



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Enactment of Ordinance No. 273, Adding Chapter Four to the Environmental Code of the White Mountain Apache Tribe)

WHEREAS, the Tribal Council of the White Mountain Apache Tribe ("Tribe") is entrusted by the Tribe's Constitution, Article IV, Section 1(q) to act in all matters that concern the welfare of the Tribe, including but not limited to, the amendment of codes through the adoption of ordinances; and

WHEREAS, Ordinance No. 273 proposed adding Chapter Four regarding the Tribal Plan and Project Review (TPPR) process to the Environmental Code; and

WHEREAS, on April 13, 2015 the Tribal Council authorized the posting of Ordinance No. 273, pursuant to Article XV of the Constitution of the White Mountain Apache Tribe and it was posted on April 21, 2015. Since that time, the Office of the Tribal Council Secretary has received no comments regarding the proposed changes; and

WHEREAS, the Council has reviewed Ordinance No. 273 carefully, and considered the recommendations and implications thereof in great detail and finds the adoption of the amendments to the Environmental Code, as set forth in Ordinance No. 273 to be in the best interest of the White Mountain Apache Tribe.

BE IT ENACTED by the Tribal Council of the White Mountain Apache Tribe that it hereby adopts Ordinance No. 273, attached hereto and incorporated by reference, which adds Chapter Four to the Environmental Code.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **MAY 18, 2015** duly adopted by a vote of **SEVEN** for, **ZERO** against, and **ONE** abstention by the Tribal Council of the

Resolution No. 05-2015-85A

Ordinance No. 273

White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

			
_____ Ronnie Lupe, Tribal Chairman	_____ Date	_____ Doreen T. Numkena, Tribal Secretary	_____ Date

**ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 273, adding Chapter Four to the Environmental Code of the White Mountain Apache Tribe, as follows:

**CHAPTER FOUR
TRIBAL PLAN AND PROJECT REVIEW**

[NOTE: Chapter Four was added by Ordinance No. 273, enacted _____, 2015.]

SECTION 4.1 INTRODUCTION

In 1996, the Tribal Council implemented an integrated review process to regulate activities that impact Tribal lands and natural resources. Known as the White Mountain Apache Tribal Plan and Project Review, or "TPPR," the process relies on the collaboration among the Tribe's professional staff to guide and carry out the policies of the Tribal Council concerning the Tribe's natural resource base. By this enactment, the Tribal Council incorporates into the Tribal Environmental Code the provisions of prior Council Resolution Nos. 08-96-182 and 02-2003-25, which established the TPPR, as revised and supplemented herein.

SECTION 4.2 DEFINITIONS

In this Code, unless the context otherwise requires:

- A. **"Applicant"** means a person who submits a project proposal.
- B. **"Land"** or **"Tribal lands,"** means the lands of the Fort Apache Indian Reservation.
- C. **"Panel"** means the TPPR Panel established in Section 4.6.
- D. **"Person"** means a natural person, individual, corporation, company, partnership, joint venture, government entity, association, or any other group or combination acting as a unit, and the plural as well as the singular number.
- E. **"Project,"** means any activity or action which occurs on Tribal lands.
- F. **"Project proposal"** means the written proposal to undertake a project, required in Section 4.8.
- G. **"TPPR"** means the White Mountain Apache Tribal Plan and Project Review.

H. "TPPR Code" or "Code" means Chapter Four of the White Mountain Apache Tribe Environmental Code.

SECTION 4.3 **SCOPE**

Unless exempted under Section 4.12, this Code shall govern and is applicable to any project which impacts Tribal lands or the natural resources therein, including but not limited to, any land lease or land use permit, any mining or logging operation, any activity within a watershed, any construction or other project which results in a disturbance to the earth, or any project which impedes the rightful use of Tribal land or natural resources by others.

SECTION 4.4 **COMPLIANCE; REQUIREMENTS**

No person shall undertake any project governed by this Code except as authorized through compliance with the review process of Section 4.8. Project authorization under Section 4.8 shall be limited to the terms of the approved project proposal, with any change after approval requiring additional review and approval. The failure to comply with the terms of the project approval shall be grounds for revocation of the approval and may result in enforcement action under Section 4.14. Compliance with the TPPR review and conditions does not excuse compliance with other applicable law.

SECTION 4.5 **TPPR COORDINATOR**

- A. The Tribe's Environmental Manager shall serve as the TPPR Coordinator.
- B. In addition to performing the duties in Section 4.8, the TPPR Coordinator shall do the following:
 - 1. Receive and process all project proposals;
 - 2. Schedule all meetings of the TPPR Panel;
 - 3. Respond to inquiries and requests for information regarding the TPPR process;
 - 4. Communicate decisions of the TPPR Panel to project applicants;
 - 5. Exercise authority delegated by the TPPR Panel to approve, deny or require pre-conditions for less complex project proposals;
 - 6. Report to the Tribal Council on behalf of the TPPR Panel; and
 - 7. Perform other duties as requested by the TPPR Panel, consistent with this Code.

SECTION 4.6 **TPPR PANEL**

A. The TPPR Panel shall be composed of the following persons, or their designees, who hold the following positions.

1. Tribal Cultural Resources Director;
2. Game and Fish Department Biologist;
3. Sensitive Species Coordinator;
4. Tribal Forester;
5. Tribal Land Office Representative;
6. Realty Office Representative;
7. Water Quality Officer;
8. Water Resources Director; and
9. TPPR Coordinator.

B. The TPPR Panel shall carry out the responsibilities assigned to it in Section 4.8. Each Panel member shall be required to participate in the Panel as a condition of holding one of the designated positions. A Panel member who is unable to attend a meeting shall designate an alternate from the absent member's department or program to attend. The alternate member shall hold and exercise the authority of the absent member, including the authority to vote at the meeting.

SECTION 4.7 **TPPR ADVISORY PERSONNEL**

A. The TPPR Advisory Personnel shall include, but need not be limited to, representatives from the following departments and organizations:

1. Public Works;
2. Tribal Engineering;
3. WMATCO;
4. Land Operations;
5. White Mountain Apache Housing Authority;
6. Tribal Treasurer or Controller's Office;
7. Office of the Attorney General;

8. Tribal Safety Department;
9. Planning Department;
10. Fire Department;
11. Tribal Utility Authority;
12. Cattle Associations;
13. Bureau of Indian Affairs, Fort Apache Agency; and
14. Indian Health Service.

B. The TPPR Panel may consult with the Advisory Personnel on matters relevant to the review process and, in the Panel's discretion, may draw upon the expertise of other personnel as the circumstances may warrant.

SECTION 4.8 REVIEW PROCESS

Any person, prior to undertaking a project governed by this Code, shall first submit a written proposal and comply with the review process and requirements in this Section 4.8 as follows:

A. **Step One: Submittal to TPPR Coordinator.**

The applicant shall submit a written project proposal to the TPPR Coordinator. The proposal shall describe the project in sufficient detail to enable evaluation under the criteria in Section 4.9. The applicant may be required to provide additional information and documentation, and to submit modified terms of the project proposal. For certain projects of limited scope or complexity as determined by the TPPR Coordinator and Panel, the TPPR review may be completed at the conclusion of Step One, without need for pursuing the remaining steps.

B. **Step Two: TPPR Panel Review.**

1. If required as a condition of approval, after completion of Step One, the applicant shall present the project proposal for review by the TPPR Panel. The TPPR Panel shall conduct the review meeting in a manner which permits a full review of the proposal by all Panel members and collaboration with the applicant. The Panel may approve or deny the project proposal, or require additional information or project modifications as a condition of approval.

2. Notice for meetings of the Panel shall be issued not less than two (2) days before the review meeting, unless an emergency requires an immediate meeting without the opportunity for such notice. A majority of Panel members in attendance at the meeting shall constitute a quorum. All decisions of the Panel shall be made by

majority vote of those members in attendance. The TPPR Coordinator shall be permitted to vote only in the event of a tie vote of the other Panel members. Meetings of the TPPR Panel shall be open to the public, except that the Panel may conduct a portion of a meeting in executive session to protect confidential or sensitive information from disclosure. The Panel shall designate a secretary from within or without the Panel membership to take minutes at each meeting. All decisions of the Panel shall be reduced to writing.

C. **Step Three: Tribal Council Decision.**

Following review and final decision by the Panel, the applicant shall request Tribal Council review and approval only for those projects for which Tribal Council review and approval is required by law or custom. In any such review by the Tribal Council, the decision of the TPPR Panel is advisory only and shall not be binding on the Tribal Council.

SECTION 4.9 REVIEW AUTHORITY AND CRITERIA

A. The TPPR Coordinator and TPPR Panel shall have the authority to approve, disapprove, or require modifications of a project proposal, based on the following factors:

1. Verification of project authorization under applicable Tribal law and procedures;
2. Conformity of the project with applicable law;
3. The need for review and approval from other Tribal departments;
4. The ability of the Panel or other responsible Tribal entity to effectively monitor a project;
5. The impact upon cultural resources, or conflict with cultural standards or traditions; and
6. The need for additional conditions, time limitations, or project modifications to address impacts to Tribal lands or resources, to address the infringement on use rights of others, or to otherwise carry out the purpose of this Code, including the protection of cultural resources, standards and traditions.

B. The TPPR review is limited to the foregoing factors and is not intended as a means to confirm the economic viability of a project or its economic value to the community.

SECTION 4.10 RECONSIDERATION OF OUTCOME

An applicant who disagrees with the outcome of Step One or Step Two of the review process may request that the decision be reviewed at the next level of review. To further the objective of collaboration, prior to seeking reconsideration of a decision made in the TPPR

process, the applicant is encouraged to first discuss the matter directly with the person or persons in the review with the professional expertise most relevant to the review factors at issue for the proposed project.

SECTION 4.11 PROMULGATION AND REGULATIONS AND FORMS

The TPPR Panel may develop regulations and forms to manage the TPPR process, including the conduct of meetings.

SECTION 4.12 EXEMPT ACTIVITIES

This Code shall not apply to the following:

1. Decisions by the Tribal Land Board concerning applications for grazing land and farm land assignments;
2. Leases of individual residential units within areas which have previously been developed for residential housing; and
3. Activities undertaken within residential leaseholds or land assignments which are permitted by the terms of the residential lease or land assignment.

SECTION 4.13 RELATION TO OTHER LAWS

The provisions of this Code are procedural only and do not modify any existing law or regulation. It is intended that the procedures of this Code will satisfy the relevant assessments which may be required under the National Environmental Policy Act for certain activities of the United States government, to the extent possible.

SECTION 4.14 ENFORCEMENT

In addition to the enforcement remedies which may be authorized under this Code and other applicable law, violation of this Code shall be deemed a "trespass" as such term is defined under applicable federal and Tribal law, including but not limited to the White Mountain Apache Tribe Land Code, and shall be subject to all enforcement remedies authorized therein.

SECTION 4.15 REPORTS TO THE TRIBAL COUNCIL

The TPPR Coordinator shall prepare and submit periodic reports to the Tribal Council, not less than once every six (6) months on the activities and results of the TPPR review.