Council by virtue of its inherent Tribal sovereignty and the Constitution of the White Mountain Apache Tribe.

### SECTION 1.3 PRINCIPLES OF CONSTRUCTION

The following principles of construction shall apply to this Code unless a different construction is obviously intended or is necessary to obtain a reasonable result:

A. Words shall be given their plain meaning, and technical terms shall be given their commonly understood meaning where no other meaning is specified.

**B.** This Code shall be construed as a whole to give effect to its purpose and all of its parts in a logical, consistent manner.

If any provision of this Code is held invalid, the remainder of this Code and its application to any other person or circumstance shall not be effected thereby, and to this end the provisions of this Code are severable.

**CHAPTER TWO**  
**ESTABLISHMENT OF A LAND RESTORATION FUND**

[Note: Chapter Two was revised by Ordinance No. 237, enacted July 15, 2009.]

**SECTION 2.1        ESTABLISHMENT OF FUND**

There is hereby established a permanent and perpetual White Mountain Apache Land Restoration Fund (the Fund) to achieve the purposes of this Code.

**SECTION 2.2        INVESTMENT POLICY**

**A.        Investment Adviser:**

1.        The Tribe shall secure the services of an investment advisor who is registered with a security exchange commission under the Investment Advisors Act of 1940, and who is believed to possess the necessary specialized research facilities and skills to meet the investment objectives set forth in this Code. The investment advisor shall adhere to the "reasonable person rule" under federal laws, and shall accept fiduciary responsibilities as set forth therein.

2.        The Tribe's investment advisor shall be held responsible for making all investment decisions regarding the assets in the Fund and shall be accountable for achieving the objectives set forth in this Code.

3.        The Chairman of the Tribal Council has the authority to engage or disengage the services of any investment advisor, trustee or custodian, at any time. Provided, however, that all such decisions shall be consistent with and further the overall purposes of this Code.

**B.        Objectives:**

1.        The permanent Land Restoration Fund shall be invested and managed so that adequate income is generated to provide funding for targeted restoration activities, and so that long term growth of income and capital is achieved. Preservation of capital shall be the overriding objective.

2.        The fund shall be invested in a broadly diversified portfolio of securities, including common stocks, preferred stocks, corporate or U.S. Government bonds, and cash or cash equivalents.

3.        It is not the intent of the Tribe to manage the Fund through extreme positions or opportunistic styles. Rather, the Fund shall be invested through a



disciplined, consistent management philosophy that accommodates the occurrence of all those events which might be considered reasonable and probable.

4. This policy is intended to be a flexible guideline for the investment of funds, and to set parameters on the types and quality of investment that are suitable for this Fund.

**C. Allocations:**

1. The investment portfolio shall be diversified as to fixed income and equity holdings. The diversification shall provide reasonable assurance that no single investment or class of investments will have a disproportionate or significant impact on the total portfolio of the Fund.

2. A maximum exposure to equities shall not exceed 75% on a value basis, including investments in securities convertible into equities. A maximum exposure to bonds shall not exceed 75% on a value basis. Fixed income securities maturing under one year are not considered bonds, but rather cash or a cash equivalent.

3. While at all times the allocation of the fund shall support the stated investment objectives of this portfolio, the specific asset or allocation decision within these parameter shall be the Fund manager's responsibility.

**D. Stocks:**

The purpose of the equity investments shall be to provide appreciation of principal, current income and growth on income.

Equity investments parameters:

1. Equity investment shall be allocated among different industries, as well as among individual companies. Other than U.S. Government securities, no more than 25% of the equities on a value basis shall be invested in the issuers of any one industry.

2. The securities of any one issuer shall not exceed more than 5% of the value of the total Fund on a value basis (except the securities of the U.S. Government).

3. The securities of any one issuer shall not exceed more than 10% of the outstanding voting securities, or 10% of all of the securities outstanding of that issuer.

4. Equity investments shall not be purchased on margin.
5. Equity investment shall not include the purchase or sale of real estate.

**E. Fixed Income:**

The purpose of fixed income investments is to provide both a highly predictable and dependable source for income and the opportunity for capital appreciation. Allocation to this asset class shall be designated to reduce the variability of the total portfolio value and, when applicable, to provide a source of funds for alternative investments.

Bond investment parameters:

1. Debt securities of any issuer can be considered for potential investments.

2. Debt quality ratings for securities purchases will be at least A rated by Standard & Poor's Corporation or A rated by Moody's Investor Service, Inc. Other, and non-rated bonds must be determined to be of equivalent quality by the portfolio manager.

3. Bonds shall be allocated among different industries, as well as among individual issuers. Other than U.S. Government securities, no more than 25% of the bonds on a value basis shall be invested in the issuers of any one industry.

4. The securities of any one issuer shall not exceed more than 5% of the value of the total portfolio on a value basis (except the securities of the U.S. Government).

5. The securities of any one issuer shall not exceed more than 10% of all of the securities outstanding of that issuer.

6. Bonds shall not be purchased on margin.

**F. General Parameters:**

1. No more than 10% of the Fund on a value basis shall be invested in securities or other assets for which there is no ready market.

2. The Fund shall not be invested in companies for the purpose of exercising control or management.

3. The portfolio manager will not purchase or sell commodities or commodity contracts, but can invest in commodity based exchange traded funds (ETF's), so long as the risk is limited to the amount of the investment, and that the investment does not exceed five percent (5%) of the value of the portfolio.

4. The portfolio manager shall not effect short sales of securities without the prior approval of the trustees.

5. Warrants if acquired shall consist of no more than 5% of the portfolio on a value basis, and no more than 2% not listed by the New York or American Exchange.



## **CHAPTER THREE FUND MANAGEMENT**

### **SECTION 3.1      TRIBAL LAND RESTORATION BOARD**

**A.** There shall be a seven member Tribal Land Restoration Board (the Board) appointed by the Tribal Council. The Board shall at all times be composed of persons from the following categories, and each member shall possess, at a minimum, a working knowledge of, and demonstrated commitment to, the Tribe's land restoration needs:

1. Four members shall be Tribal members selected from each of the Tribe's four voting districts;
2. One member shall be a Tribal member young adult who is at least 18 years of age and who understands and is able to articulate the perspective of younger Tribal members;
3. One member shall be a Tribal member elder who is recognized as a knowledgeable authority on traditional Apache cultural practices, especially as those practices relate to care for the Tribe's land; and
4. One member shall be a Tribal member with a degree or equivalent experience in a field related to ecological management.

**B.** Members of the Board shall initially serve one, two, or three year terms. At the Board's first meeting, the Board shall draw from a hat or use some other random method to determine each member's length of service. Two Board members shall serve one year terms, two Board members shall serve two year terms, and three Board members shall serve three year terms. After first terms are served, all Board members shall serve three year terms. At the discretion of the Tribal Council, Board members may serve consecutive terms.

**C.** Board members shall be compensated in the amount of \$50.00 plus mileage at the standard tribal rate for each Board meeting they attend. This per diem amount for meetings may be changed from time-to-time by Tribal Council resolution.

**D.** At the discretion of the Tribal Council, Board members may be removed from the Board and replaced for missing more than one Board meeting in any twelve month period.

**E.** The Board shall elect from its own membership a chairperson and other officers as deemed necessary. No elected official of the White Mountain Apache Tribe shall serve on the Board. No candidate for office or person who is a member of the candidate's immediate family shall serve on the Board.

F. Board members shall be responsible for updating community members regarding land restoration activities and seeking community involvement in project planning and implementation.

### **SECTION 3.2      LAND RESTORATION PROJECTS COORDINATOR**

The Tribe's Land Restoration Projects Coordinator shall coordinate all activities related to the establishment and management of the Fund. While the Coordinator shall not have decision making authority over the Fund, he/she shall act as a liaison between the Board, the Tribal Planner, the Tribal Chairman, and the Tribal Council. At a minimum, the Coordinator shall perform the following duties:

1. Convene Land Restoration Fund board meetings at least quarterly, and provide all Board members with an agenda for such meetings;
2. Provide advice to the Board and to the Tribal Council regarding the Tribe's Land Restoration needs, the priority of those needs, and technical support for carrying forward land restoration activities;
3. Oversee and implement all land restoration activities identified and selected by the Board, and ensure that such activities are conducted within budget;
4. At least quarterly and more often as circumstances warrant, prepare an article for publication in the Fort Apache Scout to inform the Tribal community regarding land restoration activities, Board meetings, Fund investment activities, and other activities related to use of Fund proceeds; and
5. Report to the Tribal Council at least annually regarding land restoration activities, the short term and long term success of those activities, the composition of the Board, the investment status of the Fund, and a record of all annual expenses.

The Tribe's Watershed Planner shall fulfill all duties of the Coordinator until the Tribal Council designates a Coordinator to fill that position.

### **SECTION 3.3      FUND ADMINISTRATION**

The Tribal Council shall appropriate sufficient funds to implement this Code, including funds to pay for Board meetings, field trips, and, when deemed appropriate by the Tribal Council, the hiring of the Restoration Project Coordinator. Once income is generated from the Fund, the Tribal Council may, upon request from the Board, authorize the expenditure of no more than ten percent (10%) of the available Fund proceeds to pay for the implementation of this Code. Such administrative expenditures shall be allocated before calculation of funds available for expenditures under Sections 4.1 and 4.2 of this Code.

## **CHAPTER FOUR**

### **CRITERIA FOR EXPENDITURE OF FUND PROCEEDS**

#### **SECTION 4.1      LAND RESTORATION PROJECTS**

**A.** No more than eighty percent (80%) of the available income generated from the Fund pursuant to the investment policy set forth in Section 2.2 of this Code shall be expended on activities directly related to land restoration projects (“projects”). When reviewing and deciding which projects to undertake, the Board and the Tribal Council shall ensure that all projects selected are designed to maximize the achievement of long-term tribal ecosystem goals. Fund proceeds will be geared toward specific projects, and shall not be used to finance ongoing program management activities, with the exception of projects that are needed to maintain previous restoration work.

**B.** All projects shall, at a minimum, include the following components:

1. Consistency with Tribal cultural values and concerns;
2. Consistency with Tribal ecosystem goals and objectives, as specified in the Ecosystem Code and Council adopted Watershed Restoration Strategy;
3. Compliance with applicable environmental natural resource and other laws;
4. Measurable results using reasonable measures and standards;
5. Efficient means for achieving goals;
6. Long-term sustainability;
7. An itemized budget and plan of work; and
8. Provisions for a final report to the Board evaluating the project.

**C.** Priority shall be given to projects that: (1) are developed through comprehensive watershed planning activities, (2) are developed through community-based efforts, (3) include activities that promote traditional cultural practices, the Apache language, and the education of tribal members, (4) are matched with funds from outside sources (at least 1:1 match, with increased priority for higher degrees of outside funding), and (5) provide semi-annual reports to the Board.

Projects requiring more than \$10,000 in Tribal Land Restoration Funds shall be required to meet the above standards.



**D.** Proposals for projects may be submitted to the Board by individual Tribal members, Tribal Department Heads and Enterprise Managers, Tribal Natural Resource employees, the Tribal Chairman, Vice-Chairman, and the Tribal Council. All proposals shall explain how the proposed project furthers the purposes of this Code and meets the criteria set forth in this Section 4.1.

**E.** Each proposal shall be submitted to the Land Restoration Projects Coordinator, who shall review the proposal for completeness, and gather additional information required to evaluate the proposal against the requirements of this Code. When a proposal is complete, the Coordinator shall submit the proposal for review by the Board at the next regularly scheduled Board meeting. The Coordinator shall provide Board members with a copy of each proposal for review at least two business days before the Board meeting.

**F.** Upon reviewing a proposal, the Board may, in its discretion, take the following action:

1. Reject the proposal;
2. Approve the proposal for funding;
3. Approve the proposal with modifications;
4. Request additional information and defer a decision until the information is received; or
5. Give preliminary approval, including reservation of funds, and authorize the Coordinator to assist the proposing entity with preparing applications to secure outside funding. After receiving commitments from outside sources of funding, the proposing entity shall demonstrate that the project meets the matching requirements in Section 4.1.C. The Board may then approve to a project.

All proposals that are approved, approved with modifications, or given preliminary approval shall be submitted to the Tribal Council for approval at the next regularly scheduled Tribal Council meeting. The Tribal Council may approve the proposal as submitted by the Board, approve the proposal with minor modifications, resubmit the proposal to the Board for major modifications, or reject the proposal. The Tribal Council's decision shall be final and not subject to appeal.

## **SECTION 4.2      CRITERIA FOR SCHOLARSHIPS AND INTERNSHIPS**

**A.** No more than twenty percent (20%) of the available income generated from the Fund pursuant to the investment policy set forth in Section 2.2 of this Code shall be set aside for scholarships and internships to those Tribal members who are juniors or seniors in

college or are graduate students, and whose academic focus is in one of the following fields: natural resource management/ policy/planning, environmental management, tourism and recreation, cultural resources, environmental health, environmental science, forestry, hydrology, limnology, biology, botany, ecology, computer science, civil/environmental engineering, structural engineering, architecture, urban and land use planning and design, agriculture sciences, range conservation, soils science, geology, fluvial geomorphology, and museum studies or administration.

**B.** Applications to the Board for scholarships or internships may only be made by the Tribal member individual who wishes to receive funding to further that individual's educational objectives. Applications shall include, at a minimum, the following information:

1. The applicant's name, age, and proof of Tribal enrollment;
2. Official copies of the applicant's post high school transcripts;
3. A brief description of the applicant's educational goals; and
4. A description in 250 words or less, of how the applicant's use of the requested funds for educational purposes will further the Tribe's land restoration objectives.

**C.** The Board may develop application forms to be completed by scholarship applicants that include, among other things, specific information regarding other funding sources, tuition, room and board costs, and any other information the Board deems relevant.

**D.** When considering applications for scholarships, the Board shall give priority to those individuals who possess a demonstrated commitment to caring for the Tribe's land and culture. Applicants are required to sign a statement obligating them to assist the Tribe in some capacity related to land restoration, including research projects, internships, or future employment. The Board's decisions on applications for scholarships and internships shall be submitted to the Tribal Council for final review and approval. The Tribal Council's decision shall be final and not subject to appeal.

**E.** Upon completion of each academic term (quarter, semester, etc.), students receiving scholarship funds shall submit official transcripts to the Board. The Board may, in its discretion, revoke scholarships for failure to maintain a GPA of at least 2.0 on a 4.0 scale. The Board may also revoke scholarships for failure to attend or other behavior that reflects a lack of commitment by a recipient. Revocations of scholarships under this subparagraph are subject to review by the Tribal Council. The Tribal Council's decision shall be final and not subject to appeal.



### **SECTION 4.3            CARRYOVER OF INCOME**

The Board, in its discretion, may choose not to expend the full amount of available income in a given year and instead carry those funds over to the next year. In the following year, those unexpended funds will be added to the current income available for expenditure.

### **SECTION 4.4            PROJECT OVERSIGHT**

**A.**     Once a project receives final approval, the Coordinator shall submit the budget to the Tribal Treasurer, who shall establish a separate tribal account for the project. The Coordinator shall approve expenditures under the account. All recipients of proceeds from the Fund are required to maintain records of their progress and expenditures. The Coordinator may request updates at any time. If the Coordinator determines that a project is not being completed properly, the Coordinator shall notify the implementing party and make a written request that corrective actions be taken. The Coordinator may recommend to the Board that a project be suspended or terminated if corrective actions are not taken or are not sufficient to correct the problems.

**B.**     The Coordinator will update the Board on project completions at regular board meetings. The Coordinator will prepare an annual report to the Board, Tribal Council, and to the public regarding all projects funded during the previous 12 month period.